Chapter 2
The Status of Scheduled Castes and Issues in accessing Commons

2.1 Introduction

The various Hindu scriptures provide ample number of evidence for the prevalence of social stratification in the Indian society. The Indian society is known for religion and caste-based division. Dr. B.R. Ambedkar rightly observes that the “Caste divides the Hindu society into various groups with varying degrees of prestige, responsibility and circles of social intercourse. The caste within the caste system is distinguished from one another by the existence of special rights for some groups and disabilities for others. This has also led to a definite social structure within the Brahmins at the top and the Harijans at the bottom”. Even today one could witness almost in every sphere the fight between the Scheduled Castes and the dominant caste groups. It is for this reason that the Indian reformers, throughout the ages, like Buddha, Ashoka, Ramanuja, Basava, Guru Nanak, Rajaram Moham Roy, Swami Vivekananda and Swami Dayananda Saraswathi had to recoil with horror from the practice of untouchability and non-entry of the untouchables into the common places (Selvamuthu Kumarasami, 2006)\(^1\).

The social awakening among the Scheduled Castes became a reality only after the great works of the reformers, particularly in the late nineteenth and early twentieth centuries. Subsequently, the provisions in the constitution of India ultimately paved the way for the material change. The impact of the separate constitutional act namely the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was found to be significant and the act has been helpful in ensuring the civil rights of the Scheduled Castes. This Act has also been amended many times to strengthen the civil rights for
the Scheduled Castes. Scheduled Castes can file a complaint under the subsection of this act whenever they confront a situation affecting their rights adversely. A Special court is also available at the district level to deal with cases of human rights violations against Scheduled Castes. In addition, the Scheduled Castes can also move the High court to ascertain their fundamental rights as granted in the Indian constitution.

The atrocities against the Scheduled Castes have been prolonging for many years. It is true that the superior courts viz. the Supreme Court and High Courts play a vital role in imposing checks on the arbitrariness of the executive and in interpreting the Law. The role of the sub-ordinate courts also cannot be ignored for it is the subordinate courts which deal with grassroots problems, bear the first brunt of the people and the millions come directly in their contact. Thus, it may well be said that if the judiciary is the lifeblood of democracy, the subordinate judiciary is the lifeblood of judiciary itself. It is the backbone of the entire fabric of the judicial system (Parashar, P.N.)

This chapter discusses the status of Scheduled castes, social exclusion, exclusion of Scheduled castes in the commons, movements and the role of political parties in addressing the issues of Scheduled castes, and the constitutional provisions and the powers of the judicial system to deal with the Scheduled castes issues.

2.2 Status of Scheduled Caste

2.2.1 Historical backdrop

Caste system could be viewed in a wide variety of perspectives in India such as custom, practice, ritual, tradition and religion. The caste system in India is a system of social stratification (Gerald D Berreman, 1972) which historically disserved peoples into thousands of endogamous hereditary groups called Jatis (Caste). The Caste in
fact emerged from the various systems which grouped the people into four Varnas namely Brahmins, Kshatriyas, Vaishyas and Shudras. Apart from these groups, there has been a group "Dalits". Dalits are excluded from even the Varna system and have been considered as untouchables. The word 'Dalit' is derived from the Sanskrit root 'Dal' which means, 'to break'or 'broken and downtrodden'. The clusters of epithets include Out-Castes, Exterior-Castes, Depressed Classes, Untouchables, Ex-Untouchables, Harijans and Dalits (Devakumar J, 2007)⁴. The 1931 Census, for the first time, systematically categorized certain castes as ‘depressed classes’.

The Census Commissioner, J. H. Hutton (1931), set forth nine criteria to determine which castes were to be scheduled (See Chapter 1, p 2). Thereafter, the Government of India Act, 1935, for the first time, provided for notification of socially disadvantaged castes as ‘Scheduled Castes’, and a list of such castes was accordingly notified in the Government of India (Scheduled Castes) Order, 1936. The elections to provincial assemblies in British administered areas were held in 1937 under the above Act which provided seats reserved exclusively for the Scheduled Caste candidates. Prior to that these population groups were generally known as ‘Depressed classes’, the term ‘Dalit’, first used in journalistic writings as far back as 1931 to refer to the untouchables (Michael S. M, 1999)⁶. These social groups are living in India and also in Nepal, Pakistan, Sri Lanka, and Bangladesh, as well as other countries outside of South Asia.

More than 260 million people worldwide suffer from this “hidden apartheid” of segregation, exclusion and discrimination. Viewed from ‘below’, the most critical feature of the caste is the experience of untouchability. The line of pollution, which divided the ‘untouchables’ from the rest, has been historically a critical point of distinction. The idea of the ‘line of pollution’ has also been an important category in the official discourse on caste. In most cases it was used as the boundary line for identifying the Schedule Castes.
and for institutionalizing policies of affirmative action for their welfare. This administrative classification and the grouping of different caste communities has, over the years, begun to shape the popular notion of caste and caste-related distinctions in social and political life (Surinder & S. Jodhka, 2012).

Ghurye (1950) provided a comprehensive definition of caste. According to him, the six main features of the caste system are:

a. Segmental division of society
b. Hierarchy of groups
c. Restriction of feeding and social intercourse
d. Allied and religious disabilities and privileges of the different sections
e. Lack of unrestricted choice of occupation and
f. Restriction on marriage.

Endogamy has been the stable feature of the caste system. Krishna, the Hindu God in Bhagavad Gita 4.13 mentioned that "According to the three modes of material nature and the work associated with them, the four divisions of human society are created by me." Hence, it was mentioned that god himself created the working society. Manu has made a categorical statement on it. "The service of Brahma alone is declared to be an excellent occupation for a Shudra, for whatever else besides this he may perform will bear him no fruit. Thus, Manu has opened avenues for the Brahmmins to enjoy the fruits of labour of the lower castes. Thus, once for this entire injunction closed the door of labour mobility among the Scheduled Castes. This also put an end to the ownership rights of the Scheduled Castes.

Even about the habit of the Scheduled Castes the Manusmrti has prescribed rigorous injunctions. "Chandalas (the outcasts) shall live on the outskirts of villages, they shall use no utensils, dogs and asses being their only wealth. By doing this the ‘law giver’ at one
stroke cut off the Scheduled Castes access to the common property resources. Being placed outside the village, they were kept out from economic decision and political participation. And thus they were forced to be at the mercy of the ruling castes and classes. *Varna, Jati*, or *zat* and many other similar terms have been in use in different parts of South Asian region for a very long time. They describe a variety of prevailing social divisions and hierarchies of status and class. This indeed includes the idea and practice of pollution or untouchability (*Surinder & JodhaNS*, 2012)\(^8\).

The classical writer *James Mill* (1824)\(^9\) has written about the caste system; This term distinguishes the classification and distribution of the members of a community into certain classes or orders, for the performance of certain functions, with the enjoyment of certain privileges, or the endurance of certain burdens; and the establishment of hereditary permanence in these orders, the son being ordained to perform the functions, to enjoy the privileges, or sustain the burdens of the father, and to marry only in his own tribe, without mixture of the classes, in regular succession, through all ages’.

