CHAPTER V

THE CONSTITUTIONAL AND LEGISLATIVE ATTEMPTS FOR SOCIAL
EQUALITY AND ABOLITION OF UNTOUCHABILITY

5.1. PROVISIONS RELATING TO SOCIAL EQUALITY AND ABOLITION
OF UNTOUCHABILITY

The problem of outcastes and untouchability is an age old one. It has manifold social, economic and political implications. Indian leaders fought against this social evil mainly during the freedom struggle. There were numerous attempts by some social reformers also. Indian National Congress brought in a resolution about its programme of action, at its Karachi Conference in 1931. Gandhi’s movement for Harijan uplift began in 1932. He wanted to bring some legislation to lay down the law prohibiting this practice. But some legislation was brought only during the period when the congress ministers came into power in some provinces. By the time the
constitution came into force in 1950, there were many
state acts dealing with this problem. But there was no
uniform procedure. The Constitution for the first time
by Article 17 abolished the practice of untouchability.
This is in pursuance of the authority given to the par-
liament under the provisions of Article 351. It also
gave power to the President and the parliament to issue
lists as who could be categorised as Scheduled Castes
and Scheduled Tribes. There could be no effective en-
forcement of any reservation to these depressed classes
without such definite lists which were issued by the
President through the Scheduled Castes Constitutional
Order 1950.

This problem of untouchability is dealt in the
Constitution of India in two fundamental ways. Firstly,
by providing to meet more effectively the social problems
of outcastes as described by the term untouchability with-
in the scope of Article 17. Secondly, by providing special
privileges and reservations in economic and political
field to the Scheduled Castes and Scheduled Tribes under
protective discrimination.

1. Art. 35 of the Constitution of India - Legislation
to give effect to the provisions of this part (part
III).
The preamble of the Constitution of India also through its objectives inspires the abolition of untouchability. Justice, liberty, Equality and Fraternity are the objectives enshrined in the preamble of the Constitution. It is intended to secure for all the citizens equality of status and opportunity and to promote among them all fraternity, assuring the dignity of the individual and unity of the nation. It appears from this that the chief purposes of the preamble is freeing of untouchables from the age-old suppression. They are also being exploited by the higher caste Hindus.

Article 17 of the Constitution, being a provision of Fundamental Rights, it confers certain immunities and privileges, on the lower groups who are subjected to the disabilities and liabilities consequent to untouchability. Unlike part IV provisions, the above clause is not merely a directive fundamental to the governance and a policy formulation principle of legislation. This provision is enforceable at the individual initiative by procedure established by law. Now as the practice is abolished, it enables the hitherto untouchables, to refuse to
be subjected to the old-age practice. This position was recognised by the Joint Committee of the Houses of Parliament . . . for the Untouchability offences (Amendment) Bill, 1972. This Committee called the articulated immunities and privileges the "Civil Rights". This "Civil Rights" means any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.¹

The second part of Article 17 lays down that "the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law"² The underlying idea of this part is also very important. It forbids any private action, conduct of practice of untouchability. Even abetting any practice of untouchability is also a crime. It adds a new crime to the penal law. As the Constitution does it, and makes it punishable, the legislature cannot be soft in the matter; The discretion of the legislature is confined to the task of only prescribing punishment and establishment of procedure to prosecute a person committing the offence of untouchability.

1. Sec. 2(a) of the Protection of Civil Rights Act.
Now, the practice of untouchability is strictly prevented and if any person commits the same, deterrent action should be taken against him. Article 17 of the constitution leaves no possibility of our courts falling into an error in providing this fundamental guarantee to the depressed classes. Unlike any directive principles of state policy, Article 17 marks the untouchability abolition a legal enforceable rule of the Constitution. As this fundamental guarantee is conferred on untouchables, they cannot be subjected, to any disability arising out of any practice of untouchability. The State also strives to extend this principle and idea of Social change incorporated in Article 17 of the Constitution. Its duty in this respect is also to promote human equality by forbidding any private action causing disability to the untouchables.

Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. The citizens cannot be subjected to any disability, liability, restriction or condition with regard to access to public places, open to
or dedicated to the use of general public. Any citizen shall not be prevented on grounds of race, caste, etc., access to shops, public restaurants, hotels, and places of public entertainment and the use of wells, tanks, bathing ghats, roads, and any other places of public resort. Thus the article clearly prohibits not only discrimination through state action but also any discrimination through state supported private action. The provision of clause (2) of Article 15 are clearly intended to avoid the pitfalls of the Civil Rights cases in U.S. as there was segregation under 'separate but equal' doctrine. Finally segregation under separate but equal doctrine on ground only of race, colour, was found to be impermissible by the warran's court in the Brown's decision.

The provision abolishing untouchability in Article 17 and its practice is an offence punishable by law has been considered to be very essential in bringing a change in the traditional old Hindu Society.

1. Art. 15(2) of the Constitution.
The Joint Committee on untouchability (offences) Amendment and Miscellaneous Provisions Bill, 1972, draw some attention on the rights conferred on those subjected to the disabilities and the committee called these rights as civil rights and gave a definition of Civil Rights\(^1\) (Section 2 (a) of the protection of Civil Rights Act)

Either the protection of Civil Rights Act, 1955 or the definitional clauses of Article 365 of the Constitution, does not define the term untouchability. Before the Joint Committee on untouchability (offences) Amendment and Miscellaneous Provisions Bill, 1972, some arguments were putforth for a comprehensive "Definition of the term untouchability". But the Committee thought that the task of defining the term is almost very difficult, because any statutory definition will narrow the scope of the term untouchability. The opinion appears to be correct also. The protection of Civil Rights Act, 1955 prescribed punishment for practice of untouchability

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1. Sec. 2(a) "Civil Rights" means any right accruing to a person by reason of the abolition of "untouchability" by Art.17 of the Constitution.
and for enforcement of any disability arising there from and for matters connected therewith. The Act also forbids all sorts of acts which caused exclusion of the untouchables on the ground of untouchability.

