
UNIT 12 CASTE, CLASS, RELIGION IN LAW

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12.1 INTRODUCTION

The Indian subcontinent is a home to all the major religions in the world. Apart from religion, there is ‘caste system’ in India. Caste discrimination and religious prejudice has hindered the growth and socio-economic development of lower castes and some minorities. Reservation was introduced to uplift citizens from backward castes and minorities. Apart from caste and religion; class is also a major factor responsible for the divisions in society. Social class determined by an individual's socio-economic status is also one of the factors that hinder equal growth and access to opportunities.

For nearly seventy years, India, through the reservation and other policies, has tried to make an effort to end the division caused by caste, class and religion and ensure that the disadvantaged groups are given a political voice, access to education, and opportunities for employment. The Legislative, Executive and Judiciary are making constant efforts to ensure that all the sections of the society have equal opportunities irrespective of their background. However, the complexities of caste and religion present challenges to the legal system to bring positive changes.

12.2 LEARNING OUTCOMES

After studying Unit, you will be able to;

- Explain the idea of caste system
- Describe the history and origin of caste system
- Discuss the purpose of reservation
- Recognize the relationship between class and law
- Identify the relationship between Religion and law

12.3 CASTE: CONCEPT

Caste system in India structures power relationships in society; it directly governs the individual and the community to exercise the power. At the conceptual level, the idea of caste has multiple shades which also formulate the social institution of 'caste'. Different scholars interpret caste differently. To strengthen the understanding on it, let us read some of scholars. Senart argues that caste is an organization which consists of a dominant chief leader and assembly. It is autonomous and old-style in nature. He further states that the celebrations of the festivals in which the performance of particular caste whether it is demonstrative in nature by collective manner or through occupation is identical of caste system (Senart, cited in Ambedkar, 2006:133).

It also involves procedures of penal systems. Nesfield defines caste as a "class of community" that confronts "intermarriage and commensality" (Nesfield, cited in Ambedkar, 2006:133). For instance, we observe that within society people hold common names through families or communities which are in homogenous forms. According to Ketkar, caste can be postulated in two significant ways, firstly confining the membership within community and secondly, disapproving marriage outside the community (Ketkar, cited in Ambedkar, 2006, p.133). Caste, for Ambedkar, does transform people into 'fixed' and 'definite' categories. It is analysed that the ways in which caste determines society is 'artificial' as well (Ambedkar, 2006, p.133). Caste thus is a social construction. It impacts the society in a particular fashion. It is further argued that endogamy affects the dialogue and social contact between the diverse sections of the society. Therefore, exogamy gains salience over the endogamy (Ambedkar, 2006:136). It is observed that the 'origin of caste' is the 'origin of the mechanism for endogamy' (Ambedkar, 2006:143). According to Ambedkar, caste functions

as an 'enclosed class' (Ambedkar, 2006:143). Such a perspective shows how caste and class do intersect in Indian society.

However, one needs to understand whether institution like caste do indeed exist in modern India or not. Discussions that emerged on the shifts in the ideological as well as tangible dimensions have to be discussed in this context. Sociologists such as M.N.Srinivas have explored the transformation of caste in modern India. According to Srinivas, caste became a realm of 'political functions' in independent India. It happened with the shift in the power that existed earlier with the British rule to that of Indians during the post-independent phase (Srinivas, 2006:154). It is analysed that differences on the discussions related to caste had emerged in that phase of Indian society. Information relation to caste-linked meetings started being circulated through postal letters, telegraph, low-price paper and printing. The introduction of the railways led to the train becoming a common mode of transport for the diverse segments of the society. They used it as a medium of transport to attend meetings related to caste. Inexpensive paper was deployed to report conflicts that emerged on the basis of social location or caste (Srinivas, 2006:155). Laws codified under the British Raj did affect the supremacy of caste panchayats. They heralded different premises of justice and probed the discrimination of people based on caste identities. However, it is discussed that caste linked ideology and practices attained different nature in that period. For instance, peasants in India were ardent followers of orthodox caste panchayats. On the contrary, they accepted the British law as well. Socially regulated economy was questioned by the advent of the British. In other words, the economy in India is determined by caste-based stratification. Caste classifies people according to an ascribed higher and lowers level hierarchical level. Caste thus determines the occupation of the diverse castes. According to Srinivas, the British administration challenged Indian economy based on primordial ascriptions of caste. As a result, lower castes became socially mobile and it led them to secure financial stability (Srinivas, 2006:158). Unlike earlier forms of caste in pre-independent India that restricted the social mobility of lower castes, British rulers, for Srinivas', opened new avenues for the lower castes. Caste has been undergoing multiple changes due to rapid societal transformations. The next section discusses with the facets of Indian society and polity.

