
UNIT 23 RIGHTS OF DALITS AND TRIBALS

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23.0 INTRODUCTION

Most often, the terms like ‘Dalits’, ‘Tribals’, ‘Harijans’, etc., are used very vaguely. But, these terms have their specific connotations and have also undergone change over time. The term ‘Dalits’, also called ‘Harijans’, is used as a designation for a group of people, traditionally regarded as of lower class sub-serving the interests of upper classes and considered unsuitable for making personal relationships. Dalits are a mixed population of numerous caste-groups all over South Asia, and speak various languages.

The word “Dalit” comes from the Sanskrit, and means “ground”, “suppressed”, “crushed”, or “broken to pieces”. It was first used by Jyotirao Phule in the nineteenth century, in the context of the oppression faced by the erstwhile “untouchable” castes of the twice-born Hindus (Oliver Mendelsohn and Marika Vicziany, 1998). Mahatma Gandhi coined the word ‘Harijan’, translated roughly as “Children of God”, to identify the former untouchables. Politically active ‘Untouchables’ feel that this term ‘Harijan’ might evoke pity rather than respect, and prefer the term ‘Dalits’, which means, “oppressed”.

While the *caste system* has been abolished under the Indian Constitution, there is still discrimination and prejudice against Dalits. Since Indian independence, significant steps have been taken to provide opportunities to Dalits in jobs and education. Many social organizations have encouraged proactive provisions to

better the conditions of Dalits through improved education, health and employment.

“Adi Dravida”, “Adi Karnataka” and “Adi Andhra” are words used in the states of Tamil Nadu, Karnataka and Andhra Pradesh, respectively, to identify people of former “untouchable” castes in official documents. These words, particularly the prefix of “Adi”, denote the ‘aboriginal’ inhabitants of the land (Leslie, 2004, p.46).

The more general term, “Adivasi” is derived from the Sanskrit words *adi* meaning primal, original or first + *bas* a verb root meaning to sit, settle, or stay; rendering Adivasi as “indigenous” people of India. People who identify themselves as Dalit may also identify themselves as Adivasi, but the distinction is analogous to that of Scheduled Tribes and Scheduled Castes in which there is some intersection but the two are distinct social identities. The terms “Scheduled Castes and Scheduled Tribes” (SC/ST) are the official terms used in Indian government documents to identify former “untouchables” and “tribals”. However, in 2008 the National Commission for Scheduled Castes, noticing that “Dalit” was used interchangeably with the official term “Scheduled Castes”, called such usage of the term “unconstitutional” and asked State Governments to end such use. But, the fact is that, while the Government documents use ‘Scheduled Caste’ as official term, the term ‘Dalits’ has become a popular usage in social context, including debates.

With this brief introduction about the terms, ‘Dalits’ and ‘Tribals’, among others, we will attempt to focus on their rights in this Unit.

23.1 OBJECTIVES

After you go through this Unit, we expect you to be able to:

- Recognise the status of Dalits and Tribals in India;
- Discuss and appreciate the constitutional and legal rights and protection available to Dalits and Tribals in India; and
- Analyse the legislative and policy measures undertaken by the State for protection and promotion of their rights in India.

23.2 SOCIAL STATUS, CONSTITUTIONAL RIGHTS AND PROTECTION OF SCHEDULED CASTES (DALITS) AND SCHEDULED TRIBES (TRIBALS)

In the context of traditional Hindu society, ‘Dalit’ status has often been historically associated with occupations regarded as ritually impure, such as any involving leatherwork, butchering, or removal of rubbish, animal carcasses, and waste. Dalits work as manual labourers cleaning streets, latrines, and sewers. Engaging in these activities was considered to be polluting to the individual, and this pollution was considered contagious. As a result, Dalits were commonly segregated, and banned from full participation in Hindu social life. For example, they could not enter a temple or a school, and were required to stay outside the village. Elaborate precautions were sometimes observed to prevent incidental contact between Dalits and people of other castes. Discrimination against Dalits still exists in rural areas

in the private sphere, in everyday matters such as access to eating-places, schools, temples and water sources. It has largely disappeared in urban areas and in the public sphere. Some Dalits have successfully integrated into urban Indian society, where caste origins are less obvious and less important in public life. In rural India, however, caste origins are more readily apparent and Dalits often remain excluded from local religious life, though some qualitative evidence suggests that its severity is fast diminishing. Similarly, Scheduled Tribes form another section of people generally called 'tribals', who live isolated life cut off from the mainstream societies. In order to empower these sections of society – Dalits (Scheduled Castes) and Tribals (Scheduled Tribes) – and to bring them into mainstream social, economic, and political fields, the Constitution of India provided them certain special rights and protection which are highlighted below.

23.2.1 Constitutional Rights and Protection of Scheduled Castes and Scheduled Tribes: A Brief Overview

As mentioned above, Dalits are people belonging to weaker sections of society and mostly belong to Scheduled Castes and Scheduled Tribes. The Constitutional safeguards for Scheduled Castes and Scheduled Tribes, among other weaker sections of society, are as mentioned below.

A) Development and Protective Safeguards: These safeguards are contained in the Directive Principles of State Policy of the Constitution and a specific provision in Article 46 which is a comprehensive provision comprising both the developmental and regulatory aspects.

- **Article 46:** It states: "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".

B) Social and Economic Safeguards: Some important social and economic safeguards include the following.

- **Article 17:** According to this Article "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.

To give effect to this Article, Parliament made an enactment, viz. the Untouchability (Offences) Act, 1955. To make the provisions of this Act more stringent, the Act was amended in 1976 and was also renamed as the Protection of Civil Rights Act, 1955. As provided under the Act, the Government of India also notified the Rules, viz. the PCR Rules, 1977 to carry out the provisions of this Act. As cases of atrocities on SCs/STs were not covered under the provisions of PCR Act, 1955, Parliament passed another important Act in 1989 for taking specific measures to prevent the atrocities on them. This Act, known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, became effective from 30-1-1990. For carrying out the provisions of this Act, the Government of India has notified the SCs and STs (Prevention of Atrocities) Rules, 1995 on 31-3-1995.