Though the term untouchability has not been defined, the protection of Civil Rights Act, Categorised the forbidden practices of untouchability and made them punishable. In the context of sections of the protection of Civil Right Act, the articulated practices of untouchability included the following namely:

1. Preventing temple entry by lower Castes co-religionists.

2. Preventing access to places open to public generally and enforcing customary disabilities with regard to access to rivers, ghats, village wells, tanks, water taps, village panchayat hall etc.,

3. Refusal of admit persons to hospitals or educational Institutions on the ground of low castes.

4. Offering insults to harijana, as they belong to lower caste.
The Act also makes enforcement of any disability arising out of untouchability an offence. It provides punishments for enforcement of untouchability disabilities in places of public worship and also social disabilities on ground of untouchability.

Previously the punishment on conviction for offences under untouchability (offences) Act, was imprisonment which may extend to six months or fine upto 8.500/- or both.

But now the punishment under the Protection of Civil Rights Act, has been enlarged and imprisonment extend upto two years or fine or both. The protection of Civil Rights Act offences are cognisable and triable summarily. The Commission of such offences or their abetment is punishable. The offences are statutory, and any commission or abetment of such offences invites strict liability which entails with penal consequences.

Whoever on ground of untouchability refuses admission to any person to a hospital, educational institution, hotel or other like place or discriminates such person after admission therein, commits an offence under the protection of Civil Rights Act.\(^1\) Whoever refuses to sell goods or render a professional service to any such person "at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business" too commit an offence punishable under the protection of Civil Rights Act\(^2\).

5:2 TEMPLE ENTRY

The Protection of Civil Rights Act provides punishment for enforcing religious disabilities.

Public Temple is a place of public worship and is defined as a place of public religious worship or

1. Sec.5 of the Protection of Civil Rights Act, 1955.
2. Sec.6 of the Protection of Civil Rights Act, 1955.
which is dedicated generally to or used generally persons professing any religion or belonging to any religious denomination or any Section there of for the performance of any religious service, or for offering prayers there in and includes:

i) all lands and subsidiary shrines appurtenant or attached to any such place.

ii) a privately owned place of worship which is infact, allowed by the owner thereof to be used as a place of public worship, and

iii) such land or subsidiary shrine appurtenant as such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship

Article 25(2)(b) articulated a head of public morality and a social reform measure when it requires a Hindu temple to be opened to the Hindu for unfettered public religious worship; and further provides that it should be thrown open to all classes and sections of Co-religionist Hindus. The temple entry by the Scheduled

1. Sec.2(d), The Protection of Civil Rights Act, 1955.
2. Art.25(2)(b) of the Constitution of India.
Caste men on equal and non-discriminatory basis along with other persons professing the same religion or belonging to the same religious denomination is a head of social reform and a law providing for this is deemed not to affect religious freedom of the Caste Hindus. In terms clause (2)(b) of Article 25 confers no right of temple entry, but enables the State to provide for this as a social reform and welfare measure. Indeed no conferment of separate temple entry is necessary as any opposition to temple entry by the Scheduled Caste men must be an enforcement of a disability arising out of untouchability. Under Article 17 untouchability having been abolished, this is clearly an offence punishable in accordance with law. The prevention, resistance or opposition to temple entry arising out of untouchability is made an offence punishable in accordance with section 3 of the protection of Civil Rights Act. Whoever prevents any person from temple entry must be guilty not only of practising untouchability but also be instrumental to deny him freedom to prefer or practice religion equally along with persons professing the same religion or belonging to the same religious denomination. Nothing can justify any opposition by a caste Hindu to
temple entry by the Harijans. He cannot avail of his freedom of worship by denying similar freedom to his co-religionists. The freedom of Higher Caste Hindu should be presumed to touch its farthest point at which the similar freedom of an untouchable begins.

It is declared that right to religious freedom can not affect the operation of a social reform law, or for that matter, a temple entry law. 1

Section 3 of the protection of Civil Rights Act makes any opposition or resistance to temple entry by the Co-religionist untouchables, or any after entry discrimination inside the temple on ground of untouchability in matters of worship or prayer offering or religious service performance an offence. This provision is based in pursuance of Article 25(2)(b) in part III of the Constitution. Who so ever is guilty of this offence is punishable with imprisonment for a term extending upto six months and also with fine upto Rs.500/-

1. Art.25(2)(b) State of Kerala Vs. Venkateswara Prabhu A.I.R. 1961, Ker.55,
Venkataraman Devaru Vs. State of Mysore A.I.R. 1958, S.C.255,
Toraj Chaganlal Gandhi Vs. State of M.P. A.I.R. 1958, M.P. 155,
State Vs. Purna Chand A.I.R. 1958, M.P.352,
Mahatma Gandhi said "Temple entry" is one spiritual act that would constitute the message of freedom to the untouchables and assure them that they are not out-castes before God. Thus, the Constitutional direction and the Protection of Civil Rights Act provisions in this part are intended to provide the legal articulations of the spiritual sentiments expressed by the Mahatma.