Apart from many written accounts of many authors about the caste system, the results of the genetic research subjected the ‘caste’ to a wider debate which enables us to understand the caste system in a wide variety of perspective. Genetic researches suggest the Indian caste system began 2000 years ago. The genetic study, published in 2012 was carried out by the Harvard Medical School and the Centre for Cellular and Molecular Biology in Hyderabad. It describes how India was transformed from a country where a mixture of different populations was rampant to one where endogamy that is, marrying within the local community and a key attribute of the caste system became the norm (*David Cameron*, 2013)\(^10\).
In the words of Lalji Singh, "The fact that every population in India evolved from randomly mixed populations suggests that social classifications like the caste system are not likely to have existed in the same way before the mixture happened." Further he added, intermarrying stopped about 2,000 years ago. The Manusmriti, forbidding intermarriage across castes, was written around 100 BC. Once the caste system was established, it became genetically effective, and mixing across groups became very rare (Reportor (a), 2013). Therefore, the crux issue of the caste system is treating the human unequal and stopping of interconnecting and intermarriage and even at present the practice of intermarriage is not happening largely. Untouchability is the yardstick used to forbid intermarriage.

2.2.2 Untouchability

The word ‘Untouchability’ must be elaborated to understand it better. The Phenomenology of ‘Untouchability’ could be understood from the writings of Sundar Sarukkai (2009) and Bean, Susan (1981). “Un” is a negation operator. But as we know, with negation operators, the meaning of the compound words drastically changes depending upon where the negation acts. In this case, does the negation act on the sense of touch or on the “ability” to touch? If it is on the former, then it is the impossibility of touching (like touching space, sky) but if it is the latter, then it is the impossibility of the act of touching itself. In other words, does the word untouchable translate into “not-touch able” or “touch unable”, that is, unable to touch?

The primary difference between these two formulations is that they point to two different types of inability. In the former, it is the inability placed on the object of touch – the object of touch is such that it is inaccessible to the sense of touch (space or god), whereas in the latter it is such that the subject is unable to fulfill the act of touching. In the first case, it points to the nature of the object that is
sought to be touched while in the second case it is the nature of the subject who is unable to touch. It is clear, therefore, that being an untouchable point to the inability of the “toucher” rather than any inability of the touched person. Thus, the real site of untouchability is the person who refuses to touch the untouchable. The brief history of untouchability practices among these categories is discussed below:

### 2.2.3 Origin of untouchability

In the writings of V.S. Rajam (2015) who has conducted extensive research on ‘Untouchability’ and other related concepts, there were evidences that the casteism and untouchability were not found in the Sangam Literature. He found them only in the commentaries on Silapathikaram by Adiyarkku Nallar and U.Ve. Swaminatha Iyer and Nammazhawar’s Thiruvaimozhi (Kolappan B, 2015)\(^{14}\). Previously, (Subramanian, 1966)\(^{15}\) it was understood that untouchability existed even in the Sangam period but it was not based on birth, but it was based on the profession (Hanumanthan, 1979)\(^{16}\).

The scholars who believed that untouchability prevailed in Sangam period based their views on the classical literature, such as *Ettuttokai* (Eight Anthologies) and the *Pattuppattu* (The Ten Idylls) which were believed to have been written between second century and third century Common Era. Many scholars point to a verse in *Purananurru* which has a reference to ‘Parayan’, classified today as a Schedule Caste. This verse, whose authorship is attributed to Mangudi Kizhar, says:

>“Tudiyan, Paanan, Parayan, Katambarn endru

> *In-naangu alladu kudiyam illai”*
Other than the *Tudiyan*, the drummers and the *paanan* the singers and the Parayans and the Katamban, there are no clans (Mangudi Kizhaar, 1981)\(^{17}\). However, there is no reference to caste here. Other than in this verse, the word ‘Parayan’ does not figure anywhere in Purananuru (Ravikumar & Azhagarasan R, 2012)\(^{18}\). Also, the word *Kudi* in Tamil denotes not ‘caste’ but ‘clan’ (George L Hart & Hank Heifetz, 2002)\(^{19}\). Hanumanthan (1979) argued that the ‘*Pulayan*’ and ‘*ilician*’ in the sangam literature refer to those engaged in ‘unclean’ works, asserted that ‘*Pulaithai*’ does not refer to a Pulayan’s wife. He also stated that it cannot be claimed definitely that the ‘Pulayas’ were treated as a separate community or that they were segregated. Besides, all references to *Ilician, Kadayan, and Pulayan* are presumed to denote Parayan (Ravikumar & Azhagarasan R, 2012)\(^{20}\).

Tracing back to the Pallar community, Edgar Thurston’s claims that Pallars were called thus because they lived in Pallams (low-lying areas) (Edgar Thurston & Rangachari K, 1909)\(^{21}\). Pallars too could have had a Buddhist origin. The term ‘Pallars’ is a corruption of ‘Mallars’ referred to in the Sangam literature (Ravikumar & Azhagarasan R, 2012)\(^{22}\).

Third, Arunthathiyars were found predominantly in the western parts of Tamil Nadu. They claim that they were termed ‘Sakkiliyars’ by the Nayaka king, Tirumalai Nayakar, in the seventeenth century. According to K.S. Singh (1999)\(^{23}\), ‘They migrated from Andhra Pradesh as a service group along with other Telugu-speaking immigrants during the reign of Telugu kings/chiefs in some parts of Tamil Nadu.

It is certain to highlight the study conducted by Noburu Karishima (1995)\(^{24}\) on the two large stone inscriptions in the Thanjavur Big Temple and the inscription in the Gangaikondacholapuram temple. The inscriptions reveal that the
people who belong to certain castes have a separate habitation. In the administrative orders of that period, there are details of three types of settlements - the settlement of ooraar called oor-nattham, the para-cheri, and the kammaana-cheri. Besides these three, there were also the kudi-iruikkai (place where the kudis live), eezha-cheri (the settlement of toddy-tappers), theenda-cheri (the temple settlement), vannar-cheri (where washer men lived), and other settlements.

The names of the tanks (kulams) in these towns carry the names of various communities as prefixes. For example, the tank in the Parayar settlement was called the Parayar-kulam. Of the forty villages, only twenty-nine had tanks and twenty-two had at least one temple. In fourteen places, there were more than one temple. However, there is no reference to specific communities which worshipped at these temples.

These epigraphs/inscriptions in villages also have details regarding cremation grounds. Of these forty villages, had a separate cremation ground for Parayars. Not all the villages with a para-cheri had a separate cremation ground for the Parayars. Similarly, other settlements such as theenda cheri, or kammana-cheri did not seem to have had separate cremation grounds set aside for them. What is most noteworthy pertains to the theenda-cheri. Of the forty villages in Karashima’s list, only two had a theenda-cheri. Even in villages that had a para-cheri, a theenda-cheri is also listed. This is enough for us to conclude that parayars of that time were not subjected to the stigma of untouchability.

The dominant caste commentators understand this to mean that the discrimination and oppression of the Scheduled Castes is not of recent origin and they derive solace in believing that untouchability is as old as the Sangam period (Devakumar J, 2007). However, the concept of ‘untouchability’ originated in the writings of the local reformers. The social and religious reform movements that were
initiated by western-educated Indians, members of the newly emergent middle class, during the second half of the nineteenth century viewed the exclusion and marginalization of ‘low’ castes as an important area for reform of the Hindu society.