- **Article 23:** It prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention Dalits or Scheduled Castes but since majority of bonded labour belong to Scheduled Castes, this Article has a special significance for these communities. In pursuance of this Article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.
 - **Article 24:** It provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This Article is also significant for SCs as a substantial portion of child-labour engaged in hazardous jobs belong to these groups.
 - **Article 25(2)(b):** It provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SC persons into such temples. For the purpose of this provision the term Hindu includes Sikh, Jain and Buddhist.
- C) **Educational and Cultural Safeguards:** Important safeguard in this regard is Article 15.
- **Article 15(4):** It empowers the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several Articles. This provision has enabled the State to reserve seats for SCs and STs in educational institutions including technical, engineering and medical colleges and in scientific and specialized courses. In this Article as well as in Article 16(4), the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz. Scheduled Castes, Scheduled Tribes, Other Backward Classes, De-notified Communities (Vimukta Jatiyan) and Nomadic/Semi nomadic communities.
- D) **Political Safeguards:** These include the following.
- **Article 164(I):** It provides that in the States of Chattisgarh, Jharkhand, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or any other work.
 - **Article 330:** It provides for reservation of seats for the SCs and STs in the Lok Sabha.
 - **Article 332:** It provides for reservation of seats for the SCs/STs in the State Vidhan Sabhas (Legislative Assemblies).

- **Article 334:** It originally laid down that the provisions relating to the reservation of seats for SCs/STs in the Lok Sabha and State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This Article has been amended five times, extending the said period by ten years on each occasion. This provision will now expire in January 2020.
 - **Article 371A:** It contains special provisions with respect to Nagaland.
 - **Article 371B:** It contains special provisions with respect to Assam.
 - **Article 371C:** It contains special provisions with respect to Manipur.
 - **Article 371F:** It contains special provisions with respect to Sikkim.
- E) Reservation for SC/ST in Government Employment:** Important provisions related to reservation for SCs/STs in employment/appointment include the following.
- **Article 16(4):** It empowers the State to make “any provision for the reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”.
 - **Article 16(4A):** It provides that nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion, “with consequent seniority” to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
 - **Article 16(4B):** It specifies that nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.
 - **Article 320(4):** It provides that nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision under Article 16(4A) may be made or the manner in which effect may be given to the provisions of Article 335.
 - **Article 335:** It mentions that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
 - Provided that nothing in this Article shall prevent in making of any provision in favour of member of SCs & STs for relaxation in

qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with affairs of Union or of a State (Added by the Constitutional 82nd Amendment Act, 2000).

F) Institutional Protection for the Scheduled Castes and the Scheduled Tribes: Institutional protection as available for the Scheduled Castes and Scheduled Tribes is discussed below.

- i) National Commission for Scheduled Castes & Scheduled Tribes:* The National Commission for Scheduled Castes and Scheduled Tribes has been constituted under Article 338 of the Constitution of India. However, by the Constitution (89th Amendment) Act, 2003, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions, namely, a) the National Commission for Scheduled Castes (NCSC), and b) the National Commission for Scheduled Tribes (NCST) *w.e.f.* 19 February 2004.

As amended by the Constitution (Eighty-Ninth Amendment) Act, 2003. The Commission shall consist of a Chairperson, a Vice-Chairperson and three other Members.

Methods of investigation and inquiry: The Commission may adopt any one or more of the following methods for investigating or inquiring into the matters falling within its authority: a) by the Commission directly; b) by an Investigating Team constituted at the Headquarters of the Commission; and c) through its State Offices.

- *Investigation and Inquiry by the Commission directly:* The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints for which the Commission decided to take up investigation or inquiry directly. Such sittings may be held either at the Headquarters of the Commission or at any other place within the country. The sitting(s) of the Commission would be held after giving due notice to the parties intended to be heard and also due publicity notice to the general public. Care will be taken to see that the members of the Scheduled Castes who are affected in the matter under investigation or inquiry are given due information through notice or publicity. When a decision for direct investigation is taken, an officer not below the rank of Research Officer/Section Officer along with necessary staff may be attached to the Member(s) entrusted with such investigation or enquiry and they shall take all steps to arrange such sittings.

In accordance with clause 8 of Article 338 of the Constitution, while investigating into a matter referred to in sub-clause (a) or in inquiring into any complaint referred to in sub-clause (b) of clause (5) of Article 338, the Commission shall have all the powers of civil court trying a suit and in particular in respect of the following matters, namely:

- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

- b) enquiring the discovery and production of any document;
- c) receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office;
- e) issuing commissions for the examination of witnesses and documents; and
- f) any other matter which the President may, by rule, determine.

The Commission, for the purpose of taking evidence in the investigation or inquiry, may require the presence of any person, and when considered necessary, may issue summons to him/her. The summons for enforcing attendance of any person from any part of India and examining him/her during the course of investigation and inquiry by the Commission shall provide at least 15 days notice to the person directed to be present before the Commission from the date of receipt of the summons.

Where the property, service/employment of Scheduled Castes and other related matters are under immediate threat and prompt attention of the Commission is required, the matter shall be taken cognizance by issue of telex/fax to the concerned authority for making it known to them that the Commission is seized of the issue. Urgent reply by telegram or fax shall be called from the concerned authority. In case no reply is received within ten working days, the authority concerned may be required to appear before the Commission at a shorter notice for enquiry.

The Commission may issue commission under clause 8(e) of Article 338 of the Constitution to take evidence in any matter under investigation or inquiry and for this purpose appoint any person by an order in writing. The Commission may make further rules for payment of fee and travelling and other allowances to persons appointed to take evidence on commission.

After holding the required sittings, the Member(s) who conducted the investigation shall make a report that shall be sent to the Secretary or any other officer authorized to receive the report. After examination, action may be initiated on the report with the approval of the Chairperson.

- *Investigation or inquiry by an Investigation Team constituted at the Headquarters of the Commission:* The Commission may decide about the matter that is to be investigated or enquired into by an Investigating Team of officials of the Commission, provided that, in case the matter is urgent, the decision for such investigation or inquiry may be taken by the Chairperson.

The Investigating Team shall hold the investigation or inquiry, as the case may be, promptly and for this purpose, may initiate necessary correspondence including issuance of notices for production of documents.

The Investigating Team may visit the area concerned, after observing due formalities for obtaining approval of tours and other administrative requirements, and after giving information to the

concerned local authorities regarding the matter, purpose, scope and procedure of the investigation or inquiry. The Investigating Team may require the help of the officers and staff of the concerned State Office but the responsibility of preparing and presenting the report shall rest with the head of the Investigating Team.