5.3 THE IMPLEMENTATION OF UNTOUCHABILITY ABOLITION PLAN

The issues relevant to implementation of the untouchability abolition plan and the effectiveness of the untouchability (offences) Act were reviewed by the Committee on untouchability and Economic Development of the scheduled Castes.¹ In its report of 1969 the Committee noted the inadequate and ineffective enforcement action Concerning the untouchability (offences) Act, 1955. The untouchability (offences) Act, 1955 offences were committed with impunity. More often, the Victims of untouchability would not lodge complaint for fear of social reprisal and deterrent economic consequences. The Harijans

¹. Report of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes and connected Documents 1969, (Hereafter referred to as the Elaya perumal Committee).
would be beaten up, their children given blows and woman assaulted. The land lords and money lenders would not give them work.

The Committee recommended the establishment of an enforcement machinery and made proposals for plugging the loopholes and lacunae in the statutory provisions. The Government of India has to take effective action against antisocial elements practising untouchability and also direct the states to take stronger enforcement action against these committing untouchability offences. In pursuance of their declared policy the parliament has decided to implement the recommendations of the Belayape-rumal Committee; and introduced in the House of the people of Parliament a bill on 13th April, 1972, the untouchability, offences (Amendment and Miscellaneous Provisions) Bill, 1972. The Bill provides for comparatively more stringent punishments for the offences under Untouchability (offences) Act and also made provisions to ensure that those found guilty under section 3, 4, 5 and 6 of the Untouchability (offences) Act are not able to avoid conviction. It forbids preaching, speaking or writing,
committing untouchability on any ground of orthodoxy-
Conservatism, traditionalism and Casteism, or any of
them. It provides even for suitable action against the
derelict police officials for their reluctance or negli-
gence in moving the machinery of law or prosecuting
by procedure established by law. It provides for making
the untouchability (offences) Act offences Non-compound-
able. It prescribes the enhanced imprisonment upto two
years and also fine upto rupees five hundreds. The Bill
was later referred to a Joint Committee of both the Houses
of Parliament. The Joint Committee submitted its report
in February, 1974.

The Joint Committee report gave a neat treatment to
the Bill, and suggested improvement in the Bill provisi-
ons. It made the following among other points, namely:-

1) The abolition of untouchability should be ta-
ten to have conferred upon the untouchables
certain legally enforceable immunities and
privileges of citizenship, the 'Civil Rights'.
Therefore, the law intended and designed to
punish practice of untouchability should be
described as a Civil Rights enforcement legis-
lation. Accordingly the Committee felt that
the short title of the principal Act, the un-
touchability (offences) Act should be changed
to the "PROTECTION OF CIVIL RIGHTS ACT";
ii) Any disability on ground of untouchability should include any discrimination on that ground;

iii) Any place of public worship established and maintained by a religious denomination should be open to all persons belonging to the same religion.

iv) Prevention of temple entry on the ground of untouchability of a person should be punishable, even if the person concerned does not belong to the same denomination as the person prevented.

v) No one should be prevented on the ground of untouchability from bathing not only in, or using waters of the sacred tanks, wells, springs, or water courses, but also of the rivers, lakes or ghats attached to them.

vi) Any disability enforcement on ground of untouchability with regard to the taking part in, or taking out any religious or social procession should be made punishable.

vii) Any insult done or attempts to do it to a person on grounds of untouchability should be punishable;

viii) A person who justifies or preaches practice of Untouchability on historical philosophical religious grounds should be deemed to encourage, or to excite practice of untouchability.

ix) A public servant showing any negligence in investigation of the Untouchability (offences) Act offences should be punished as an abettor.

x) Any community - local or other practising untouchability should be liable to a collective fine.
xi) Legal aid should be made available to the victims of the Untouchability (offences) Act crimes.

xii) Official machinery including committees at various levels should be planned for overseeing implementation of untouchability removal measures, and conducting periodic surveys of the Untouchability (offences) Act operation.

xiii) Special Officers and special Courts for trial of the Untouchability (offences) Act offenders would be appointed.

xiv) The reports concerning various measures taken by the various governments should be placed on the tables of the Houses of Parliament.

Accordingly with effect from 19-11-1976 the name of Untouchability (Offences) Act, 1955 has been changed by the Untouchability (Offences) Amendment Act, 1976 [105 of 1976] to the Protection of Civil Rights Act, 1955

5.4 PROTECTION OF CIVIL RIGHTS ACT

The object of the Act is to prescribe punishment for the preaching and practice of 'Untouchability', for the enforcement of any disability arising therefrom and
PUNISHMENT FOR ENFORCING RELIGIOUS DISABILITIES

Section 3 provides that whoever, on the ground of untouchability, prevents any person (a) from entering any place of public worship, which is open to other persons professing the same religion or any section thereof as such person; or (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water course, river or lake, or bathing at any ghat of such tank, water course, river, or lake, in the same manner and to the same extent as is permissible to other persons professing the same religion or any section thereof, as such person, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

An important explanation is appended in Section 3 namely that for the purposes of this section persons professing the Buddhist, Sikh or Jain religion or persons pro-
fessing the Hindu religion in any of its forms or developments including Virashivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminarayana Sampradaya shall be deemed to be Hindus.