Though they all came from the upper crust of the Indian society, they approached the question of caste from their nascent democratic imagination. Charsley says that one of the first statements on the subject of untouchability was made by G.K.Gokhale, in a resolution he moved in the conference of social reformers at Dharwar in 1903. It is worth quoting from the statement of Surinder S Jodhka (2012): “We may touch a cat, we may touch a dog... but the touch of these human beings is pollution. And so complete is now the mental degradation of these people that they themselves see nothing in such treatment to resent...’ (Surinder S. Jodhka, 2012)26.

Afterward, The Maharaja of Baroda, Sivaji Rao Gaekwad III, wrote in 1909 in the Indian Review that ‘untouchableness’ was ‘additional to more widely shared difficulties such as poverty and illiteracy’. He also criticized the term ‘depressed classes’ for being ‘too elastic’ to include even those from the Brahmin caste, who did not experience ‘pollution’. ‘Specially disadvantaged therefore needed another title: untouchable’. He proposed (Surinder S. Jodhka, 2012)27 thereafter, untouchability was widely used to address only the depressed people.

Charsley argues that it was through the consistent efforts of Herbert Risley, who was also the Commissioner of the 1901 Census, that the term untouchability, as we understand it today, came to be recognized in the colonial administrative discourse (Charsley 1996). Risley tried to deal with the question by subdividing the Shudras into four different hierarchical categories on the basis of their polluting effect. The untouchables were at the bottom of this hierarchy and
were designated as Asprishya Sudra, ‘those whose touch is so impure as to pollute even the Ganges water’ (Surinder Jodha N, 2012)28

In other parts, too India has attempted many policies to empower SC people in the social, economical and political lives through reservation since British Period. Hunter Commission (1882) was, of course, the first commission where the Jyotirao Phule made the demand for free and compulsory education for all along with proportionate reservation in government jobs (Shivachithappa K and Jeffrey Lawrence D'Silva, 2014)29. The Morley-Minto Reforms Report, Montagu–Chelmsford Reforms Report, and the Simon Commission Report were some of the initiatives that can be directly associated with this context (Anand Teltumbde, 2012)30. Even at present, many of the laws and programmes are flawless in addressing the issue and the programmes are directly targeting the SC for their social and economic wellbeing.

All the available textual and inscriptional evidences point to the conclusion that untouchability was institutionalized in Tamil Nadu only after eleventh century Common Era. Subsequently, this practice became stronger and got strengthened and deepened. The annihilation of Buddhism and Jainism through violence formed a backdrop to these developments. Iyothee Thass strongly refuted the possibility of ‘Parayar Untouchability’ during the Sangam period and questioned the authenticity of the work in the form in which it is presented and interpreted (Ravikumar & Azhagarasan R, 2012)31. Ambedkar, too, accepts that the practice of Buddhism was one of the reasons for the origin of untouchability (Ambedkar B R, 1948)32.

2.2.4 Caste structure in Tamil Nadu

Communities in Tamil Nadu33 are classified as socially, educationally and economically Backward Classes. They are classified as Backward Classes, Most Backward Classes and Denotified Tribes. A list of communities as approved by the Government of Tamil Nadu
under each category is maintained as per the provisions contained in Article 15(4) and 16(4) of the Constitution of India. There are 132 Backward Classes, 7 Backward Class Muslim communities, 41 Most Backward Classes, 68 Denotified Communities, 76 Schedule Caste communities and 40 Schedule Tribes. These are the caste structure in Tamil Nadu.

In Tamil Nadu, Caste conflict happens frequently in southern districts. Southern districts have witnessed caste conflicts almost continuously during this period. The backward caste Thevars and the Pallars or Devendra Kula Vellalars (Scheduled caste) are the key players. In the northern districts, the conflict is, by and large, between the most backward caste Vanniyars and the Parayars (Scheduled caste).

2.2.5 Demography of the Scheduled Castes

According to the 2011 Census, the total population of Tamil Nadu stood at 72,147,030 with 14,438,445 Scheduled castes. There are 76 types of scheduled castes communities identified by the state government of Tamil Nadu. Adi Dravida (also called Parayar), Arunthathiyar and Pallan are the three predominant scheduled caste groups. The details are given below:

Table: 2.1. Demographic profile of the few Scheduled Castes

<table>
<thead>
<tr>
<th>S. No</th>
<th>Name of the Caste</th>
<th>Total Males</th>
<th>Total Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Adi Dravida</td>
<td>3619665</td>
<td>3622511</td>
<td>7242176</td>
</tr>
<tr>
<td>2.</td>
<td>Arunthathiyar</td>
<td>544879</td>
<td>539283</td>
<td>1084162</td>
</tr>
<tr>
<td>3.</td>
<td>Pallar</td>
<td>1155591</td>
<td>1173526</td>
<td>2329117</td>
</tr>
<tr>
<td>4.</td>
<td>Paraiyar</td>
<td>905334</td>
<td>917190</td>
<td>1822524</td>
</tr>
</tbody>
</table>

Source: Census 2011

Parayar community consists of 50.15 percent of the total Scheduled caste population followed by Pallar who account for 16.13 and Arunthathiyar community with 7.50 percent in the total scheduled caste community.
2.3 Social exclusion of the Scheduled Caste

2.3.1 Forms of exclusion

Social exclusion is defined as a social process which involves denial of fair and equal opportunities to certain social groups in multiple spheres in society, resulting in the inability of individuals from excluded groups to participate in the basic political, economic and social functioning of the society. Sukadeo Thorat and Nidhi Sadana Sabharwal (2010)\(^{35}\) have found two types of social exclusion— the caste and untouchability based Social Exclusion. In the caste-based exclusion, the caste system involves negation of not only equality and freedom, but also of basic human rights, particularly to the low caste ‘untouchables’, impeding their personal development.

In the untouchability-based social exclusion, the physical and social isolation is the unique feature of caste system from which only the untouchables suffer. The untouchables have suffered from double denial, namely the denial of equal rights, civil, social, cultural, religious and economic that are clearly specified in the customary laws of caste system, as well as the denial of rights due to their untouchable status involving “forced non-association”, leading to lack of participation in the various spheres of society, culture and economy.

There are different forms of caste and untouchability-based social exclusion. It is categorized such as economical, civil and political. The exclusion and the denial of equal opportunity in the economic sphere would necessarily operate through market and non-market transactions and exchange. In the civil, cultural and religious spheres, the ‘untouchables’ may face discrimination and exclusion in the use of public services like roads, water bodies, temples and institutions delivering educational and health services. In the political sphere, the ‘untouchables’ can face discrimination in limited or no access to
political rights, and participation in the institutions of governance and the decision-making process.

2.3.2 Forms of atrocities on Scheduled Castes

The word Atrocity as defined in the Oxford dictionary denotes “quality of being shocking cruel and inhumane”. It is also defined in the “Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989”. It includes the following offenses:

a. Forces to drink or eat any inedible or obnoxious substance.

b. Acts with intent to cause injury, insult or annoyance by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood.

c. Forcibly removes clothes or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity.

d. Wrongfully occupies or cultivates any land owned by or gets the land allotted to him transferred.

e. Wrongfully dispossesses a member of a Scheduled Caste from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.

f. Compels or entices to do ‘beg’ or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government.

g. Forces or intimidates not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law.

h. institutes false, malicious or vexatious suit or criminal or other legal proceedings.

i. Gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe.

j. Intentionally insults or intimidates with intent to humiliate.
k. Assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty.

l. Corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by Scheduled Castes.

m. Denies the customary right of passage to a place of public resort or prevent him from using or having access to a place of public resort.

n. Forces or causes to leave his house, village or other place of residence.