The Investigating Team shall submit the report of the investigation or inquiry, as the case may be, to the Secretary or a subordinate officer of the Commission as may be directed by general or specific orders within the stipulated time, if any. If the time limit stipulated is likely to be exceeded, the head of the Investigating Team shall obtain the orders of the Secretary through the Officer-in-charge of the matter. The report shall be examined and put up to the competent authority for a decision regarding the action to be taken on the report.

The report shall be placed before the Chairperson of the Commission who will take appropriate action in the matter.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) List out important Articles that provide constitutional safeguards for the protection of SCs/STs.

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2) What are the various methods of investigation and enquiry followed by the National Commission for SCs/STs?

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23.2.2 Bonded Labour Abolition

The genesis of rural poverty in India dates back to the later half of the 18th century when the erstwhile colonial rulers introduced the Zamindari system. Subsequently the anti-farmers policies of the colonial government had also contributed towards the indebtedness of a large number of small and medium farmers and eventually pushing them into the category of landless labourers (Kartik Gupta, at www.jurisonline.in).

The problem of bonded labour closely linked to the broader socio economic problems of surplus labour, unemployment, under employment, inequitable distribution of land and assets, low wages, distress migration, social customs, etc. With the phenomenon of small and marginal farmers and rural artisans steadily becoming landless labourers generate environment which can perpetuate the system of bonded labour (Ibid).

The problem of bonded labour is mostly associated with the SCs and STs. The Government of India has consistently maintained a proactive approach to the issue of forced or bonded labour in the country. It recognizes this evil system as a gross infringement of the fundamental Human Rights of the affected citizens and is implacably committed to its total eradication in the shortest possible time.

The system of debt bondage in India is an outcome of certain categories of indebtedness, which have been prevailing for a long time involving certain economically-exploited helpless and weaker sections of society. Thus, this system originated from the uneven social structure characterized by feudal and semi-feudal conditions. Bonded labourers constitute, perhaps, the weakest section of rural poor (Ibid).

23.2.2.1 Constitutional and Legal Provisions

The Constitution of India guarantees to all its citizens, as has been mentioned in the preamble, justice — social, economic and political; freedom of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity, dignity of individual and unity and integrity of the nation.

Under Article 23 of the Constitution, traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Bonded labour system (Abolition) ordinance was promulgated which was later on replaced by the Bonded Labour System (Abolition) Act, 1976.

Under Article 42, the State shall make provision for securing just and humane conditions of work and for maternity relief.

Under Article 43, living wage, etc. for workers has been provided. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Under Section 374 of IPC, unlawful compulsory labour has been criminalised. Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

India has ratified ILO Convention No.29 (Forced Labour Convention 1930) on 30.11.1954. Following the ratification, the bonded labour system was abolished by law throughout the country *w.e.f.* 25th October 1975 by an Ordinance. Subsequently, Bonded Labour System (Abolition) Act was passed by the Parliament in 1976 but given effect to it from 25.10.1975, the date when the Ordinance was promulgated. The Act provides for the abolition of bonded labour, bonded labour system and bonded debt.

This Act extends to whole of India and it came into force with retrospective effect on 25th day of October 1975. The object of the Act is to provide for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people and for the matters connected therewith and incidental thereto.

Bonded labour: The Bonded labour under the Act has been defined as “any labour or service rendered under the bonded labour system”.

Bonded labour system: The Act further defines bonded labour system as “the system of forced, or partly forced labour under which a debtor enters, or has, or is presumed to have entered, into an agreement with the creditor to the effect that —

- i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest if any, on such advance, or
- ii) in pursuance of any social or customary obligation, or
- iii) in pursuance of an obligation devolving on him by succession, or
- iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- v) by reason of his birth in any particular caste or community –

he would:

- render by himself or through any member of his family, or any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- forfeit the right to move freely throughout the territory of India, or
- forfeit the right to appropriate or sell, at market value, any of his property or product of his labour.

The main provisions as laid down under the Act are:

- ***Abolition of Bonded Labour System:*** As per Section 4 of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation. Furthermore, no person shall: i) make any advance or in pursuance of bonded labour system, and ii) compel any person to render any bonded labour.
- ***Extinguishment of liability to repay bonded debt:*** As per Section 6 of the Act, every obligation of a bonded labour to repay any bonded debt shall be deemed to have been extinguished. No proceedings can be held in any civil court for the recovery of any bonded debt. Every attachment made of any movable property of the bonded labour or such movable property was seized or removed from his custody shall be resorted to the possession of the bonded

labourer. If the restoration is not made within 30 days from the coming of this Act into force, the aggrieved party may apply to the prescribed authority for the restoration of the possession of such property. Under this Act if any suit or proceeding for the recovery of any advance made to a bonded labourer is pending, such a suit will stand dismissed. Furthermore, every bonded labourer detained in civil prison shall be released from detention.

As per Section 7 of the Act, the property vested in a bonded labour which was under any mortgage, charge or lien shall stand freed and discharged from such mortgage, lien or charge and such property shall be resorted to the possession of the bonded labourer. In case of any delay, the matter may be referred to the civil court of the lowest pecuniary jurisdiction.

- **Punishment for violation of the Act:** The Act provided for suitable punishment of anyone who:
 - compels any person to render any bonded labour,
 - advances any bonded debt,
 - enforces any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system,
 - being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of thirty days from the commencement of this Act, and
 - abets any offence punishable under this Act.

Bonded Labour Liberation Front (*Bandhua Mukti Morcha*): *Bandhua Mukti Morcha* (BMM) was formed in 1981 to wage a battle against the pernicious bonded labour system in India. Administrative and political will to carry out the Constitutional mandate and enforce prohibitive laws of the land failed to produce any results. Against all odds, *Bandhua Mukti Morcha* has achieved the release of over 1,24,000 bonded Indians from the shackles of slavery. A large number of them have been rehabilitated. From the Carpet Industry alone, about a thousand children have been rescued and restored to their parents. Their rehabilitation has been monitored effectively. BMM has started a campaign for the provision of non-formal, full-time education for these children, along with the supply of nutrition to each and also some food security to their poor families (Kartik Gupta, See www.jurisonline.in).