12.3.1 Understanding Caste

Caste system is an identity system that is unique to India. Caste system had its origins in the ancient times and it was based on birth. Once a person is born in a certain caste, he remains in the same caste. It is a system of graded inequality where some castes are considered to be lower than the other. The caste variations depend on region, language, colour and many other indicators. Although other forms of differentiation exist in all human societies, it becomes a problem when one or more of these dimensions overlap each other and become the sole basis of systematic ranking and unequal access to valued resources like wealth, income, power and prestige.

The Indian Caste System is considered a closed system of stratification, which means that a person's social status is obligated to which caste they were born into. There are limits on interaction and behavior with people from another social status.

They are classified according to occupation and determine access to wealth, power, and privilege. The Brahmins, usually priests and scholars, are at the top. Next are the Kshatriyas, or political rulers and soldiers. They are followed by the Vaishyas, or merchants, and the fourth are the Shudras, who are usually laborers, peasants, artisans, and servants. At the very bottom are those considered the untouchables.

12.3.2 History and Origin of Caste

The origin of the Indian caste system has many theories behind it. Some of them are religious, while others are biological. The religious theories explain that according to the Rig Veda, which is the ancient Hindu book, the primal man, Purush, destroyed himself to create a human society and the different parts of his body created the four different varnas. The Brahmins were from his head, the Kshatriyas from his hands, the Vaishyas from his thighs, and the Shudras from his feet. The Varna hierarchy is determined by the descending order of the different organs from which the Varnas were created. For example, Brahmins, who were derived from the head of Purush, are considered the intelligent and most powerful varna because their wisdom and education are a representation of the brain. In the same way, Kshatriyas, considered the warrior caste, were created by arms, which represent strength. Another religious theory claims that the Varnas were created from the body organs of Brahma, who is the creator of the world in Hinduism.

12.3.3 Emergence of Reservation

In 1989, Justice Madan in one of his judgements said if a class of citizens are socially, educationally backward, they have a right to reservations. There were campaigns and movements in pre- and post-independence period that compelled governmental actions to overcome and eliminate the inequalities and injustices associated with the caste system. During the national movement, Gandhi introduced the term "Harijans" (God's people) to refer to the untouchables in order to encourage a shift in attitude towards the lower castes. In 1960s, the system of reservation of seats in educational and state institutions was introduced for SCs and STs. Individual states could determine which castes would be identified as OBCs. Some southern states identified economically disadvantaged castes as OBCs, but there has been considerable opposition to implementing these policies in other Indian states. The Central Government appointed a commission headed by B.P. Mandal to look into the issue which completed its report in 1978. The Mandal report concluded that caste was the main contributing factor to social and economic backwardness. Many seats in state institutions were reserved for the three groups. The Commission recommended that 27 percent of seats be reserved for OBCs, in addition to 15 percent for SCs and 7 percent for STs.

12.4 CONSTITUTIONAL PROVISIONS

The framers of the constitution introduced the concept of reservation bearing in mind the need to address inequalities in society due to the prevalent caste system. The constitution has made numerous efforts through various articles and different statutes to bring about substantive equality in society by introducing special measure to uplift marginalized communities in India. Constitution declares untouchability, and consequently any discrimination based on caste to be unconstitutional and places such declaration in the chapter on fundamental rights. Every citizen has a fundamental right to equality and non-discrimination on the ground of caste, among other grounds of religion, sex, class, language, and region.

There are various provisions in the Constitution that highlight the principles of equality.

- Art 14 of the Indian constitution states that: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This article provides equality before law and equal protection of all people without discrimination.
- Article 15(4) capacitates the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society such as SC and STs.
- Article 16 of the Constitution and also Article 335 which have direct bearing on reservation are as follows:

Article 16 (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Flowing from the constitution, other acts have been framed by the legislature for the protection of citizens such as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. This act provides protection to marginalized castes from discrimination and prescribes the punishments in case of violation.

Check Your Progress-1

- 1) *What is caste?*
- 2) *Write your views on caste and constitutional provisions*

12.5 MODERN INDIA AND CASTE

The constitutional guarantees of protection and reservations have contributed to positive change in society though caste-based discrimination and marginalized has been by any means, fully eliminated. There is an increase in representation of SCs, STs, and OBCs in elected offices, educational institutions and have mobilized themselves to influence electoral politics by forming strong political parties in various regions. Additional measures include encouraging students from lower castes to pursue higher education

with relaxation in the cut-offs marks required for admission.