In spite of this explanation it was held in State v. Puranchand that denial to untouchables of entry to Jain temples is not a violation of Section 3 of the UOA\(^2\) (Untouchability offences Act), since those excluded are not of the same religion as those admitted. The UOA according to the court, does not abolish the distinction between Hindus and Jains, nor does it create any new right—either for untouchables or for caste Hindus—to enter Jain temples. It only puts the rights of untouchables on parity with the rights of "others of the same religion" i.e., untouchables have the same rights to enter a Jain temple that were previously enjoyed by caste Hindus. If the temple was not open to the latter before, it is no offence to exclude untouchables from it now. Jain untouchables, if there are any,\(^3\) would

2. The Present Protection of Civil Rights Act (prior to change of title in 1976) was originally called as "THE UNTOUCHABILITY (OFFENCES) ACT, 1955.
3. Untouchables are rarely known to profess Jainism.
of course now have the right to enter Jain temples since the latter are open to persons of the "same religion."

The Amended Act (PCRA) continues to put the rights of untouchables on parity only with the right of "others of the same religion" and does not clarify the meaning of the explanation. From this one could very well conclude that the legal position under the new Act will probably be as held in the above case of State v Puran Chand.

**PUNISHMENT FOR ENFORCING SOCIAL DISABILITIES**

Section 4 provides that whoever, on the ground of untouchability, enforces against any person any disability with regard to---

(i) access to any shop, public restaurant, hotel or place of public entertainment; or

(ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dhar-
mashala, sarai or musafirkhana for the use of the general public or of section thereof; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or

(iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, or any sanitary convenience, any road or passage, or any other place of public which other members of the public or any section thereof have a right to use or have access to; or

(v) the use of, or access to, any place used for a charitable or public purpose, maintained wholly or partly out of state funds or dedicated to the use of the general public or any section thereof; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or
(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition or occupation of any residential premises in any locality whatsoever.

(ix) the use of any dharmashala, sarai or musafirkhana which is open to the general public or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in or taking out any religious, social or cultural procession; or

(xi) the use of jewellery and finery; shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall not be less than one hundred rupees.

For the purposes of this section, "enforcement" of any disability" includes any (emphasis supplied) discrimination' on the ground of 'Untouchability'.

1. Explanation to Sec. 4.
PUNISHMENT FOR REFUSAL TO ADMIT PERSONS TO HOSPITALS ETC.

Section 5 provides that whoever on the ground of untouchability—

(a) refuses admission to any hospital, dispensary, educational institution or any hostel, if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.
PUNISHMENT FOR REFUSAL TO SELL GOODS OR RENDER SERVICES

Section 6 provides that whoever on the ground of untouchability refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Section 8 also makes provision for cancellation or suspension of licences under certain circumstances. It provides that when a person who is convicted of an offence under Section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such
person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so cancelling or suspending a licence shall have effect as if it has been passed by the authority competent to cancel or suspend the licence under any such law.\(^1\)

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**PUNISHMENT FOR INTERFERING WITH UNTOUCHABILITY**

**ABOLITION MEASURES**

Section 7 (1) provides that whoever—

(a) prevents any person from exercising any right accruing to him by reason of the abolition of untouchability under Article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to

\(^1\) In this section licence includes a permit or a permission, (Explanation to Sec.8).
any person in the exercise of any such right or molests, injures annoys or boycotts\(^1\) any person by reason of his having exercise any such right; or

(c) by words, either spoken or written, or by signs or by visible representation or otherwise incites or encourages any person or class of persons or the public generally to practise untouchability in any form whatsoever,\(^2\) or.

(d) insults or attempts to insult, on the ground of 'Untouchability', a member of a scheduled Caste.

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1. Explanation I to Sec 7(1) provides that a person shall be deemed to boycott another person who--
   (a) refuses to let to such other person or refuses to permit such other person, to use or to occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or
   (b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

2. Explanation II to Sec 7(1) provide that for the purposes of clause (c), a person shall be deemed to incite or encourage the practice of "untouchability---
   (i) if he, directly or indirectly, preaches "Untouchability" or its practice in any form; or
   (ii) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of untouchability in any form.
shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Under Section 7(1A) whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised and right accruing to him by reason of the abolition of "untouchability" under Article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

Section 7(2) provides that whoever—

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section; or
(ii) takes any part in the ex-communication of such person, on the ground that such person has done any act in furtherance of the objects of this Act, shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

PUNISHMENT FOR UNLAWFUL COMPULSORY LABOUR

Section 7A provides that whoever compels\(^1\) any person, on the ground of untouchability, to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of "untouchability"\(^2\).

It further provides that whoever is deemed under

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1. For the purposes of this section "compulsion" includes a threat of social or economic boycott (Explanation to Sec.7).
2. Sec.7A(1).
the above provision to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.¹

PUNISHMENT FOR ABETMENT OF ANY OFFENCE UNDER THE ACT

Whoever abets any offence under this Act shall be punishable with punishment provided for the offence.²

PUNISHMENT FOR OFFENCES COMMITTED BY THE WHOLE COMMUNITY

Untouchability offences, in certain cases, are committed by the whole community in a particular area. In order to meet such a situation, the Act empowers the State Government to impose a collective fine on the inhabitants of that area under certain circumstances and to

1. Sec.7A(2).
2. Sec.10. A public servant who wilfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act. (Explanation to Sec.10).
apportion the fine, so imposed, among them. The relevant section 10A(1) provides that if, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence punishable under this Act or harbouring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may by notification in the official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government's judgement of the respective means of such inhabitants and in making any such apportionment the State Government may assign a portion of such fine to a Hindu undivided family to be payable by it. The fine apportioned to an inhabitant shall not be realised until the petition, if any, filed by him.