These are the various forms of atrocities mentioned in the Act and these crimes still prevail in the society.

2.3.3 Eruption of Scheduled Caste problem in Tamil Nadu

The first major atrocity, leaving a lasting impression on the psyche of Scheduled Castes all over the Tamil Nadu, was the killing of Immanuel at Mudukulathur village in 1957 (Devakumar J, 2007)\(^37\). The Keelvenmani massacre on 25\(^{th}\) December 1968 was of a different kind, though caste was again an important precipitating factor. In this case it was a question of the Scheduled Caste agricultural workers getting organized into a fighting trade union demanding just compensation for their labour. This incident was in 1969 which brought about many inferences in the conditions of Scheduled Castes where the feudal setup was high (Devakumar J, 2007)\(^38\).

The first massacre in the independent India, in which 44 Scheduled Castes who fought for the wages, were massacred by the landlords. In the Kodiyankulam (Thamizhchelvan, 2011)\(^39\) incident of 1995, the police were alleged to have committed excesses on Scheduled Castes while on a combing operation. However, the Gomathinayagam Enquiry Commission constituted by the then All India Anna Dravida Muneetra Kazhagam (a political party) the government gave a clean chit to the police, though the then Deputy
General Police Vaikunth himself had a different opinion. Here again the cause of the clash between Thevars and Scheduled Castes was a verbal altercation between a bus driver and a passenger and subsequent desecration of the statue of Muthuramalinga Thevar.

In the late April 1997 (Devakumar J, 2007) the state government announced the creation of a new transport corporation in Virudunagar District named after a Pallar Community member (the Veeran Sundaralingam Transport Corporation). This was not accepted by the Thevar community and in the inauguration of the corporation, they pelted stones at the buses and refused to ride on the buses. The dominant caste people (Thevar) refused to travel in the Government buses named after lower caste (Pallar) leaders. Another issue is that Scheduled Castes are not allowed to occupy the seats in the Village Panchayat though they are constitutionally given places to occupy. In villages like Pappapati, Keeripatti and Naatarmangalam (Devakumar J, 2007) where Scheduled Caste candidates could not even file their nomination paper. All these took place because of untouchability practices deeply rooted in the minds of dominant caste people.

Another significant incident occurred in the Village of Melavalavu (Devakumar J, 2007), in September 1996. This village was declared a reserved constituency. The murder of the Scheduled Caste leaders of Melavalavu Panchayat was clearly because “untouchability” was still ingrained in the social system. The upper caste people had hitherto enjoyed a hold over common properties such as ponds, temple lands and forest produce and did not want to relinquish these privileges to a Panchayat system run by the downtrodden and the socially excluded community. Particularly, the atrocities occurred against the Scheduled Castes for the reason of avoiding them from accessing and administering the common properties.
During February 1998, when the Gundupatti villagers (Thamizhchelvan, 2011)43 illegally confined the Kodaikanal Panchayat Union chairman Vadivelu of Dravida Munnetra Kazhagam (a political party) and 6 policemen, the police went to the village and ransacked two areas namely Viduthalai Nagar and B-Colony and allegedly tortured the villagers before rescuing the detained men. The four-member high-level team constituted by the then Dravida Munnetra Kazhagam government to go into this matter was divided over the issue. While three members gave a clean chit to the police, the fourth member R. Christdos Gandhi, their Adi-Dravidar Welfare Secretary, put the blame on the police and “others” and recommended action against them.

The Thamaraparani River Tragedy (Thamizhchelvan, 2011)44 of 23rd July 1999 was pertaining to the death of 17 Scheduled Castes, including two women and a two year old child, when they got into the river to escape police lathi-charge. They were taking up onward procession to Thirunelveli Collectorate to submit a memorandum demanding wage settlement for the tea plantation workers of Manjolai Estate. An altercation between the police and the marchers resulted in lathi-charge by police. The marchers ran, helter-skelter and many fell into the river and drowned. Justice Mohan Commission, which probed the incident, recommended the banning of political processions.

On 25thOctober 2002, in village Thinniyan in Tiruchi district, two Scheduled Castes were forced “to feed each other” human excreta, by the local Panchayat leader and her husband, who belonged to a Dravidian party. They were tortured when they went in support of another Scheduled Caste who was cheated of Rs.2000/- by the Panchayat president who had promised to get a land allotted to him under the government scheme. All these incidents extremely show that the rights of the Scheduled Castes were totally denied and
they were subjected to severe punishment by the majority and the agencies in-charge of law and order.

There were also many other incidents that happened in Tamil Nadu which we need to look into very seriously. The practice of “untouchability” has been a major factor that divided human beings into two classes. Of course, the other factors such as race, sex, religions etc., were at the backdrop, invariably in all such incidents which sustained the age-old discriminatory practices. In the words of B.R. Ambedkar “the caste system is not merely a division of labour, it is quite different from the division of labour- it is a hierarchy in which the division of labourers is graded one above the other”. Naturally, the people at the lower grades are treated unfairly by those who are in the upper strata. There are many occasions in which Scheduled Castes face problems in the hands of the dominant caste.

2.3.4 Exclusion of Scheduled Castes from owning land

Indian traditional customs have prevented and discouraged Scheduled Castes from owning lands for centuries. Rights to ownership of lands were denied to Scheduled Castes. They were kept assetless and prevented from engaging in any other productive activities. The exclusion was effected through the Manu Law Code, which stopped Scheduled Castes from holding land (Fact Sheet, 200645), taking up trades and professions other than the activities forced on them by tradition. Landowning patterns and being a high-caste member is co-terminus. Also, Caste is a tool to perpetuate the exploitative economic arrangements (Balakrishnan R, 1998)46. They have limited access to agricultural land due to the historical legacy associated with restrictions imposed by the caste system (Thorat Sukhadeo, 2002)47

Land distribution in India closely follows social hierarchy. While the large landowners invariably belong to the upper castes, the cultivators belong to the middle castes and the agricultural workers
largely to the scheduled castes and tribes. The poorest among the poor in Indian society are largely from these latter groups (Mohanty B B, 2001)\textsuperscript{48}. The Landlessness encompass lack of access to land, inability to own land, and forced evictions constitute a crucial element in the subordination of Scheduled Castes. When Scheduled Castes do acquire land, elements of the right to own properties including the right to access and enjoy it are routinely infringed (Anthony P D'Costa, 2012)\textsuperscript{49}. Hence, Scheduled Castes were kept asset less and powerless.