Unfortunately, however, only a relatively small proportion of the lower castes population have benefited from these preferential policies. Although there is an increasing acceptance of lower-caste individuals in society, overt hostility and violence expressed against the lower castes continues in many parts of India.

12.5.1 Class and law

The Indian Constitution provides that all citizens are equal before law. However, law works like a superstructure and the base in the society is different. The inequalities of class are strong. In the operation of law, inequalities of class can be seen. Law cannot work the same way for every class of individuals.

Unlike caste, class discrimination is practiced throughout the world. Class discrimination is based on the social and individual achievements of an individual. Social class, also called class, a group of people within a society who possess the same socio-economic status. The concept of class as a collection of individuals sharing similar economic circumstances has been widely used in censuses and in studies of social mobility.

12.5.2 History and usage of the term

The usage of the term class came into picture in the 19th century and replaced the use of terms such as rank and order as descriptions of the major hierarchical groupings in society. The term is applied in various societies but it is most usefully confined to the social divisions in modern societies, particularly in industrialized ones.

12.6 SOCIAL CLASS IN INDIA

In India caste and class are sometimes taken to be synonymous to each other. In the earlier times only people belonging to a particular caste would have the ability to level up in the society. As the caste system was very rigid in operation it was difficult to move up in the social class ladder. So, a person belonging to a backward caste would not have the socio-economic capacity to increase his class in the society. Hence for a long time the caste determined even their class in the society.

After independence, due to various reforms and policies by the government and the diminishing of the caste system in the society, the class system got itself a separate meaning in Indian society.

12.6.1 Different kinds in Social Class

When sociologists talk of social class, they refer to a group of individuals who occupy a similar position in the economic system of production. According to many sociologists, the class system is divided into upper class; the elite, the upper middle class, lower middle class, the working class and poor.

Upper class/Elite: they represent institutional leadership, heads of multinational corporations, foundations, universities etc. Capitalist elites are the owners of lands, stocks and bonds and other assets – wealth derived from what they own. Below are some of occupations and the class that they belong to: -

Upper Middle Class: these represent scientific and technical knowledge – engineers, accountants, lawyers, architects, university faculty, managers and directors of public and private organizations. Have both high incomes and high social prestige. The people belonging to this group are generally well educated.

Lower Middle Class: the people belonging to this group are generally Clerical-administrators, those who provide support for professional, engage in data collection, record-keeping, Paralegals, bank tellers, sales and Blue-collar workers in skilled trades.

Working Class: the people belonging to this class of people are Craft workers, Laborers in factories, Restaurant workers, Nursing home staff, Repair shops, garages, delivery services.

Poor: The full-time workers fall into this category. The above divisions are based on the socio-economic status that the profession possesses.

12.6.2 Social class and Law

There have been many reforms and policies by the legislature to ensure that there is proper allocation of resources and to ensure that there is no concentration of power in one individual or body.

Class is composed of all persons, in the same economic situation, who have about the same probability of procuring goods, gaining a position in life, and gratifying their wants, in so far as this probability rests on the control of goods and services and the access to opportunities within the given economic system.

During the post-independence period the economically and socially backward were from the similar background. Hence the policy of reservation that was applicable to caste could also be applied to economically backward sections of people.

The Indian constitution has also made provisions for the same. Article 15(4) empowers the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society such as SC and STs.

12.6.3 Differences between Caste and Class

- Castes are perceived as hereditary groups with a fixed ritual status. A person's Class is based on social status, wealth and power acquired, level of education and other achievements.
- A person belonging to a certain caste has to follow certain traditions, rituals and customs. A person belonging to a certain class is not bound

by customs, rituals or traditions.

- Caste system is unique to the Indian subcontinent whereas Classes are found throughout the world.
- The caste system hinders the growth of the individual in the society whereas the class system does not limit the individual
- In the caste system an individual is not allowed to practice occupation other than the one specified; it is not the same in the class system.
- The caste system has a religious background. The class system is not based on any religion.
- The Caste System is static. The class system is dynamic
- There is no scope for vertical social mobility since the division is solely determined by birth. There is ample scope for vertical social mobility for people belonging to different classes since it is dependent on one's abilities, nature of work, education, acquisition of wealth, status etc.

12.7 RELIGION AND LAW

Religion and law are not a new concept for the world. Law, especially the personal laws, are more or less influenced by religious teachings, texts etc. The separation of church and state which is relatively a concept of west is the example of how much the church had influence on the state policies.