1. This notification shall be proclaimed in the area, by beat of drum or in such other manner as the State Government may think best in circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.
under sub-section (3)\textsuperscript{1} of this section is disposed of.

The portion of any collective fine payable by any person may be recovered in the manner provided, by the code of Criminal Procedure, 1973, for the recovery of fines imposed by a Court as if such portion were a fine imposed by a magistrate.\textsuperscript{2}

The State Government is further empowered to exempt the victims of any offence punishable under the Act (who might be inhabitants of the area) or any other person who does not fall under the category of persons who are liable to be collectively fined under sub-section (1), from the payment of collective fine or any portion thereof.\textsuperscript{3}

\textbf{1. Under Sec.10A(3)} any person aggrieved by the imposition of the collective fine under Sub-Sec.(1) or by the order of apportionment, may within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment. The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit. The amount of fine exempted will not be realised from any person.

\textbf{2. Sec.10A, Sub-Sec(5).}

\textbf{3. Sec.10A, Sub-Sec(4).}
5.5 PROVISIONS FOR THE EFFECTIVE ENFORCEMENT OF THE ACT

The following provisions are incorporated for the effective enforcement of the protection of Civil Rights Act.

PRESUMPTION OF UNTOUCHABILITY

Section 12 provides that where any act constituting an offence under this section is committed in relation to a member of the scheduled caste, the court shall presume, unless the contrary is proved, that such act was committed on the ground of untouchability. Thus the onus of proof is not on the prosecution, as it normally is, but on the defendant to prove his innocence.

OFFENCES TO BE COGNIZABLE AND TRIABLE SUMMARILY

Section 15 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable and
every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a judicial magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with procedure specified in the Criminal Procedure Code.

ENHANCED PENALTY ON SUBSEQUENT CONVICTION

If a person having already been convicted of an offence under this Act or of an abetment of such offence under this Act, is again convicted of any such offence or abetment shall, on conviction, be punishable—

(i) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than five hundred rupees;

(ii) for the third offence or any offence, subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also
with fine which shall be not less than five
hundred rupees and not more than one thousand
rupees. 1

RESUMPTION OR SUSPENSION OF GRANTS MADE BY
GOVERNMENT

Where the manager or trustee of a place of
public worship or any educational institution or hostel
which is in receipt of a grant of land or money from the
Government is convicted of an offence under this Act and
such conviction is not reserved or quashed in any appeal
or revision, the Government may, if in its opinion the
circumstances of the case warrant such a course, direct
the suspension or resumption of the whole or any part
of such grant. 2

MEASURES TO ENSURE 'RIGHTS' AVAILED OF BY THE
CONCERNED PERSONS

Section 15A provides that, subject to such rules
as the Central Government may make in this behalf, the

1. Sec.11.
2. Sec.9.
State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by persons subjected to any disability arising out of 'untouchability'.

In particular, and without prejudice to the generality of the provisions of the above sub-section (1), such measures may include:

(i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of 'untouchability' to enable them to avail themselves of such rights.

(ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act.

(iii) the setting up of special courts for the trial of offences under this Act.

1. Sec. 9.
(iv) the setting up of committees, at such appropriate levels as the State Government may think fit, to assist the State Government in formulating or implementing such measures.

(v) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act.

(vi) the identification of area where persons are under any disability arising out of 'untouchability' and adoption of such measures as would ensure the removal of such disability from such areas.

PROTECTION OF GOVERNMENT ACTION TAKEN IN GOOD FAITH

Section 14A provides that no suit, prosecution or other legal proceeding shall lie against the Central or a State Government for anything which is in good faith done or intended to be done under this Act. Further

1. Sec.15A(2)
no suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

5.6 APPRAISAL OF PROTECTION OF CIVIL RIGHTS ACT

Untouchability could not be eliminated from the Hindu Society even after 35 years of this enactment. Enacting a legislation appears to be just to spell out the thinking of the legislators. In case it is to eradicate untouchability it must be provided with necessary tooth and a law. In this Act no provision has been incorporated, specifying how and when, it is to be implemented and with whose assistance. Unless permanent and effective machinery with sufficient infrastructural facilities are established for implementation of the Act, the situation would remain more or less the same. It is due to these limitations that it could not be possible to eliminate untouchability from our Society. And more over the condition of untouchables (mainly the Scheduled Castes and Scheduled Tribes) has become still worse. Hence the
Parliament has taken up the routine task of enacting one more legislation preventing atrocities committed on members of Scheduled Castes and Scheduled Tribes.

5.7 THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. Because of the awareness created amongst the Scheduled Castes and the Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down.
and terrorise them. When the Scheduled Castes and the
Scheduled Tribes try to preserve their self-respect or
honour of their women, they become irritants for the
dominant and the mighty. Occupation and cultivation
of even the Government allotted land by the Scheduled
Castes and the Scheduled Tribes is resented and more
of-ten these people become victims of attacks by the
vested interests. Of late, there has been an increase
in the disturbing trend of commission of certain atro-
cities like making the Scheduled Castes persons eat in-
edible substances like human excreta and attacks on and
mass killings of helpless Scheduled Castes and Scheduled
Tribes and rape of Women belonging to the Scheduled Cas-
tes and the Scheduled Tribes. Under the circumstances,
the existing laws like the protection of Civil Rights
Act, 1955 and the normal provisions of the Indian Penal
Code have been found to be inadequate to check these cri-
mes. A special legislation to check and deter crimes
against them committed by non-scheduled Castes and non-
Scheduled Tribes has therefore, become necessary. Hence
the Parliament has enacted, The Scheduled Castes and
the Scheduled Tribes (Prevention of atrocities), Act. 1989\textsuperscript{1}.