As a result of BMM's efforts, the leaders of the leading political parties have expressed their concern on the issue of child labour and often made a mention of it in their election manifestos in Parliamentary/Assembly elections. *Bandhua Mukti Morcha* has been campaigning for a national minimum wage equivalent to first-day salary of a class IV employee in Government service. Its revision is to be done on cost price index as is done for the Government employees. The State Governments may fix minimum wage according to the local conditions but not below the National Minimum Wage (Ibid).

23.2.2.3 Role of National Human Rights Commission (NHRC)

The Supreme Court has directed that the NHRC should be involved in dealing with the issue of bonded labour. In pursuance to the above order, a central action group has been constituted in the NHRC.

In *Bandhwa Mukti Morcha case* (1984) the Supreme Court had issued certain directions to the central government and various authorities. In order to ensure compliance of the above directions, Ministry of Labour constituted a task force, comprising of central officers who are responsible for enforcement of various labour laws. The task force submits its reports to the central as well as state governments indicating the status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

23.2.2.4 Rehabilitation of Bonded Labour – Centrally Sponsored Plan/Scheme

In order to assist the state governments in their task of rehabilitation of released bonded labourers, the Ministry of Labour launched a centrally sponsored scheme since May, 1978 for rehabilitation of bonded labourers. Under this scheme, rehabilitation assistance of Rs.20,000 per freed bonded labour is provided which is shared by the central and state governments on 50:50 basis. In the case of the Seven North-Eastern states, 100% central assistance is provided if they express their inability to provide their share. The scheme also provides for financing in respect of the following activities (Ibid).

- 1) Rs.2 lakhs per sensitive district can be provided to concerned state government to conduct survey for identification of bonded labour once in 3 years.
- 2) Central assistance of Rs.10 lakhs every year can be sanctioned to every state government to undertake awareness generation activities relating to bonded labour system.
- 3) Rs.5 lakhs every year can be sanctioned to every state government to study the impact of existing land debt related issues affecting bonded labourers and the impact of poverty alleviation programmes and financial assistance provided by various government sources so far.

Besides these, the state governments have also been advised to integrate the centrally sponsored scheme for rehabilitation of bonded labour with other ongoing poverty alleviation schemes such as *Swaran Jayanti Gram Swa Rojgar Yojna* (SJGSRY), tribal sub plan etc. Accordingly, the rehabilitation package provided by the concerned state governments for the freed bonded labourers includes the following major components.

- Allotment of house site and agricultural land.
- Land development.
- Provision of low cost dwelling units.
- Animal husbandry, dairy, poultry, piggery, etc.
- Training for acquiring new skills, developing existing skills.
- Wage employment, enforcement of minimum wages, etc.

- Supply of essential commodities under targeted public distribution system.
- Education for children.
- Protection of civil rights.

Freedom from bondage would be meaningful only when the uncertainty and insecurity associated with bondage is removed through productive and income generating schemes. In the absence of poverty eradication measures, the rehabilitated bonded labourers are likely to fall back into their original state of bondage. The scheme for rehabilitation should be chosen in consultation with the beneficiary and it should be well planned with all requisite components and infrastructural facilities tied up. By an order of immediate priority, the different parts of country which are dry, drought-prone and poverty-stricken and prone to other natural calamities, migration, indebtedness and also from where the incidence of bonded labour system have been reported on one time or the other, could be identified and surveys undertaken on selective basis to identify the bonded labour system. The bonded labour so identified should be released and rehabilitated on priority basis. Besides, special efforts should be made to remove the general economic backwardness of such area by focused integration of various ongoing plan programmes.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”

3) How does the Bonded Labour System (Abolition) Act, 1976 extinguish the liability of the bonded labour?

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23.2.3 Abolition of Untouchability and Protection of Dalits and Tribals

Because of the caste stigma in our society, an acute problem of untouchability is still prevailing and Scheduled Castes persons are not getting their due share of benefit in occupational opportunities as compared to other members of the society. Upper-caste Hindus consider the Dalits as being untouchable. The presence, touch or even the mere reference to a lower caste is considered to be polluting by the upper caste. The Dalits particularly employed as manual scavengers are considered to be untouchable even by other Dalits.

The instance of prevention of entry of Scheduled Castes into temples should be carefully tackled. Those encouraging such discriminatory practices and promoting disaffection in the society should be prevented from doing so by launching

prosecution against them. The State Governments have also issued various orders and instructions from time to time for the removal of various hardships and problems from which the members of Scheduled Castes have been suffering.

23.2.3.1 The Protection of Civil Rights Act, 1955

After independence, a provision was made under Article 17 of the Constitution of India, whereby untouchability was abolished. In accordance with this constitutional provision, the Government of India has adopted "The Protection of Civil Rights Act, 1955." Under this Act, stringent measures have been made regarding punishment etc. and offence of untouchability has been made cognizable. Under the Act, 6 special courts and 2 designated courts have been established.

However, the Civil Rights Act, 1955 was basically concerned itself with superficial humiliations such as verbal abuse of the lower castes. Thus, it could not address the problem of untouchability in an effective manner.

23.2.3.2 The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Government of India, in 1989, passed the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, which delineates specific crimes against Scheduled Castes and Scheduled Tribes as "atrocities," and describes strategies and prescribes punishments to counter these acts. The Act 1955 was replaced by the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989. The Act came into force with effect from 30th January 1990. This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes. The Act provides for punishment for offences of atrocities committed against Scheduled Castes and Scheduled Tribes. Comprehensive Rules under the Act were notified in the year 1995, which *inter-alia* provides norms for relief and rehabilitation. The Act extends to whole of India except Jammu & Kashmir. The Act is implemented by the respective State Governments and Union Territory Administrations, which are provided due central assistance under the Centrally Sponsored Scheme for effective implementation of the provisions of the Act.

The Act attempts to curb and punish violence against Dalits through three broad means. *Firstly*, it identifies what acts constitute "atrocities." *Secondly*, the Act calls upon all the states to convert an existing sessions court in each district into a Special Court to try cases registered under the Act. *Thirdly*, the Act creates provisions for states to declare areas with high levels of caste violence to be "atrocitiy-prone" and to appoint qualified officers to monitor and maintain law and order.

The cure has thus become part of the cause in this case; as members of the Scheduled Castes and Scheduled Tribes (SC/STs) avail themselves of the advantages of reservation, and awareness and assertion of their rights increases, the status quo of inter-caste relations in villages faces severe challenges. Increased violence and increased reporting of incidents of violence, is thus a natural product or consequence.

