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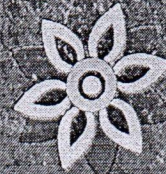


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कला एवं धर्म शोध संस्थान,
लोक कल्याणकारी ट्रस्ट, वाराणसी

कला सरोवर KALA SAROVAR

(भारतीय कला एवं संस्कृति
की विशिष्ट शोध पत्रिका)



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कला सरोवर

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समर्पण



आद्याशक्ति 'माँ दुर्गा'

के

चरण कमलों में सादर समर्पित

सर्वदेवमयी देवीं, सर्वदेवीमयम् जगत् ।

अतोऽहं विश्वरूपा त्वां नमामि परमेश्वरीम् ॥



कला सरोवर

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'कला सरोवर' शोध-पत्रिका में प्रस्तुत सभी लेखों, छायांकनों और रेखाचित्रों का अनामक उपयोग प्रधान संपादक की पूर्व लिखित अनुमति से ही किया जायेगा। रचनाओं में व्यक्त विचार लेखक के अपने हैं। शोध-पत्रिका संपादक परिवार का उन प्रकाशित लेखों से उनका सहमत होना आवश्यक नहीं है। विवाद की स्थिति में लेखक/शोधार्थी स्वयं जिम्मेदार होगा।

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19

Indian Criminal Justice System defining the Rights of Scheduled Caste Women and Children

★ Manoj Kumar Dhirania (Author) ★★ Dr. Archana Vashishth (Co-Author)

ABSTRACT

According to the Hindu religious belief, "All human beings are born unequal". This belief has led to discrimination amongst human beings based on caste due to which various atrocities have been committed against Scheduled Castes.

The Constitution of India provides equal rights to all citizens and various measures have been taken for protecting and uplifting the Scheduled Caste Community, still the Scheduled Caste people are being discriminated and exploited.

Despite various laws being enacted by the Government for the protection of Scheduled Castes and Scheduled Tribes such as The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and The Protection of Civil Rights Act, 1955, still in different States of our country like Uttar Pradesh, Rajasthan, Punjab etc., the atrocities against the Scheduled Castes are increasing which shows the ineffectiveness in implementation of these Acts.

This paper would be useful to explore the status of Scheduled Caste women and children in Hindu hierarchical society and Rights under Criminal Justice System.

The study used a quantitative data from National Crime Record Bureau, National Commission for Scheduled Castes, Parliamentary Reports and other Government Organizations.

This research paper attempts to achieve the following objectives:-

- To identify the protective measures of legislations to eradicate social prejudice and atrocities against Scheduled Castes members especially women and children.
- To examine the role of Houses of legislature and Constitution of India in preventing the crimes against Scheduled Castes women and children as well protection of them.
- To develop a better understanding regarding problems as well as the implementation of law relating to the protection of rights of Scheduled Castes specially women and children.

Introduction

The Hindu hierarchical society is dominated by purity-pollution, ranking the Brahmins on top and untouchables at the bottom. This system was based on exploitation and discrimination. The higher caste the higher was its class, power and position in society. It was representing the self centered Brahminical ideology. The Lack of wealth, education and power made the untouchables vulnerable to oppression. Even today a majority of Scheduled Castes i.e., 63.11 percent are landless agricultural labourers, thus implying that even now they are exploited and discriminated based on caste system. According to the report, every week 15 Scheduled Castes is murdered, 6 kidnapped and everyday 6 Scheduled Castes women are raped by the Upper Castes.

Caste system, a system of social stratification in ancient India still continues to afflict the present day India society. The ancient India society was not only stratified but also fossilized into different Varnas and Jatis, which were determined by the accident of birth. Atrocities are day to day phenomena and Scheduled Castes are facing indignities and discrimination due to various historical, social and economic reasons.

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The framers of our Constitution were well aware of the discrimination against Scheduled Castes as they provided fundamental rights coupled with positive discrimination. All kinds of discrimination against the Scheduled Castes have been enacted to eradicate social prejudice and

The Indian Constitution provides for the abolition of caste. After its declaration of its abolition, it persists in many subtle forms. The Commission of Scheduled Castes crimes committed against the Scheduled Castes are increased by ten times. According to the above statement, these records are not registered in the police station, but there are many more cases which

The Constitution of India guaranteed to all countrymen the fundamental rights and equal opportunities. It provides a number of safeguards to Scheduled Castes (SCs) to ensure their complete development and protection against all kinds of the discriminations. But most of the provisions of the constitution have remained unimplemented. The discriminated communities are officially designated as Scheduled Castes. They include in the SC category are communities from three different religions, Hinduism, Islam and Buddhism, all having within them communities traditionally suffering from untouchability.