**PRACTICES AMOUNTING TO ATROCITIES ON MEMBERS OF SCHEDULED CASTES OR SCHEDULED TRIBES**

This Act is basically intended for checking atrocities committed on members of a Scheduled Caste or a Scheduled Tribe by a member of a non-scheduled Caste or a non-scheduled Tribe. Section 3 of the Act specifies the list of offences which are atrocities for purposes of the legislation and the punishment for commission of such atrocities is also indicated therein.

The practices listed as atrocities are:\textsuperscript{2}

(1) Forcibly a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance:

\textsuperscript{1} Act No. 33 of 1989.
\textsuperscript{2} Sec. 3(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
(ii) action with intent to cause injury, insult
or annoyance to any member of a Scheduled
Caste or Scheduled Tribe by dumping excreta,
waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removing clothes from the person of a
member of a Scheduled Caste or a Scheduled Tribe
or parading him naked or with painted face or
body or committing any similar act which is
derogatory to human dignity;

(iv) wrongfully occupying or cultivating any land
owned by or allotted to, or notified by any
competent authority to be allotted to, a mem-
ber of a Scheduled Caste or a Scheduled Tribe
or, getting the land allotted to him transferred;

(v) wrongfully dispossessing a member of a Scheduled
castes or a Scheduled Tribes from his land or
premises or interfering with the enjoyment of
his rights over any land, premises or water;

(vi) compelling or enticing a member of a Scheduled
caste or a Scheduled Tribe to do 'begar' or
other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forcing or intimidating a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) Instituting false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) giving any false or frivolous information to any public servant and thereby causing such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled caste or a Scheduled Tribe.

(x) Intentionally insulting or intimidating with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaulting or using force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;
(xii) being in a position to dominate the will of a woman belonging to a SC or a ST and using that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by members of the SCs or the STs, so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denying a member of a SC a ST any customary right of a passage to a place of public resort or obstructing such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to; and

(xv) forcing or causing a member of SC or a ST to leave his house, village or other place of residence.

of false evidence, mischief by fire or explosive substance, interference with evidence and other matters
and all these offences would also be atrocities.¹

ATROCITIES IN RELATION TO PROPERTIES OF SCHEDULED CASTES | SCHEDULED TRIBES

Property is often the basis of atrocities on Scheduled Castes and Scheduled Tribes. Hence, wrongful dispossession of the property is an atrocity under the Act.² As a matter of deterrent, the Act provides that upon conviction, in addition to a sentence to be passed, the movable and immovable property belonging to the convicted persons and used in the offences would be liable for forfeiture. The Act also includes offences relating to property and persons and carrying punishments of imprisonment of 10 years and above under the Indian Penal Code and committed by non-Scheduled Castes and non-Scheduled Tribes, on the ground that the victims happen to be members of Scheduled Castes or Scheduled Tribes, as atrocities.

¹ Sec. 3(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
² Sec. 3(1)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
SPECIAL PROVISIONS REGARDING SCHEDULED TRIBES

The Scheduled Tribes living in Scheduled Area or Tribal Areas are victims of unscrupulous persons and they are harmed in many ways by those persons. Article 19(5) of the Constitution permits Government to place reasonable restrictions on the freedoms mentioned in Article 19(1) for the protection of the interests of any Scheduled Tribe. The Act, therefore, provides for 'externment' of a person who is likely to commit an atrocity as defined in the Act against a member of a Scheduled Tribe in a Scheduled or Tribal Area, from that area for a period extending to two years.¹

IMPORTANT OTHER FEATURES OF THE ACT

Some of the other features of the Act are:

(i) The State Government will specify for each district, a court of session to be a Special Court for a speedy trial of offences under the Act.

¹. Sec.10(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
(ii) For every Special Court, the State Government will specify a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in Court.

(iii) A person who commits an offence under this Act cannot take recourse to Section 438 of the Criminal Procedure Code i.e., release on bail is not allowed.

(iv) Section 360 of Criminal Procedure Code or the Probation of Offenders Act do not apply to persons guilty of an offence under this Act.

(v) The State Government has been empowered to impose collective fine on the inhabitants of any area where such inhabitants are concerned in or abetting the commission of atrocity/offence.

(vi) The State Government can confer by notification in the official gazette, on any officer of the State Government, powers exercisable by a police Officer, under the Criminal Procedure Code, viz., the powers of arrest, investigation
and prosecution of persons before any Special Court.

(vii) The law and order machinery of the State can declare an area as atrocity prone area and take appropriate preventive action for checking atrocities in that area.

(viii) Some of the provisions of the Indian Penal Code relating to Criminal Conspiracy, unlawful assembly and attempting to commit any offence, automatically apply to offences under the Act.

(ix) Section 8 of the Act mentions circumstances under which certain presumptions could be made for facilitating prosecution.

(x) The provisions of the Code of Criminal Procedure on matters relating to security for keeping the peace and for good behaviour, maintenance of public order and tranquility and preventive action of the police are automatically applicable for purposes of enforcement of the Act.
SCHEMES TO BE FRAMED UNDER THE ACT

For effective implementation of the legislation, the State Governments have to take certain measures which may include:

(i) the provision for adequate facilities including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

(ii) the provision for travelling and maintenance expenses to, witnesses, including the victims of atrocities, during investigation and trial of offences.