However, this increase in violence seems improbable in the light of the astonishing amount of international political and civil society attention that the Dalit cause

has been receiving. Dalit NGOs and political groups led a high-profile campaign at the World Conference against Racism in 2001 which has made even caste as one of their central concerns. Governments have also taken up the issue bilaterally with India (www.countercurrent.org).

The POA is a tacit acknowledgement by the government that caste relations are defined by violence, both incidental and systemic. The POA, thus, gives 'Dalits' vital ammunition in the form of legal redress for this violence.

Nevertheless, in practice, the Act has suffered from major failures in implementation. Ironically, the primary obstacles to implementation are intended to be the primary enforcers of the Act — the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Policemen have displayed a consistent unwillingness to register offences under the Act for various reasons including their ignorance. Thus, though the purpose of the Act was to prevent atrocities and help in social inclusion of Dalits into the society, it has failed to live up to its expectations.

Offenders, Victims and Offences under the Act: Any person who is not a member of a scheduled caste or a scheduled tribe and commits an offence listed in the Act against a member of a scheduled caste or a scheduled tribe is an offender. *The victim should be a member of a scheduled caste or a scheduled tribe against whom any of the following offences is committed by the offender:*

- 1) Forced to eat or drink an offensive or uneatable substance;
- 2) Caused annoyance, injury or insult by any excreta or waste matter being dumped in his premises or neighbourhood;
- 3) Paraded naked or with painted face or body;
- 4) Wrongfully deprived of cultivation of his land;
- 5) Wrongfully deprived of his rights over any land, premises or water;
- 6) Forced to do beggary or work as a bonded labourer;
- 7) Prevented from exercising his right to vote or to vote according to his wishes;
- 8) Subjected to false legal proceedings;
- 9) Caused injury or annoyance by a public servant on the basis of false information given to him;
- 10) Deliberately insulted and humiliated in public view;
- 11) A woman who is sexually assaulted;
- 12) Deprived of his right to clean drinking water;
- 13) Deprived of his right of passage to a public place;
- 14) Forced to leave his house or village;
- 15) Falsely implicated him in a criminal case, which might result in his imprisonment or execution;
- 16) Intended harm or injury by burning a place of his dwelling or worship; and

Besides this, section 2 of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled tribe:

- i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;
 - which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;
- ii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause —
 - damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
 - destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;
- iii) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
- iv) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or
- v) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Nature of offences and extent of punishments under this Act: All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

The Act prescribes both minimum as well as maximum punishment. The minimum in most cases is six months imprisonment while the maximum, in

most cases, is five years sentence and with fine. However, in some cases, the minimum is enhanced to one year while the maximum goes up to life imprisonment or even death sentence.

Section 4 (of the Act) deals with punishment for neglect of duties by a public servant. According to this section, if a public servant, who is not a member of the Scheduled Caste or Scheduled Tribe, deliberately neglects his duties, which he should perform under the Act, he is liable for punishment with imprisonment up to six months.

Section 5 provides enhanced punishment for subsequent conviction. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Constitution of Special Courts: Chapter 4 of the act clearly states about the constitution of special courts for hearing cases on atrocities against the Scheduled Caste and Scheduled Tribes. For the purpose of providing for speedy trial, the State Government shall with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, establish in each district a Court of Session to be a Special Court exclusively to try the offences under this Act. Provided that in respect of districts where there are no atrocities against Scheduled Castes and Scheduled Tribes at all the Government may, with the concurrence of the National Commission for Scheduled Castes and Scheduled Tribes, either exempt such district or districts from this provision or combine such district(s) with any other neighbouring district(s) for the purpose of establishing exclusive special courts. The special courts set up under this provision shall not be the same as any of the existing courts of session. The exclusive Special Courts shall try offences under this Act on day-to-day basis.

The Act further provides that for every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Investigation and Rehabilitation: Section 23 of the Act, authorises the Central Government to frame rules for carrying out the purpose of the Act. It was drawing power from this section that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 were framed. According to Rule 7(1), investigation of an offence committed under the SC/ST Act cannot be investigated by an officer not below the rank of Deputy Superintendent of Police (DSP). In regard to this, various High Courts have vitiated the trial based on the above rule and, therefore set aside the order of conviction. The Andhra Pradesh High Court, in *D. Ramlinga Reddy v State of A.P.* (2000), took the position that provisions of Rule 7 are mandatory and held that investigation under the SC/St Act has to be carried out by only an officer not below the rank of DSP. An investigation carried out and charge sheet filed by an incompetent officer is liable to be quashed. Similarly, Madras High Court, in *M. Kathiresam v State of Tamil Nadu* (2000) held that investigation conducted by an officer other than a DSP is improper and bad in law. Proceedings based on such an investigation are required to be quashed. The Courts without taking into consideration the inadequacies of the State have been punishing SC/STs for the same.

The Act contains affirmative measures to weed out the root cause of atrocities, which has denied SC/STs basic civil rights. The Act has addressed the problem regarding the dispensation of justice, but failed to deal with the problem of 'rehabilitation'. There is mention of rehabilitation under Section 21(2)(iii), but there are no provisions addressing the same. As it has been stated earlier, the victims of atrocities are on a different level when compared to victims of other crimes. Hence, there should be special provision for the same. According to the report submitted by the National Commission for Review and Working of the Constitution, victims of atrocities and their families should be provided with full financial and any other support in order to make them economically self-reliant without their having to seek wage employment from their very oppressors or classes of oppressors. Also, it would be the duty of the State to immediately take over the educational needs of the children of such victims and provide for the cost of their food and maintenance. The number of SC/ST workers as agricultural labourer is increasing at a faster rate when compared to other sections of the society. This basically implies that after losing their land holdings, SC/ST cultivators are becoming agriculture labourers. Loss of land, on the one hand, is caused by atrocities against them, making them more vulnerable. This in turn fuels and promotes continuance of atrocities and untouchability. Marginalisation is one of the worst forms of oppression. It expels a whole category of people from useful participation in the society and therefore potentially subjected to material deprivation and this could even lead to extermination. Moreover, this leads to the state of powerlessness which perhaps is best described negatively, the powerless lack authority, status and a sense of self. Moreover, every right has three types of duties:

- Duties to avoid deprivation.
- Duties to protect from deprivation.
- Duties to aid the deprived.