During the British period, significant changes took place to improve the socio-economic conditions of Scheduled Castes. For the first time in India, the right over land was restored to Scheduled Castes. A commission was appointed in 1891 by the Madras Presidency to study the conditions of the Scheduled Castes and it got positive report to assign the lands to Scheduled Castes (Kavita S, 2016\textsuperscript{50}; Chikkala Kranthi Kumar, 2014)\textsuperscript{51}. In fact, landlessness leads to homelessness, distress migration, displacement, poverty, child labour, immoral trafficking, suicides and hunger death (NCDHR)\textsuperscript{52}. There are many movements after independence, especially the Bhooman Movement (1951) by Vinoba Bhave which sought to persuade the landowners to donate land in the cause of social justice (Varsha bhagat-Ganguly, 2016)\textsuperscript{53}. However, has not been achieved as targeted. According to the Socio-economic Caste Census, 2011, around 45 percent of the Scheduled Castes remain landless.

Scheduled Castes were also denied access to commons and were not able to assert their rights over commons. As per the Indian tradition, Scheduled Castes were an excluded community. As they were not even considered as members of the community they did not have access to the common resources of the community. The common resources of the community were exclusively used by the members of the community and regulations of the community institutions. The community institutions systematically excluded Scheduled Castes from the community and thereby accessing the common properties of
the community. Even though there are legal provisions on using commons, the dominant communities at the local level have their hands in protecting their traditional rights over the resources.

2.4 Scheduled Caste access to common

Before getting details about the CPRs, it’s indeed worth to provide details about the other concepts related to commons. Commons represent all natural resources used for human welfare, which are not necessarily owned by an individual or group of individuals (Kadekodi K. Gopal, 2004)\(^54\). Common Property Resources represents the resources used commonly by a community. Other than the private holdings, most of the resources in the villages have traditionally been used as the village common.

Retrospectively, in India, the commons are used commonly. Around 1865 and thereafter the British began the process of privatization of common properties. They did this by creating numerous permanent settlements on common property lands, declaring many ‘reserved forests’, ‘protected forests’ and ‘revenue land’. After independence, Indians have not only accepted these classifications but also attempted to enforce them with greater zeal (Shyam Divan, & Armin Rosencranz, 2001)\(^55\). The Patta system was introduced at that time and many of the land were occupied by the dominant caste people.

2.4.1 Commons and Scheduled Castes

The natural world is meant to be shared by all, whereas we have divided up its resources in terms of ‘property’ on the basis of needs, customs and laws, as well as by mere fiat and force. In the state of nature, Locke believed that, Property is common in the sense that everyone has a right to draw subsistence from whatever nature offers (George & Thorson 1981)\(^56\). There are some resources commonly used by the people and some of these resources only give user-benefits
such as road, temple, and other public resources, and do not give income-benefit. On the other hand, the natural resources are useful in generating income to the users.

The common properties could be utilized effectively and thus improve the income from the sale proceedings of the trees and another benefit, which is the most important one, is that the protection of tanks from encroachment (Palanithurai G, et. al. 2008)\(^57\). Also, the degradation of land and deforestation had an adverse impact on rural poor women and led to loss of livelihood and alienation from land (Smita Mishra Panda, 2008)\(^58\). Thus, the institutions have a greater role to govern the commons at the village level. In some villages the elected representatives of the Village Panchayats do not have the knowledge on the details and the position of commons. The major encroachers of the commons are dominant castes (Palanithurai G, 2005)\(^59\).

The idea of commons pertains to areas around the village which allows general access. Commons was a space, a place where a subsistence society could find that little vision of surplus in terms of food, fodder, medicines and raw materials for housing (Shiv Visvanathan, 2011)\(^60\). If the access to the forest resources was restricted to the weaker section of the society, it would badly affect the poor who mostly depend on those resources (Netra Timsina, 2014)\(^61\). In such ways, it helps the rural poor, Scheduled Castes, women and other marginalized people in their livelihood.

### 2.4.2 Commons and Scheduled Caste exclusion

Western scholars like Hardin, Olson and Elinor Ostrom have viewed the natural resources as commons. Public properties are not as much highlighted as of natural resources. The public properties constructed by the government as well the community are also considered as commons like natural resources. It is widely used by the exclusive group. Those properties are used only by members of
the exclusive groups. The Common Property Resources can be classified as being of two distinct types— that which is the product of organized human labour, and that which is the product of nature’s labour. Public transport, entertainment places, service offices, hospital, etc. are of the former type. These things are not generally called ‘public property’.

In the latter class fall natural forests, ponds, lakes, rivers and streams, ores, mineral fuels, sand, mud, limestone, and other types of stones and salts. All such common property yields natural resources. The term ‘natural resources’ is often applied mistakenly to minerals and oils only, but fish, wood, birds, mud, wild grass, salts and various other subjects are as much natural resources as minerals. In terms of their consumption such resources are as economically significant as minerals and oils (Shyam Divan & Armin Rosencranz, 2001)\(^62\). In these types of properties too the Scheduled Castes are not allowed to have access by the dominant caste.

### 2.4.3 Role of institutions in commons

In India, in the case of a variety of Commons, the state has been acting as the custodian. Revenue lands, Panchayat lands, Railway lands, canal banks, public works department lands, are owned by central or state governments. According to the Constitution of India, (Article 246) several of the commons are put under the exclusive responsibility of individual states (under the Seventh Schedule, as List II- State List). The regulation of mines and minerals, water supply, irrigation, canals, drainage, development of ponds, land and fishery management etc., is the responsibility of the individual state.

The central government (under the seventh schedule, as List I-Union List) would have regulations for the development of inter-state rivers and river valleys. Forest and wildlife protection are in the concurrent list i.e., the responsibility of both the central and state governments (as list III concurrent list) (Kadekodi K Gopal, 2004)\(^63\).
The state has a provision to strengthen the village Panchayat by devolving functions. Commons such as grazing land, fishing ponds and other different resources are supplementary sources of well-being for poor people. These sources are especially of great significance to the Scheduled Castes.

2.4.3.1 Role of state government in governing commons

In the case of Common Property Resources, there is no property right; there are only use rights. No one has the exclusive property rights over the commons. Relationship is very important in the case of commons. There must be ground rules, coordination among them, unless the relationship is maintained in a sustainable manner, there is no commons. If there is no social relation there is no meaning for commons. There the system of common does not work. There are many players in framing the rules in regard to the use commons. In such commons, in which the state has a larger stake, government frames the rule.

After India’s Independence in 1947, ownership rights to private tank were abolished and the government of India expropriated them from the Zamindars. The tanks became common property resources; farmers who own land in the area served by each tank have the right to use the tank water. The government of Tamil Nadu has issued patta (right to land) to farmers who cultivated encroaching the tank area, has introduced social forestry activities inside the tank water storage area, and had instituted tank rehabilitation measures. The government also intervenes in tank management through the farm forestry program on vacant land, including the water storage area (William Easter K & Palanisami K, 1985)64. Currently, this program is initiated by the government of Tamil Nadu through the state machinery.
2.4.3.2 Powers of Village Panchayat in managing commons

Chapters, VIII and XI of the Tamil Nadu Panchayats Act, 1994 [Tamil Nadu Act 21 of 1994] have the following provisions: The village Panchayats subject to the provisions of act are required to construct and maintain the village burial grounds. They also have the responsibility for erecting lamp post for lighting of public roads and maintaining property, drainage works, tunnels and culverts, and public places. Further, common dispensaries, child welfare centres, etc. are some public properties which come under the control of Village Panchayat. Village Panchayats have a legal provision to administer unreserved forests for the benefit of the villagers. It has the power to prohibit, along with other government officials, any obstructions over the encroachment in the public roads.