There is always some degree of interaction between law and religion. Such a separation is, in historical terms, a relatively recent phenomenon, having its origins in the Enlightenment. Nor is this separation by any means universal in the contemporary world, given the number of Muslim states in which the basis for the Shari's, as well as all others aspects of life, is to be found in the teachings of Islam. It is incontrovertible that the process of differentiation has not led to a complete separation of law and religion, that religion remains an important influence on law, and that society attaches significance to religion.

12.7. 1 International law and Religion

Protection of an individual's right to freedom of religion is found in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which came into force on 23 March 1976.

Article 18 stipulates as follows:

- Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and

freedoms of others.

- The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
- The non-derogable nature of the rights set out in all the articles of ICCPR including article 18 indicates the importance attached to the right to religious freedom or belief. This is confirmed by the HRC in Paragraph 1 of General Comment 22 where Article 18 rights are described as ‘far-reaching and profound’.

12.7.2 India and Religion

In the Indian Constitution, India has declared itself as a secular state and therefore has no state religion. Over the years India has developed its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism.

When the constitution was initially framed there was no mention of the word secular in it but due to judicial decisions and State practices the word was incorporated in the preamble of the constitution. In India, the law of the land determines the scope of religion in society; it is not the religion that determines the scope of the law.

12.8 CONSTITUTION AND RELIGION

India is a secular nation, but there is no “wall of separation” between religion and state, in law or in practice. The two can, and often do, interact and intervene in each other’s affairs within the legally prescribed and judicially settled parameter. The only demand of secularism, as mandated by the Indian Constitution, is that the state must treat all religious creeds and their respective adherents equally, with no discrimination in all matters under its direct or indirect control. There are several provisions in the constitution that mention the word religion. Some of them are discussed below.

- Article 14: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” This article guarantees that all individuals are equal before the law and are entitled to equal protection of the laws in the event of experience of inequality.
- Art 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (2) 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 (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) 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.

- Art 16: Equality of opportunity in matters of public employment (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
- Article 25 says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health."
- Article 26 says that all denominations can manage their own affairs in matters of religion.
- The chapter on Fundamental Duties under the Constitution includes the following among the basic national obligations of all the citizens: "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities," and "to value and preserve the rich heritage of our composite culture".

The above are some of the provisions related to freedom to preach and practice any religion. Further, these provisions are also the basis to justify application of religion based personal laws in matters of marriage, inheritance, adoption, divorce, succession, etc.

12.9 PENAL PROVISIONS ON RELIGION

Apart from the constitutional provisions protecting the individual's right to freedom of religion, there are provisions in the Indian Penal Code in case of violations of religious freedom rights.

- Chapter 15 of the Indian Penal Code is dedicated entirely to punishments for offenses relating to religion. In many cases, the punishments for these offenses are quite severe.
- Section 295 states: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
- When such acts are done deliberately or maliciously, the prison sentence may be increased to three years.
- It is also a crime under the Indian Penal Code to disturb a religious assembly. Though such a crime does not merit the same punishment as defiling a place of worship, it carries a sentence of up to one year in prison, fines, or both.
- One year in prison may also be sentenced upon any person who trespasses into a place of worship or burial site with the intention of "wounding the feelings of any person" or of "insulting the religion of any person."

- It is a crime punishable by up to one year in prison if anyone “utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person” with the deliberate intent of wounding the religious feelings of that person.

12.9.1 Difference between Religion and Caste

- Religion most often precedes a caste system, since most caste systems are derived from religious philosophy.
- While caste systems deal with social structures within the physical world, religion is focused more on the metaphysical one.
- Caste systems are based on systems dealing with hierarchical issues, while religion is focused on divine worship, morals, and ethical issues.
- Within religions, the judgement is most likely to lie with the deity worshiped and is enforced through a form of an institution. A caste system is enforced through a social collective, most often from the higher ranks.

12.10 LET US SUM UP

Caste system is historically one of the main dimensions where people in India are socially differentiated through class, religion, region and tribe. It is divided into four categories: Brahmins, Kshatriyas, Vaishyas and Shudras. Caste system was divided on the basis of occupation. Thus, to restrain the negative effects of the caste system there emerged the policy of reservation. Class system is found throughout the world but has its history in the industrial sector. It is rigid compared to class. Class is based on the socio-economic status. There is always an interaction or a relationship between Religion and law. However, to protect religious freedom Article 18 of the International Covenant on Civil and Political Rights (ICCPR) was enacted. India declared itself to be a secular country and therefore has no state religion. The Constitution guarantees the religious freedom to all its citizens. In case of violations there are various penal provisions mentioned in Indian Penal Code.

12.11 UNIT END QUESTIONS

1. Define reservation and discuss in the context of India.
2. How does international law protect religion freedom?
3. What are the constitutional provisions that curb the negative effects of caste system?

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