(iii) the provision for the economic and social rehabilitation of the victims of the atrocities.

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions;

(v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures.

1. Sec. 21(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.
(vi) provision for a periodic survey of the working of the provisions with a view to suggesting measures for the better implementation of the provisions; and

(vii) the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members.

CENTRAL GOVERNMENT FUNCTIONS

The State Governments may adopt appropriate schemes in respect of all these matters and also notify schemes\(^1\). Central Government has the responsibility to co-ordinate measures taken by the State Governments for purposes of implementation of the Act. It has also to place a report every year on the Table of each House of Parliament on measures taken by itself as well as by the State Governments for achieving the objectives laid down in the legislation. Central Government has also respons-

\(^1\) Sec.17(3) of the Scheduled Castes and Scheduled Tribe (Prevention of atrocities) Act.
sibility to frame rules both in relation to matters
covered under Section 21 and also general matters as
provided in Section 23 of the Act.

SPECIAL RESPONSIBILITY OF PUBLIC SERVANTS

The legislation makes it abundantly clear that
a public servant when he commits any offence which is
an atrocity as per provisions of the legislation is
punishable with imprisonment for a term which shall
not be less than one year and which may extend to the
punishment provided for that offence under the law.¹
Further a public servant who wilfully neglects his
duties required to be performed under the Act is also
liable to be punished with the imprisonment for a term
which shall not be less than six months and which may
extend to one year.² This law, however would not apply
to a public servant who is a member of a Scheduled
Caste or Scheduled Tribe. In case a Public Servant

1. Sec.3(2)(viii) of the Scheduled Caste and Scheduled

2. Sec.4 of the Scheduled Caste and Scheduled Tribe
   (Prevention of Atrocities) Act.
who is a member of Scheduled Caste or Scheduled Tribe commits any atrocity or neglects his duties, he has to be proceeded with under the normal laws and administrative instructions are to be issued for taking appropriate disciplinary action against him for such actions.

QUANTUM OF PUNISHMENT UNDER THE ACT

The normal punishment under the law is imprisonment for a term which shall not be less than six months, and which may extend to five years and with fine. Certain offences like fabrication of false evidence, mischief by fire or any explosive substance, interfering with evidences in relation to an offence, etc., are punishable with higher punishment like imprisonment for 7 years and 10 years, life imprisonment or capital punishment or whatever higher punishment is provided under the Indian Penal Code in addition to fine for that offence.¹ The Act specifies a minimum punishment of imprisonment for a term of one year a person convicted of an offence for a second time.²

¹. Sec.3(2)(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
5.8 APPRAISAL OF STEPS FOR ELIMINATION OF SOCIAL INEQUALITY

Elimination of factors which create inequality among the people in the society is as essential for the realisation of equality in fact as the equilibrium creating 'Protective discrimination'. This theory helps to level up artificial social contours. There are constitutional safeguards which seek to eliminate factors of social inequality. Article 17 of the Constitution prohibits untouchability. The protection of Civil Rights Act, out laws the enforcement of disabilities on the ground of untouchability in regard to, among others entrance to, and worship at, temples, access to shops and restaurants, the practice of occupation and trades, use of water sources, places of public resort, and accommodation, public conveyance, hospitals, educational premises, holding of religious ceremonies and processions. Violation of these provisions is made an offence punishable by fine upto Rs. 500/- imprisonment upto 6 months, cancellation or suspension of licence etc.

1. Sec.3 to 6 of the Protection of Civil Rights Act.
2. Sec.8 and 9 of Protection of Civil Rights Act.
Prof. Marc Galanter is of the view that "Article 17 deals with two classes of conduct: acts constituting the practice of Untouchability in any form and acts which are the enforcement of disability arising out of untouchability. The first is apparently broader and inclusive of the latter. But while all of the former are 'forbidden', only the latter are declared an offence punishable in accordance with law". The practice of Untouchability according to him, may include such acts as refusal of commonality, invidious separation at private functions, perhaps even observance of purificatory rites after contact.

"Yet it is difficult", he says, "to believe any of these would be included in the enforcement of disabilities". The latter would seem to be confined to some narrower class of acts which involve deprivation of some legally protected rights and not merely denial of social acceptance. Evidently prof. Galanter put very broad construction on the phrase practice of Untouchability but which take place within the private domestic sphere. Therefore, he comes to the inevitable conclusion that the phrase "Practice of untouchability in any form" is broader in

2. Ibid.
scope than the expression "enforcement of disability arising out of untouchability" and the latter covers only a few acts but not all the acts constituting "Practice of untouchability in any form."

Article 17 forbids practice of untouchability, the provision is self-executing and, therefore does not require a supplementary or aiding legislation for its effectiveness. Therefore violation of this provision, i.e., practice of untouchability whether by State or by an individual would be unconstitutional per se for which remedy lies under Article 32 and 226 of the Constitution. A person aggrieved by such unconstitutional acts has a right to approach the Supreme Court for remedy, and the court has full power under the Constitution to issue an appropriate writ or order directing the state or an individual, as the case may be, to desist from practicing untouchability.

There are certain acts of refusal of entry of persons to one's house on the ground of untouchability, but they evidently take place in the private domestic sphere like invidious separation at private functions,
observance at home of purificatory rites after contact, etc., If by broader construction these acts are included within the purview of the phrase "Practice of untouchability", nothing would prevent an aggrieved or affected party or person from seeking the intervention of the court to gain an entry to a private house on the footing of equality and without discrimination to end invidious separation at private functions and to restrain an individual from observing purificatory rites at home after contact outside the house.