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. The Constitution mandates positive discrimination in government services, state-run, and sponsored educational institutions. Amendments to the Constitution also enabled representation of SC men and women in local governance structures.

OBJECTIVES:

- To identify the protective measures of legislative to eradicate social prejudice and atrocities against Scheduled Castes.
- To examine the role of Houses of legislature and Constitution of India in preventing the crimes against scheduled castes women and children as well protection of them.
- To develop an understanding regarding problems as well as the implementation of law relating to the protection of rights of Scheduled Castes specially women and children.
- To find out the problems of SC women and children in the society.

METHODOLOGY

The research methodology that would be adopted in this study is doctrinal in nature. Doctrinal research asks what the law is on a particular issue. It is concerned with analysis of the law and how it has been developed and applied. This type of research is also known as

Scheduled Castes Women and Children

- SCs are also born free and equal as well have a right to life like others.
- As per law no one can discriminate with Scheduled Castes.
- No slavery and torture.
- Freedom to move anywhere in a fair and free world.

- Rights of Scheduled Caste are protected by law.
- No unfair detainment.
- Scheduled Castes are also always innocent till proven guilty like others.
- The right to seek a safe place to live.
- Right to a nationality and democracy.
- Marriage, family and social security.
- The right to their own things as well as their privacy.
- Freedom of thought and expression like others.
- The right to public assembly.
- Workers' rights.
- The right to play.
- Food and shelter for all.
- The right to education.
- Cultural rights.
- No one can take away their human rights.

Various forms of Crimes committed against Scheduled Castes Women and Children in their social life on daily basis

- Dedicating a Scheduled Caste woman to a deity as a devadasi.
- Intentionally touching a SC woman when such act of touching is of a sexual nature and is without the recipient's consent.
- Using words, acts or gestures of a sexual nature towards a SC woman.
- Forcing 'begar' or other forms of forced or bonded labour onto an SC children.
- Dumping excreta, sewage, carcasses or any other obnoxious substance onto their premises.
- Garlanding with footwear or parades naked or semi-naked.
- Forcibly removing clothes, tonsuring of head, painting face or body or any other similar act, which is derogatory to human dignity.
- Corrupting the water of any spring, reservoir or any other source used by a SCs.
- Obstructing SCs from using common property resources of an area such as river, stream, spring, well, tank, cistern, water-tap or other watering place or any bathing ghat, any public conveyance, any road, or passage.
- Obstructing SCs from mounting or riding bicycles or motor or wearing footwear or new clothes in public places or taking out wedding procession.
- Obstructing SCs from entering any place of worship which is open to the public or taking out, any religious, social or cultural processions.
- Causing physical harm or mental agony on the allegation of practicing witchcraft.
- Compelling an SC to dispose or carry human or animal carcasses, or to dig graves.
- Forcing, employing or permitting a SCs to do manual scavenging.
- Interfering with the voting rights of a SC women or men through violence or intimidation.

Literature Review:

The Constitution of India (Article 14, Article 15 and 17) : Provides Equality before the law, Prohibition of Discrimination and abolition of untouchability respectively.

The Caste Disabilities Removal Act, 1950 : The Act provides that when in a civil suit the parties belong to different persuasions, the laws of the religions of the parties shall not be permitted to operate to deprive such parties of any such parties of any property but for the operation of such laws, they would have been entitled.

The Untouchability (Offences) Act, 1955 : This Act provides penalties for the offences like preventing a person from entering into public temples or places of worship, preventing the drawing of water from sacred lakes, tanks, wells etc.

The Protection of Civil Rights Act, 1955 : The Act prescribes punishment for compelling any person to scavenge, sweep, remove carcasses, flay animals or remove umbilical cords. It empowers the state Government to impose collective fines on the inhabitants of any area who were concerned with abetting the commission of offences relating to untouchability.

The Bonded Labour System (Abolition) Act, 1976 : Under Article 23 of the Constitution of India, Prohibition is imposed on the practice of Traffic in Human Being and of Forced labour. It also provides that contravention of said prohibition is an offence.

The SC/ST (Prevention of Atrocities) Act 1989, The SC/ST (POA) Amendment Act, 2015 & The SC/ST (POA) Amendment Bill, 2018 : The objectives of the Act, therefore, very clearly emphasise the intention of the Statute to deliver justice to SC/ST communities through affirmative action in order to enable them to live in society with dignity and self-esteem and without fear, violence/suppression from the dominant castes.

The Indian Penal Code, 1860 : There are several provisions in the Indian Penal Code for the protection of the Scheduled Castes in India.

P.C. Chaturvdi The judiciary could not be a mute spectator. It has come to the rescue of innocent victims. Handling the intricacies of this complex law judiciary handed over to us conceptually clear proposition as to what are the postulates and constituents of the offence under Section 3(1 & 10) of the Act which are to be pleaded and recorded as statements and to whom the imputations must have been specifically made and at what place.