The Panchayat is subjected to administer the fisheries for the benefit of the inhabitant of the village. It has powers to regulate, restrict and control certain poramboke lands namely, grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart-stands and topes. The powers to manage the village market and decide on the disputes that arise at the place of markets rest with the Panchayats and the decision of the village Panchayat or Panchayat union council shall be final. Public roads, Markets, Wells, Tanks, reservoirs and waterways vested in or maintained by a village Panchayat shall be open to use and enjoyment of all persons, irrespective of their caste or creed.

2.4.4 Issues in access to commons

It is necessary to the Dr. BR. Ambedkar movement in access to the commons. He launched satyagraha for asserting the civil rights and obtaining access to water at Choudar Tank, Mahad (Kolaba) on 20 March 1927 along with many of his brethren (Kshirsagar R.K, 1994) and also launched his temple entry movement at Nasik in 1930 (Raj Kumar, 2008). These two movements were important
land marks in the Scheduled Caste history which helped to assemble the depressed for emancipation. There are ample evidences on the issues of Scheduled Castes accessing commons and public utilities.

The Report of International Scheduled Caste Solidarity Network has mentioned the prevalence of various untouchability practices in the government offices and other public places. The India Human Development Survey (IHDS) conducted by the National Council for Applied Economic Research (NCAER) as well and the University of Maryland, also reported that 30 per cent of rural and 20 per cent of urban households practised Untouchability in public places (Rukmini S, 2014)68. Sukadeo Thorat (2009)69 made it clear through his studies that the Scheduled Castes are denied access to common property resources. Another recent study by Sakarama Somayaji (2011)70 conducted in the six villages indicates the fact that only a very few Scheduled Castes are allowed to use common property resources in the relocated sites.

The problems of the Scheduled Castes are further intensified by the fact that: a) they lack access to CPRs; b) due to the lack of access they have to use their own fields for grazing cattle; c) since most of them are landless and the near-landless, they have restricted or no access to village grazing lands; d) as a result, their capacity to rear animals is considerably reduced. The consequences of exclusion and discrimination in the fishing ponds in villages are much the same. Exclusionary and discriminatory access of the SCs to fishing ponds also deprives them of sources of livelihood in villages. It is clear that Untouchability is still prevailing and the government and Non-Governmental Organizations are battling for eradicating untouchability practices among the SC.

In America, there was an incident in which one Rosa Park was not allowed to sit in the bus. Thereafter, the first large scale bus boycott was demonstrated by the African Americans. The
Montgomery Bus Boycott took place from December 5, 1955 to December 20, 1956. Rosa Park was arrested and fined. The United States’ Supreme Court ultimately ordered Montgomery to integrate its bus system, and one of the leaders of the boycott, a young pastor named Martin Luther King Jr. (1929-68), emerged as a prominent national leader of the American civil rights movement in the wake of the action (Reporter, d)\textsuperscript{71}. The U.S. Supreme Court’s pronouncement has brought equality in the Bus travel after that incident. Thus, the court has intervened and acted impartially.

2.4.5 Right to access temple

The Temple Entry Authorization and Indemnity Act, 1939\textsuperscript{72} aimed at removing all restrictions on Scheduled Castes to enter Hindu temples. The Tamil Nadu Temple Entry Authorization Act, 1947\textsuperscript{73}, speaks of the “rights of all classes of Hindus to enter and offer worship in temples”. These rights include the “right to bathe in or use the waters of, any sacred tank, well, spring or watercourse appurtenant to the temple, whether situated within or outside the precincts hereof” and the “right of passage over any sacred place, including a hill or hillock or a road, street or pathway, which is requisite for obtaining access to the temple”. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959\textsuperscript{74}, also says that there should be no discrimination in the distribution of any prasadam (offerings) or theertham (Holy water) in any religious institution on the grounds of caste, sex, place of birth or any of them.

2.4.5.1 Concept of denomination temple

The denomination temple: The constitution of India, Article 26(b) grants to the religious denominations the right to manage their own affairs in the matter of religion. However, Article 25(1) guarantees to all persons the right to freely profess, practise, and propagate their religion. Also, Article 25(2) allows state intervention in religious practice, if it is for the purpose of “social welfare or reform or
the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus” (Ravidevaraj, 2009).75

In Tamil Nadu, the temples are managed by a particular community if the temple was constructed by people belonging to their caste. They frame the rules to manage and to use the temple. The management of the temple rests with their community. They normally exclude other community people especially Scheduled Castes. Another type of temples called ‘Pankali Kovil’, are constructed by family members with brother relationship. In these types of temple only the blood related people can worship. It is within the family and no other members are allowed to manage the temple. They do not allow other community members in managing the temple but other dominant caste members persons can worship. The Scheduled Castes are allowed neither to worship nor to manage such temples.

2.5 Movements and political parties

Despite the fact that there was no national level Scheduled Caste Movement, the Scheduled Caste activists worked against the caste discrimination throughout the nation. They reliably battled for social inclusion. The following is the brief history of the different movements which emerged and worked against the discrimination.

2.5.1 Buddhist movement to liberate the oppressed

In the beginning, Buddhism fought against the suppression of Scheduled Castes. The first revolution of the oppressed people against dominance started in Buddha period. “In the days of the Vedas, Buddha with his followers fought a social struggle for the liberation of the oppressed in the society. This movement was referred to as Sangam and was started on a full moon day, in Vaikasi (Month of June), in 589 BC on the banks of the Ganges at Isiyadhanam in the city of Kasi. This was the first movement for the liberation of the oppressed people against the orthodox Brahminic
religion that shaped into a dominant institution through its four Varnas (division based on caste) based on caste injustice. The Buddha was in fact the first to oppose this kind of discrimination. The Sangam emerged as the opposing force against the Aryan Brahminic principle of born capitalism. Buddhism emerged as the camp for humanist social liberation.” (Vallinayagam A.P, 2003)76 Buddhism was, of course, obstinately opposed to caste system. It assumed a most imperative part in challenging Brahmanism, and gave an important role to untouchables.

2.5.2 Bhakthi Movement

Bhakti movement is associated with the worship of god. It thrived in pockets across the country over several centuries. The Bhakti Movement was not an organised movement but a conglomeration of the individual efforts of various saints and social reformers who pursued their ideas though their writings, folk culture and belief on one divine power. The Bhakti Movement was anti-caste, anti-Sanskrit and anti-elite; it was pro –women and pro-poor. It affirmed that genuine love for God was sufficient to find solutions to social problems. The movement attracted large numbers of the lower caste and poor people, including women (Shyam Singh, 2010)77.