Though the Act does cover the first two duties but totally ignores the third one, i.e. the duty to aid the deprived. Hence, it is necessary to make the SC/STs self-dependant.

A brief assessment of the functions of the Act: This Act is having many teeth but which seldom bites. Although the Prevention of Atrocities Act (POA) is a powerful and precise weapon on paper, in practice, the Act has suffered from a near-complete failure in implementation. Ironically, the primary obstacles to implementation are intended to be the primary enforcers of the Act — the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Policemen have displayed a consistent unwillingness to register offenses under the Act for various reasons including their ignorance. According to a 1999 study, nearly a quarter of those government officials charged with enforcing the Act are unaware of its existence (Dhruvam, et al, See www.legalserviceindia.com/.../1440-Scheduled-Castes-and-Tribes-Act).

In most cases, unwillingness to file a First Information Report (FIR) under the Act comes from caste-bias. Upper caste policemen are reluctant to file cases against fellow caste-members because of the severity of the penalties imposed by the Act. Most offenses are non-bailable and carry minimum punishments of five years imprisonment. Hard work by human rights defenders has slowly begun to decrease this problem. Nevertheless, the staggering scope of the problem

demands government intervention before cases can be properly registered under the Act (Ibid).

A bigger obstacle faces victims who actually manage to lodge a complaint. Failure to follow through with cases is alarmingly apparent at the lowest echelons of the judicial system. The statistics speak for themselves: out of 147,000 POA cases pending in the courts in 1998, only 31, 011 were brought to trial. Such delay is endemic to the Indian judicial system. Although the POA mandated the creation of Special Courts precisely to circumvent this problem, only two states have created separate Special Courts in accordance with the law. In other states, existing sessions courts have been designated Special Courts, while still being asked to process their usual caseloads. Since many different Acts require the creation of Special Courts, such sessions courts are often overloaded with a number of different kinds of “priority” cases, virtually guaranteeing that none of these cases receive the attention they are mandated to receive.

Even if cases make to trial, the Act also suffers from abysmal rates of conviction. Out of the 31,011 cases tried under the Act in 1998, only a paltry 1,677 instances or 5.4% resulted in a conviction and 29,334 ended in acquittal. If we compare this to the conviction rate in cases tried under the Indian Penal Code, we find that in 1999, 39.4% of cases ended in a conviction and in 2000, 41.8% resulted in conviction. Judicial delay is just one cause of this low conviction rate; the lapse between the case being registered and the trial means that witnesses who are often poor and face intimidation in the interim, turn hostile and the case becomes too weak for a conviction. The long wait also results in many plaintiffs losing interest. Judicial bias against Dalits is rampant and unchecked, and court decisions frequently bear the mark of such bias (Ibid).

Besides these, the other main deficiencies in the Act is Section 14(2), which merely requires the State Governments to specify for each district a Sessions Court to be a Special Court to try atrocities, contradicting the very purpose “of providing for a speedy trial”. Merely calling an existing court a special court cannot speed up a trial. The law ought to have provided for a special court in each district exclusively to try cases of atrocities, on a day-to-day basis, with corresponding provisions for an exclusive special public prosecutor and a special Investigating Officer. This lacuna lays the foundation for a situation of crime without punishment.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

4) What is the nature of offences and extent of punishments under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989?

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5) Who is the competent officer to investigate an offence committed under the above mentioned Act?

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23.2.4 Prohibition of Manual Scavenging

You must be aware that “Manual Scavenging” or “carrying the night soil” are terms used to delicately refer to the practice of removing human and animal excreta using brooms, small tin plates, and baskets from dry latrines and carrying it on the head to disposal grounds some distance away from the latrines.

This “job” is for Dalits, mainly women and young girls. Moreover, men, women and children – particularly from the Chuhar, Mehathar, Halalkhor, Lalbaghi, Bangi, Thotti and Jamadar lower castes – are commonly employed as manual scavengers in India. Being at the lowest in the caste hierarchy and due to the perceptions of pollution and impurity imposed upon them, the members of these communities are forced to live in isolated and remote corners within the cities and municipal corporations where they are employed. These places are often a corner in the municipal burial ground or a reclaimed garbage ground. The living conditions in these places are very poor. Facilities like schools and health centres do not exist for these families, being numerically low in these areas. Perceived as the lowest of the castes and due to the prejudices that exist in the Indian society, the children from these families are often prevented from attending schools and the members of these communities are denied medical treatment even in government facilities. This probably explains the large ratio of deaths in the manual scavenging community (Asian Legal Resource Centre, See www.alrc.net/doc/mainfile).

Manual scavenging is carried out without any form of protective gear. Even simple equipment like a face mask is not provided. A scavenger who enters a sewer without any protective gear is exposed to many forms of toxic chemicals and disease-causing bacteria.

The framers of the Indian Constitution abolished the practice of untouchability in the hope that it would serve to erase the caste bias inherent in Indian society. The practice of untouchability is a penal offence under law, punishable with a prison sentence and in some cases, forfeiture of property. More than 50 years on, however, even as the rest of India moves on to cutting-edge technology and economic power status, the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu continue to carry other people’s filth on their heads and are perceived as untouchable. These communities feature at the bottom of the caste hierarchy in India and also the hierarchy of Dalit sub-castes. They live in segregated settlements in the outskirts of their villages, and are denied access to the local temple, religious community events, hotels, public water taps/wells, and are excluded from interpersonal social relations.

Manual scavengers are exposed to subhuman conditions of work, working amidst unbearable dirt and stench. They are required to clean public latrines, sometimes with as many as 400 seats on a daily basis and then carry the refuse to disposal grounds a long distance away. Needless to say, these working conditions pose serious health hazards. They are exposed to viral and bacterial infections that affect their skin, eyes, respiratory and gastrointestinal systems. The stench is so unbearable that many workers come to their place of work in a state of intoxication to be able to tolerate the stench.