Sai Kamini Garimella Illustrating through the features of the SC/ST Act, 1989 and an appraisal of the performance of the legislation, the paper attempts to present the inherent insufficiencies that help sustain the unequal nature of power as reflected in the institutions of caste, often in violent ways.

Jakob De Roover The Constituent Assembly simply accepted the colonial division of the Indian population into 'Caste Hindus' and 'Depressed Classes'. Yet the colonial administration had also failed to find empirical tests that allowed it to identify the 'Depressed Classes' as a distinct set of castes. The notion of 'untouchability' did not help here, because it functioned as a label used to name a collection of practices. It was unclear law to identify the victims of 'untouchability, since these practices could be found both among groups classified as Depressed Classes and among those considered Caste Hindus.

Nikita Sonavane Analyses the 23 Judgments delivered by the District Court of Bilaspur in cases where the accused was charged both with the commission of rape of Dalit women under the IPC and of an atrocity under the POA Act between June 2009 and December 2014.

The Constitutional and Legislative Rights granted to protect the rights of Scheduled Castes Women and Children.

The Indian took various initiative to safeguard the right of the Scheduled Caste and to assist them in attain equal and rightful status within the Society. Some of the Major Legal rights are highlighted below:

Rights granted under the Constitution of India:

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Rights granted under the **Constitution of India**:

Right to Equality, Prohibition of Discrimination and Abolition of untouchability.
Article 14, 15 and 17 : The Articles 14, 15 and 17 are the backbone of fundamental rights of the Constitution of India. These Articles Provide Equality before the law, Prohibition of Discrimination and abolition of untouchability respectively.

Safeguards for Public Employment – Article 16 and 335 : Article 16 of the constitution provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. Preferential treatment in matters of employment in public services.

Article 46 : Promotion of educational and economic interests.

Article 330 and 332 : Reservation of seats in the Lok Sabha (lower house of Parliament) and State Assemblies.

Article 338 has made provision for the special officer to investigate all matters relating to the safeguards for the Scheduled Castes

Other Legal Provisions regarding protection of the rights of Scheduled Caste.

National Commission for Scheduled Castes : Article 338 of the constitution requires constitution of the National Commission for Scheduled Castes and Scheduled Tribes for better protection of the rights of the members of the Scheduled Castes and Scheduled Tribes.

The Caste Disabilities Removal Act 1950: The Act provides that when in a civil suit the parties belong to different persuasions, the laws of the religions of the parties shall not be permitted to operate to deprive such parties of any such parties of any property but for the operation of such laws, they would have been entitled.

The Protection of Civil Rights Act 1955: By this Act, enforcement of any disability arising out of untouchability has been made an offence punishable in accordance with the relevant provisions.

The Bonded Labour System (Abolition) Act, 1976 : An Act to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989: In 1978, Untouchability (offences) Act, 1955, was changed to Protection of Civil Rights, 1955. As cases of atrocities on SCs and STs were not covered under the old legislation, a new act called Scheduled Caste and Schedule Tribe (Prevention of atrocities), act, 1989, was passed by the Parliament. An Act to prevent the Commission of atrocities against members of the Scheduled Castes and the Scheduled Tribes for Constitution of special courts for trial of such offenses, and to provide relief and rehabilitation to the victims.

The Protection of Human Rights Act 1993: The Act provides for the Constitution of a National Human Rights Commission, State Human Rights Commission, and Human Rights Courts for better protection of Human Rights.

The Indian Penal Code, 1860 : There are several provisions in the Indian Penal Code, 1860 for the protection of the Scheduled Castes in India.

The Government support for upliftment of women.

The helpline 181 for women facing violence, abuse and harassment was shut down for want of funds.

One Stop Centres in 2015 to provide medical and legal aid to the survivors of crime such as sexual violence, rape and acid attack.

The Nirbhaya Fund set up in 2013 to enhance the safety and security of women in the country remains underutilised

Conclusion: Failure of Indian Criminal Justice System

Caste based atrocities and discrimination remains one of the most severe and austere human rights abuse of the 21st century. Justice will not be achieved if SCs continue to be excluded, and their human rights denied. The full participation of SCs in public life is the only guarantee to uphold and protect their human rights. This study lists all of the human rights guaranteed under the UN Declaration and how human rights of the Scheduled Caste are violated on a daily basis.

The Indian government should enlist the support of the United Nations, multilateral financial institutions; India's trading partners, and national and international non-governmental organizations to eradicate the pervasive problem of caste-based abuse and protect the rights of Schedule Caste women and minors. It should also place a priority on strengthening institutional mechanisms aimed at addressing issues of violence and discrimination.

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