In Tamil Nadu, the Scheduled Castes have been kept away from the temple for centuries by the dominant caste. There are many frontiers on the temple entry movement in Tamil Nadu. The most significant contribution was made by Ramanujar, who fought for the temple access to the Scheduled Castes in Sri Rangam temple (Natrajan T, 1996)78. Vaidynatha Iyer took a revolutionary step in taking Scheduled Castes to the Madurai Meenakshi Amman temple (Rengaraju G, 2006)79. Another important movement was the Vaikom temple entry movement led by E.V. Periyar. It was the movement for use of public roads, and temple for the Scheduled Castes.
As a part of Bhakthi movement, the northern and eastern India has given a unified social protest against the social inequalities and untouchability (Mohua Dutta, 2014). Though, the Bhakti Movement has not spoken exclusively for the Scheduled Castes or proposed any agenda for radical changes in the social structure of Hindu society, it has established a pattern of questioning the Hindu social order which later provided a platform for an organised Scheduled Caste Movement with a strong voice for social reforms (Shyam Singh, 2010). Their movements in the colonial and post-colonial periods were confined to the problems of ‘untouchability’. They were predominantly anti-untouchability movements. Gail Omvedt (2006) and the other by Ghanshyam Shah (1980), gave an overview of the Scheduled Caste liberation or anti-untouchability movements in India.

2.5.3 Social movements and political parties for Scheduled Castes

Scheduled Caste movement in Tamil Nadu has had a very long history of valiant struggle and achievement. Pandit C. Iyodhi Dass (1845-1914) was one of the pioneering leaders of the Scheduled Caste liberation in Tamil Nadu. Later, the South Indian Liberal Federation, popularly called the Justice Party was formed in 1916 in Tamil Nadu. In 1925 the Self Respect movement was established by Mr. Ramaswamy Naicker and these organizations had the credit of awakening the backward castes including the Depressed Classes in Madras (Kshirsagar RK, 1994).

Since then the political parties such as Dravida Munnetra Kazhagam and All India Anna Dravida Munnetra Kazhagam have taken several social welfare measures to develop the Scheduled Castes of the Tamil Nadu. These types of movements have been serving them for many years but, to a greater extent, failed in uplifting them. Even after 50 years of power by the Dravidian parties, the Scheduled Castes understand that they are as badly off or worse
off as they were under the Brahmins. In fact it was under Dravidian rule that they have been attacked and killed, their due share in government service is not given, and they are not allowed to rise (Gail Omvedt, 2009). It was after many years, of angst over the ill treatments meted-out in the hands of the dominant caste people and as the political parties failed to deliver the social and economic justice, the Scheduled Castes themselves started their own movement and political parties.

A number of Scheduled Caste movements hosted with social motives changed over into political party thereafter. In the 1990s, Baba Saheb Ambedkar’s Centenary celebrations created an awakening in the Southern districts of Tamil Nadu. Dalit Panther Movements in Tamil Nadu created a wave of defiance and disobedience. This surging wave shook the very foundations for many social movements, which have already established themselves in the country. It acted in such away as to give open expression and outlet to the boiling within. They integrated their struggles with the struggles of the oppressed all over the world (Anand Teltumpte, 1999; Thamizhchelvan, 2011). The ideology and strategy of Scheduled Caste Movement in Tamil Nadu was very vibrant thereafter. Mr. John Pandiyan initiated All India Devendra Kula Vellalar Sangam and strengthened the movement in the southern districts of Tamil Nadu namely Ramnad, Sivagangai, Tirunelveli, Theni and Virudhunagar.

In 1992, the Parayar Peravai was started by Saathai Packiyaraj to represent Paraiyahs and Sambavars after the riots in Nalumoolaikinaru (Tiruchendur). This movement has consolidated its units in the districts of Chennai, Tirunelveli, Tuticorin and Virudhunagar. Afterwards it was converted into a political party called ‘Makkal Desam’ and after some period of time, it merged with ‘Ambedkar’s Makkal Pasarai’, inaugurated by Sankarachari. Another significant movement was initiated by Chandrabose in 1990.
He started Thiyagi Emmanuel Peravai in two districts namely Ramnad and Sivagangai. It has for its motto the annihilation of caste, retrieval of Tamil nationalism, opposing violence and atrocity against Scheduled Castes.

In the 1990’s, Arunthathiyars movement emerged and spread fast in the state. Mr. R. Adhiyaman started ‘Tamilnadu all Arundhathiyars Coordination Committee’ in 1991. Later it converted into a political party in 1994 called ‘Adhi Tamilar Peravai’. Similarly, Dr. Krishnasamy who was functioning under the identity of ‘Devendra Kula Velalar Federation’ started a joint federation called ‘Puthiya Tamilagam’ converting it later into a political party. In the Northern districts ‘Adhi Tamilar Viduthalai Iyakkam’ under Vinoth, ‘Puratchi Bharadham’ headed by Poovai Moorthy, ‘Dalit Makkal viduthalai Munnani’ under the leadership of Vani Dasan, ‘Ambedkar Makkal Viduthalai Munnani’ under the leadership of Paarvendan, ‘Republican Party of India’. ‘All India Manitha UrimaiKatchi’, ‘Ambedkar-Makkal Iyakkam’. All these movements have been struggling for the creation of a casteless society (Anbuselvam, 2005)87.

2.6 Constitution and Judiciary

2.6.1 Constitutional Provision for Scheduled Caste

On the inauguration of the Constitution and being aware of the existing social system, in his inaugural speech, Dr. Ambedkar had to make the following observations: “On 26 January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long should we continue to live this life of contradiction?
How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow the structure of political democracy which this Assembly has so laboriously built up” (Constituent Assembly Debates, 1999)88

The intention of every state is to deliver justice through affirmative action. Social injustices happen in the class-ridden society and in countries like India these are more predominant because of its caste system. To enable the suppressed class, government took many measures by implementing various laws, rules, commission, committees, special courts etc. Inadequacy of the existing laws in the present context and due to the new types of atrocities led to the amendment of the previous laws. The opening pages of the Indian Constitution, its preamble, envisaged that the modern India as a nation needs to adopt the values of equality, liberty, and fraternity in letter and spirit. The Constitution contains several provisions in the nature of safeguards for the Scheduled Castes. ‘Scheduled Castes’ are defined in Article 366(24) of the Constitution of India, as - “such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purpose of the Constitution.”

Article 341 of the Constitution deals with specification of a caste as a Scheduled Caste and reads as under:-

a. The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled
Castes in relation to that State or Union Territory, as the case may be.

b. Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The Articles in the constitution concretely aim at curbing atrocities against SCs and STs, and are therefore very important for the Scheduled Castes. India had endeavoured many transmutations in its laws since establishment of its constitution to uphold the status of Schedule caste. Fundamental Right is the essential part of the constitution guaranteeing its citizens all civil liberties to live in peace and harmony. The Fundamental Rights are aimed at treating citizens equally and with dignity. Any such violation happened would result in punishments as prescribed by the law. The constituent assembly included many special provisions for Schedule caste to ameliorate their social and economic conditions such as 16(4), 46, 330, 332, 335, 340, 341 and 342. Significantly, about the equality and non-discrimination is insisted in articles 14, 15, 17, 19, 25, 26, 37 and 46. These articles, connected with the social safeguards of SC are reproduced below:

1. **Article 14 Equality before law**

   a. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

2. **Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**
a. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

b. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

- access to shops, public restaurants, hotels and places of public entertainment; or

- the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

c. Nothing in this article shall prevent the State from making any special provision for women and children.

d. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

3. Article 17 Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

4. Article 19

All citizens shall have the right

a) To freedom of speech and expression;
b) To assemble peaceably and without arms;
c) To form associations or unions;
To move freely throughout the territory of India;

e) To reside and settle in any part of the territory of India; and

f) To practice any profession, or to carry on any occupation, trade or business

5. Article 21 Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

6. Article 25 in the Constitution of India 1949

Freedom of conscience and free profession, practice and propagation of religion

a) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

b) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

i. regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

ii. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II: In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly
7. **Article 26**

Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

a) to establish and maintain institutions for religious and charitable purposes

b) to manage its own affairs in matters of religion

c) to own and acquire movable and immovable property and

d) to administer such property in accordance with law

8. **Article 37**

Declares that the Directive Principles of State Policy (DPSP) "shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws." The DPSP is not justifiable.