Not only is the nature of work degrading and the conditions of work abysmal, the scavengers are employed at highly exploitative wages. Those working for urban municipalities earn Rs.30-40 per day and those working privately are paid as less as three to five rupees per day (www.halabol.com). The practice of manual scavenging as an offensive, inhuman practice in civilized society has long been recognized. In 1917, Mahatma Gandhi had insisted that the inmates of Sabarmati Ashram – which he had set up and which was run like a commune – clean their toilets themselves. The Maharashtra Harijan Sevak Sangh, in 1948 protested against the practice of manual scavenging and called for its abolition. The 1949 Barve Committee made several recommendations to improve the working conditions of the sanitary workers. In 1957, the Scavenging Conditions Enquiry Committee recommended the abolition of the practice of carrying human excreta in head loads. In 1968, the National Commission on Labour set up a committee to study the working conditions of “sweepers and scavengers”. All these Committees recommended the abolition of manual scavenging and rehabilitation of sanitary workers, or *safai karmacharis*, as they are also called, but none of the recommendations were implemented (Human Rights Report, See <http://www.hrdc.net/sahrdc>).

While government estimates suggest that there are about one million manual scavengers in India, 95 percent of whom are women, unofficially the figures are much higher. In order to tackle the problem of manual scavenging, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been enacted. The Act prohibits the employment of manual scavengers or construction of dry latrines, not connected to proper drainage channels and violations of provisions of this Act can lead to imprisonment for up to one year and/or a fine of up to Rs.2,000. However, as the Comptroller and Auditor General (CAG) of India, pointed out in a 2003 report, the law had only been adopted by 16 states as of 2003, and it had not been enforced in any State (Comptroller and Auditor General, 2003).

The National Scheme of Liberation and Rehabilitation of Scavengers and their dependents was launched in March 1992 and the Ministry of Social Justice and Empowerment has been entrusted with the task of implementing the scheme. However, according to the CAG report, the scheme had failed to achieve its objectives despite an investment of more than INR 600 crore (60 billion). The preambular paragraph of the report most emphatically states (Ibid).

In 1993, the National Commission for *Safai Karmacharis* was set up under the National Commission for *Safai Karmacharis* Act, 1993. According to the National Commission for *Safai Karmacharis*, the main reason for unsatisfactory progress of the Scheme appears to be inadequate attention paid to it by the State Governments and concerned agencies. State governments routinely deny the

existence of manual scavengers. Part of the reason why such rehabilitation schemes fail is the state's complicity in the whole process. Many government offices and buildings still have dry latrines and municipalities employ manual scavengers to clean these latrines.

The CAG report faulted the Ministry of Social Justice and Empowerment for, among other things, delays in disbursing funds to the Scheduled Caste Development Financial Corporations – responsible for implementing income-generating rehabilitation schemes – and for having “hardly any workable monitoring machinery at the Ministry, State and District levels”. The Corporations and the banks, for their part failed to deliver as there was no clear definition of the path of occupational change. The loan rejection percentage, according to the CAG report, was 47 percent in Maharashtra and 74 percent in Tamil Nadu. As the report, perceptively, pointed out, “to expect an illiterate and poor scavenger to comply with the rigours of project-financing by commercial banks was to say the least, unimaginative” (Ibid).

The National Human Rights Commission, has on its part called upon states to adopt and implement the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 but it has noted that the response has been dismal, once again reflecting the complacency at the political level. It declared at a review meeting on eradication of manual scavenging with senior government officials that a survey was required to be conducted in states to understand the extent of the problem and tackle it in an efficient manner (Ibid).

The Indian Railways – a body that actually employs manual scavengers, according to a petition filed in the Supreme Court – in its recently announced Rs.24,000 crore Integrated Railways Modernization Plan (IRMP) does not have the elimination of manual scavenging on its radar. The Tenth Five Year Plan, however, has mentioned the eradication of manual scavenging by 2007 as a goal, which has still remained a dream (Ibid).

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

6) Explain the meaning of “untouchability” and “manual scavenging”.

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7) What are the legislations passed to tackle the problem of manual scavenging in India?

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8) What are the main reasons for the failure of the various schemes/ legislations relating to prohibition of manual scavenging?

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23.2.5 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, though passed by Parliament in 2006 it came into force only on December 31, 2007 (i.e. one year later). The Rules to the Act, which provide for some of the operational details, were notified on January 1, 2008. The Tribal Development Department has executed the first phase of Scheduled Tribes and Other Traditional Forest Dwellers (Forest Rights Recognition) Act, 2006 in the tribal areas from 6th April, 2008.

The basic objective of the Act is to decide upon and recognize the forest rights of those tribal forest dwellers and others who have been living in forests since generations, but were subjected to historical injustice. The main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006 are:

- To decide and recognize forest rights of tribal forest dwellers living in forests.
- To recognize the ownership of the land to the tribal forest dwellers.
- To recognize the right of livelihood of the tribal peoples.

Any member of scheduled tribe, community or any other traditional forest dweller, who is dependent on forests for livelihood and has possession over forest land prior to 13th December, 2005 and continued ownership till 2nd January, 2007 can present their claims. The last dates for receiving claims will be decided in the Gram Sabha meeting.

Critical Appraisal of the Act: It is as follows (www.im4change.org/empowerment/forest-and-tribal-rights).

- The Act provides for recognition and vesting of forest rights to Scheduled Tribes in occupation of forest land prior to December 13, 2005 and to other traditional forest dwellers who are in occupation of forest land for at least three generations, i.e. 75 years, up to a maximum of 4 hectares. These rights are heritable but not alienable or transferable. Forest rights include among other things, right to hold and live in the forest land under individual or common occupation for habitation, self cultivation for livelihood, etc.
- One of the most crucial aspects of the Forest Rights Act is the realization of forest rights within a protected area through declaration and demarcation of the “critical wildlife habitat” (CWLH).
- The present law has only diluted the interests of the forest dwelling Scheduled Tribes with that of the “Other Traditional Forest Dwellers”. The forest dwelling Scheduled Tribes no longer remain the focus of the law contrary to what it originally envisaged.
- There is no provision in the Act providing that cases under the Forest Conservation Act of 1980 against the forest dwelling Scheduled Tribes for accessing minor forest produce would be dropped or closed.
- The British established a mode of forest governance that imposed restrictions on local forest dwelling communities through a definition of forests as national property for colonial objectives, which tried to acquire control of forests for commerce and national development at the cost of local forest-based livelihoods. However, known as the Panchayats (Extension to Schedule Areas) Act, 1996 (or PESA), it decentralized existing approaches to forest governance by bringing the Gram Sabha at the center stage and recognized the traditional rights of tribals over “community resources” — land, water and forests.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

9) What are the main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006? Do you think that the Act is potent enough to fulfill these objectives?