Such a construction, besides recognising individuals' right to interfere with individuals' private affairs, would throw the sanctity, privacy and peace of home into complete disarray. It is, therefore, difficult to say without a positive indication in the constitution, that such a construction or situation is contemplated by the constitution makers. Moreover, what is forbidden by the constitution is the practice of untouchability in any form which means prohibition of untouchability in all its manifestations. The use of the phrase "in any form" is significant in that it is intended to cover all facts of practice of untouchability but not all places wherein it may take place. If the constitution - makers
had intended to catch within the set of constitutional
prohibition acts amounting to practice of untouchabili-
ty which take place in the private domestic sphere also
they would have surely used the phrase "practice of un-
touchability" in any form or in any place". In the
absence of such a positive indication it is difficult
to give a wider meaning to the phrase "Practice of un-
touchability in any form" to include even acts constitu-
ting practice of untouchability which take place in
the domestic sphere. 1

A reasonable view seems to be that Article 17
forbids practice of untouchability in any form in the
public sphere, where citizens have equal right to enjoy
the public facilities. Denial of access to shops and
restaurants, restrictions on the practice of occupations
and trades, denial of use of water sources, places of
public resort and accommodation, invidious separation
in public conveyances, hospitals and educational institu-
tions and similar other acts in regard to the use of
public facilities, which are practiced on the ground of

1, Ibid.
untouchability, amount to practice of untouchability, which is forbidden by constitution, so a discriminatory act would come within the constitutional prohibition only if it fulfils two conditions:

i) it should be based on the ground of untouchability; and

ii) it should be in regard to public institutions, public places and public facilities. Such a construction guarantees to all without any discrimination the right to enjoy the facilities offered in public institutions, places, conveyances and in places or undertakings impressed with public interest.

Article 17 is intended to eliminate the social evil of untouchability, which create disability in certain members of the society, against whom it is practiced in the matter of rights guaranteed by the constitution. Article 15 assures social equality to all citizens in the constitution without much substance to persons against whom untouchability was practiced. So when Article 17 forbade the "practice of untouchability" it forbade in-effect, the position of disabilities arising out of the

1. Arts.15 and 16 of the Constitution of India.
practice of untouchability. In fact it is difficult to understand "practice of untouchability" in any sense other than the "imposition of disabilities arising out of untouchability". For "practice of untouchability" which does not amount to imposition of disabilities on any person can hardly be a concern of the provision of Article 17 much less the concern of any person who is least affected by it. So, there seems to be no difference in connection between the two phrases "practice of untouchability in any form" and enforcement of disability arising out of untouchability used in Article 17 of the constitution. While the former is intended to convey the idea that practice of untouchability that is, imposing of disability arising out of untouchability is forbidden by constitution, and consequently, its practice would amount to violation of the constitution for which constitutional remedy is available, the latter is intended to enable the state to enact legislation making the practice of untouchability, that is, imposition of disability arising out of untouchability, a punishable offence.

The important problem is about the meaning of untouchability and the scope of its application. The
problem arises mainly due to the absence of definition of untouchability either in the constitution or in the protection of Civil Rights Act, 1955 or The Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 enacted by parliament.

Section 12 of the Protection of Civil Rights Act, 1955 provides that where any of the forbidden practice is committed in relation to a member of a scheduled caste the court shall presume, unless the contrary is proved that such act was committed on the ground of untouchability. This provision throws some light on the controversial point. It may be remembered that many backward classes and castes listed by the Union Government in accordance with the provisions of Article 341 under the title "Scheduled Castes" come under the label "Sudra Caste" which is within "The pale of caste system". This provision of the law, therefore, clearly indicates that untouchability the practice of which is prohibited, is intended to cover not only acts of untouchability practised in relation to castes (group) of persons which are

1. Sec. 12, Presumption by Court in Certain Cases.
Beyond the pale of caste system but also acts of untouchability practised in relation to castes and groups of persons which are within the pale of caste system.

Besides this, the meaning and scope of untouchability may be ascertained from the context and position of Article 17 in the constitution. It comes soon after Articles 15 and 16 which guarantee right to Social Equality and right to equality in employment opportunities respectively. It is then followed by Article 18 which abolishes, inequality creating titles. Flanked, thus, by Articles which are designated to ensure to all equality in law and in fact, Article 17 cannot be construed differently without striking a discordant note in the group. In other words it is intended to abolish Social inequality in an all-embracing form, whether it is untouchability between Hindus and Hindus, between Hindus and Mahamadans or between Hindus and Christians. That is to say it is intended to eradicate from the process of law and from the public sphere of all civil disabilities which, but for this provision, could have been imposed on an individual, whether he be a Hindu, Christian or Muslim. In short it is intended to eliminate the factor of social
inequality and thereby to do away with the two classes, touchable and untouchable classes existing in the society.

Thus, various attempts were made through the provisions of the constitution, The Protection of Civil Rights Act, 1955 and The Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989 to eradicate this social evil and to improve the conditions of depressed and oppressed sections of the Society. The judiciary has also considered the changing conditions in the society and upheld the validity of the law for the upliftment of the downtrodden, enacted by the Parliament and the State legislatures, which were challenged in various courts as unconstitutional. The role of judiciary in mitigating the archaic practice of untouchability is elucidated in the ensuing chapter.
"Law must step in because it is rights we are recognising not clarity we are distributing; it is justice we are doing, not condescension we are showing."

V.R. KRISHNA IYER.