9. **Article 46**

For the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

2.6.2 **Provision on the Prevention of Atrocities**

The Indian Constitution lays down various rights to its citizens and guarantee that every citizen shall have equality of status and opportunity. The problems of social inequality and class divide a country like India with heterogeneous groups and sub-groups need to
be recognized and resolved by all available democratic measures including special legislations to deal with particular acts constituting offences against such weaker sections of the society. ‘Scheduled Castes’ and ‘Scheduled Tribes’ are two such identified social groups.

Special social enactments have come into force from time to time for SCs and STs in order to uphold the constitutional mandate and safeguard the interests of these sections of the society. The major legal enactments at the national level are Protection of Civil Rights Act, 1955 and Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989. The Protection of Civil Rights Act, 1955 was enacted in furtherance of Article 17 of the constitution to abolish untouchability and its practice in any form.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force on 30th January 1990 in order to check and deter crimes against Scheduled Castes and Scheduled Tribes by persons belonging to other communities. These enactments have extended the positive discrimination in favour of SCs and STs to the field of criminal law as much as they prescribe penalties that are more stringent than the corresponding offences under Indian Penal Code (IPC) and other laws. Special Courts have been established in major states for speedy trial of cases registered exclusively under these Acts.

Under the Indian Penal Code (IPC) the crimes are registered under Murder, Hurt, Rape, Kidnapping & abduction, Dacoity, Robbery, Arson, etc, while Under Special Laws (SL), namely the Protection of Civil Rights Acts, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 the crimes against SCs are registered. The POA Act ensures the rights of the SCs to safeguard their rights in the society. All the rules of government treat the citizens equally. They are subjected to law and are entitled to its protection.
This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes. Comprehensive Rules under this Act, titled “Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995” were notified in the year 1995, which, inter-alia, provide norms for relief and rehabilitation.

2.6.2.1 Features of the amendment on PoA Act, 2014

The recent amendment to this act mainly focuses on incorporation of new offences of atrocities, establishment of exclusive special courts, and role to the state government for the speedy trial of the cases. The new offences are: Obstructing or preventing a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to

a. Using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage;

b. Mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

c. Entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras;

d. Entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment
or any other public place or using any utensils or articles meant for public use in any place open to the public; or

e. Practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to.

The other important new offences of atrocities added under the Bill include: a) Denying access to irrigation facilities or forest rights; b) compelling to dispose or carry human or animal carcasses, or do manual scavenging; c) attempting to promote feelings of ill-will against SCs or STs or disrespecting any deceased person held in high esteem; d) Forcing a member of SC/ST to leave house, village or residence; and e) Preventing SC/ST candidates from filing of nomination to contest elections.

It strengthens the Act by establishing Exclusive Special Courts and specification of Exclusive Special Public Prosecutors to exclusively try the offences under the PoA Act to enable speedy and expeditious disposal of cases. The power of Special Courts and Exclusive Special Courts is to take direct cognizance of offences and as far as possible, complete the trial of the cases within two months, from the date of filing of the charge sheet.

2.6.3 Role of Judiciary

Courts have contributed, to a great extent, to the cause of social issues. Though other institutions such as civil societies, political parties, pressure groups and media are equally important, the role and expectations of the Judiciary have to be seen as higher. Once the social issues are solved, there would be social changes. The wisdom of Judiciary is expected to fulfil the primacies of social change (Asha Kaushik, 1977)\textsuperscript{89}. Courts by themselves cannot bring about social change and cannot be expected to bring about all of the desired social
changes on their own (Sudarshan R, 2006). It has only one role namely to interpret the constitutional provisions.

However, Hamilton would not have seen the courts as instigators of social change (Ronald Sackville, 2005). McHugh argues that Hamilton underrated, or did not foresee, three matters that have falsified his assessment of the strengths (or weaknesses) of the judiciary (Ronald Sackville, 2005). The first is the frequency with which the judiciary has been called on to exercise the power of judicial review and declare legislative and executive acts void and of no effect. The second is the importance of the social, economic and political issues that courts – particularly federal courts – must decide. The third is the underpinning of the judiciary’s strength by public confidence in its integrity, impartiality and capacity (Michael McHugh, 2004).

But, he is not specifically concerned about the role of the courts as instigators of social change and he does not suggest that courts perform that role. Nonetheless, the argument that courts have greater strength than Hamilton predicted might suggest that judicial decisions can bring about social change (Ronald Sackville, 2005). Thus, the verdict of the court would lead to social change. In the face of these constraints on the courts as instigators of social change, it might be thought, at best, highly optimistic to see the courts as agents not only for legal reforms but also for social change.

According to Hume, Justice is the bond of society and without it no association of human individual could subsist. Justice in a social order, therefore, should guarantee the basic dignity and fundamental freedoms necessary for human existence and proper development of society. In the present era, the democratic system is suited to each society as it is under this system that maximum efforts can be made for securing the collective welfare of the members of society and also for maintaining and safeguarding their individual dignity and liberty.
by applying the sound principles of 'Rule of Law' (Parashar P.N.)\textsuperscript{95}. Subsequently, a viable and autonomous legal framework would be the best for managing the equitable framework and for maintaining the Rule of Law.

According to Chief Justice Warren Burger, in a democratic society, the court system plays an essential role in seeing that neither license nor tyranny becomes dominant. It is, therefore, said that judiciary is the last basic of democracy and it is its life blood. It is true that the superior courts viz. the Supreme Court and High Courts play a vital role in imposing checks on the arbitrariness of the executive and in interpreting the Laws, but the role of the subordinate courts also cannot be neglected or minimized because it is the subordinate courts which deal with grass root problems, bear the first brunt of the people and the millions come directly in their contact. Thus, it may well be said that if the judiciary is the lifeblood of democracy, the subordinate judiciary is the lifeblood of judiciary itself. It is the backbone of the entire fabric of the judicial system (Parashar P.N.)\textsuperscript{96}

Sometimes, the decision of the court does not consider many of the facts. Sthabir Khora commented on the 'final reports' under SC/ST Atrocities Act. He argued that the Justice delivered by the court based on the First Information Report was not trustworthy because the police do not record all the facts about the case (Sthabir Khora, 2014)\textsuperscript{97}. In another case called Laxmanpur-Bathe massacre incident, the author has recorded the conclusion of the judgment as flawed because it fails to take into account the actual circumstances following the massacre. Of the many possible explanations for a certain set of facts, the High Court chose the one best suited to benefit the accused (Kavitha Krishnan, 2013)\textsuperscript{98}. Thus, the court’s impartial decision has significance on the social change, provided it must consider all the facts pertaining to the case without fail.
The High court’s exercise of the power through Article 226; the Power of High Courts to issue certain writs: Every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including, in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III of the constitution.
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