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23.3 LET US SUM UP

The Hindu caste system used to follow one basic premise — all men are born unequally, a premise rooted in ancient and so called sacred Indian texts. According to these texts, four varna groups emerged from various parts of the body of a primordial being. Each group fulfils a function in society. According to varna system of ancient India, Dalits fall into a fifth category outside the varna system. They are required to perform tasks that are considered so impure that they could not possibly be included in the traditional varna system. In ancient times, elaborate rules were applied to avoid “cross-contamination.” In northern India for example, Untouchables had to use drums to let others know of their arrival. Even their shadows were considered polluted. In the south, some Brahmins ordered Untouchables to keep at least 65 feet away from them (www.suite101.com).

Caste discrimination has allowed, and still does allow, upper castes to maintain their control over cultural, social, political and material capital. But, some Dalits are starting to fight their status of social and cultural outcasts. Small but growing groups of activists are working for the liberation of Untouchables. The reaction of authorities to their activism is often unforgiving and police brutality against untouchable activists is commonplace.

There are no easy solutions to the ongoing plight of India’s Dalits. The constitutional and legal safeguards and new rules and regulations are mostly theoretical constructs. In practice, India’s millions of Dalits and Tribes are yet trapped at the very bottom of a system that functions by virtue of their shameless and relentless exploitation.

23.4 ANSWERS TO ‘CHECK YOUR PROGRESS’ QUESTIONS

- 1) The Articles of the Constitution that provide safeguards for the protection of SCs/STs include the following.

Development and Protective Safeguards (Article 46 of the Constitution of India); Social Safeguards {Articles 17, 23, 24, 25(2)(b)}; Economic Safeguards (Articles 23, 24 and 46); Educational and Cultural Safeguards {Article 15(4)}; Political Safeguards {Articles 164(I), 330, 332, 334, 371A, 371B, 371C, 371F)}; Reservation for SCs and STs in Government Employment {Articles 16(4), 16(4A), 16(4B), 320, 335}.

- 2) Various methods of investigation and enquiry followed by the National Commission for SCs and STs include the following: by the Commission directly; by an Investigating Team constituted at the Headquarters of the Commission; and through its State Offices.
- 3) *Extinguishment of liability to repay bonded debt:* As per Section 6 of the Act, every obligation of a bonded labour to repay any bonded debt shall be deemed to have been extinguished. No proceedings can be held in any civil court for the recovery of any bonded debt. Every attachment made of any movable property of the bonded labour or such movable property was seized or removed from his custody shall be resorted to the possession of the bonded labourer. If the restoration is not made within 30 days from the coming of this Act into force, the aggrieved party may apply to the prescribed authority

for the restoration of the possession of such property. Under this Act if any suit or proceeding for the recovery of any advance made to a bonded labourer is pending, such a suit will stand dismissed. Furthermore, every bonded labourer detained in civil prison shall be released from detention.

- 4) *Nature of offences and extent of punishments under SC and ST Act, 1989:* All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

The Act prescribes both minimum as well as maximum punishment. The minimum in most cases is six months imprisonment while the maximum in most cases is five years sentence and with fine. However, in some cases, the minimum is enhanced to one year while the maximum goes up to life imprisonment or even death sentence.

Section 4 (of the Act) deals with punishment for neglect of duties by a public servant. According to this section, if a public servant, who is not a member of the Scheduled Caste or Scheduled Tribe, deliberately neglects his duties, which he should perform under the Act, he is liable for punishment with imprisonment up to six months.

Section 5 provides enhanced punishment for subsequent conviction. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

- 5) *Investigation and Rehabilitation:* Section 23 of the Act, authorises the Central Government to frame rules for carrying out the purpose of the Act. It was drawing power from this section that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 were framed. According to Rule 7(1), investigation of an offence committed under the SC/ST Act cannot be investigated by an officer not below the rank of Deputy Superintendent of Police (DSP). In regard to this, various High Courts have vitiated the trial based on the above rule and, therefore set aside the order of conviction. The Andhra Pradesh High Court, in *D. Ramlinga Reddy v. State of AP*, took the position that provisions of Rule 7 are mandatory and held that investigation under the SC/St Act has to be carried out by only an officer not below the rank of DSP. An investigation carried out and charge sheet filed by an incompetent officer is liable to be quashed. Similarly, Madras High Court in *M. Kathiresam v. State of Tamil Nadu* held that investigation conducted by an officer other than a DSP is improper and bad in law. Proceedings based on such an investigation are required to be quashed. The Courts without taking into consideration the inadequacies of the State have been punishing SC/STs for the same.

- 6) 'Untouchability' means the system of excluding some persons from the main stream of the society. In Hindu religion, caste system prevails, in which the upper castes consider the lowest caste of the structure, i.e. Dalits, as 'untouchables' and they are not permitted to sit along with or to have personal relationships with the upper caste members of the society.

‘Manual scavenging’ means the practice of removing human and animal excreta using brooms, small tin plates, and baskets from dry latrines and carrying it on the head to disposal grounds some distance away from the latrines.

- 7) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 has been passed in India to tackle the problem of manual scavenging. On the basis of this Act, the government used to pass various rules to prohibit manual scavenging. And the second important enactment is National Commission for Safai Karamachari Act, 1993.
- 8) The main reasons for the failure of the various schemes/legislations relating to prohibition of manual scavenging are:
 - The schemes were ill-conceived.
 - They failed in working out a coherent strategy for policy initiatives as it could not take advantage of an existing law that prohibited employment of scavengers.
 - The schemes lacked in enhancing or re-orienting the skill-levels of the beneficiaries, which is necessary for change of occupation. It means, these schemes try to differentiate liberation from rehabilitation.
 - Inadequate attention paid to it by the State Governments and concerned agencies to the schemes.
 - Delays in disbursing funds to the Scheduled Caste Development Financial Corporations – responsible for implementing income-generating rehabilitation schemes.
- 9) The main objectives of Scheduled Tribes and Other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006 are:
 - To decide and recognize forest rights of tribal forest dwellers living in forests.
 - To recognize the ownership of the land to the tribal forest dwellers.
 - To recognize the right of livelihood of the tribal peoples.

This Act is potent enough to fulfill its objectives, but the present law has only diluted the interests of the forest dwelling Scheduled Tribes with that of the “Other Traditional Forest Dwellers”. The forest dwelling Scheduled Tribes no longer remain the only focus of the law, contrary to what it originally envisaged.

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