

**Scope of Article 17 of the Constitution (Abolition of Untouchability)**- Priyanshu Jain<sup>1</sup>**Abstract-**

Untouchability means ostracizing a minority group by segregating them from the mainstream of social custom or legal mandate. Indian constitution abolishes untouchability as per article 17 but fails to define the ambit of article 17 of the constitution, whether restricted to Dalit's or to entire population, In context to Indian the practice of untouchability is not restricted to Dalit's many communities such as transgender, women's(in some cases) & Specific Hindu faces it. The questions on the ambit of article 17 generated in the judgment of sabarimala, where judges state whether not allowing women in the temple depicts untouchability. Untouchability does not remained only with Dalit's but extended to various minor communities, if you go to southern part of India you will find various creeds of Hindus ostracized from society. The ambit of article 17 is ambiguous, it failed to describe the ambit of Article 17 of the constitution.

Key words: Article 17, Social customs ,Untouchability, Minor communities, Dalit's

**Introduction:**

Untouchability in its literal sense is the practice of ostracising a minority group by segregating them from the mainstream of social custom and legal mandate. The origin of the word untouchability is quite debatable; some depicts it from Indus valley civilisation, where some depicts it from Indo-Aryan times.

**Historical view of the word untouchability:**

Austrian ethnologist **Christophe von Furer-Haimendorf** theorized that untouchability originated as class stratification from Indus valley civilisation, According to his theories the poor worker who involved in unclean occupation such as sweeping or leather work were segregated from society, personal cleanliness were considered as purity from there the untouchable words originated which means the one who does uncleanliness work after the

---

<sup>1</sup> Student at NMIMS, Mumbai

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

decline of Indus valley civilisation these untouchable spreaded to different parts of India<sup>2</sup>, but this theory was rejected by **Suvira Jaiswal** arguing that this theory lacks evidence on the exact meaning of untouchability, according to him concept of untouchability pronounced in rural areas.

American scholar **George L. Hart**, based on his interpretation of old Tamil texts such as purananuru, traced the origin of untouchability to ancient Tamil society<sup>3</sup>. According to him, in this society, certain occupational groups were thought to be involved in controlling the malevolent supernatural force for Example, Paraiyars, who plays drum during battle and solemn during death and birth were called as untouchables. Jaiswal dismissed the evidence claiming as contradictory and weak. He also described that This Tamil texts also involve several Brahmanas, thus the society described in this texts was already under the brahmanical influence, so it is possible that the term of untouchability would have taken from there.”

English merchant **William Methwold** stated certain caste that follow vegetarian diet and possess high cleanliness tends to be pure and he found untouchables caste that ate death animals even those with diseases<sup>4</sup>. According to him, in primitive times vegetarian tends to be of privilege class, and one who ate unhygienic non veg food even with diseases tends to be considered as untouchables. His theory was also criticised by several individual claiming that in privilege times non veg was even eaten by privilege class

According to Dharamshastra untouchables is believed to be the person who was not considered as part of Varna System because of grievous sins, barbaric or unethical acts such as murder etc. Those who have sins attached with his/her earlier birth, is born as untouchables.

Scholars such as **Suvira Jaiswal, R.S. Sharma and Vivekananda Jh** characterise untouchability as later development after the establishment of Varna system and Caste system. According to Vivekananda Jha, the word untouchability has no mention in Rig-Veda and even the later Vedic period texts; do not suggest untouchability existed in contemporary society. In alter period between **600 – 1200 AD**<sup>5</sup>. Several groups tends to be characterize as untouchables According to Him, institution of untouchability arose when abnormal tribes with no material culture and uncertain means of livelihood came to be regarded as impure by privilege classes, who engaged in Manuel labor or unhygienic work.

By analysing the historical aspects of the meaning of untouchability, you will find there is no

---

<sup>2</sup> [https://himalaya.socanth.cam.ac.uk/collections/rarebooks/downloads/Haimendorf\\_Tribes\\_of\\_India.pdf](https://himalaya.socanth.cam.ac.uk/collections/rarebooks/downloads/Haimendorf_Tribes_of_India.pdf)

<sup>3</sup> <https://tamilnation.org/caste/hart.pdf>

<sup>4</sup> [https://digitalcommons.brockport.edu/cgi/viewcontent.cgi?article=1029&context=eng\\_theses](https://digitalcommons.brockport.edu/cgi/viewcontent.cgi?article=1029&context=eng_theses)

<sup>5</sup> <https://journals.sagepub.com/doi/10.1177/025764301002600102>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

definite meaning of untouchability, every author has its different opinion, but there is no exact scientific prove which state the meaning of the word untouchability.

**Meaning of untouchability on our Indian constitution:**

**Article 17 of the constitution**, states Untouchability is abolished and its practice in India is forbidden by law. The enforcement of any disability arising due to untouchability shall be offence punishable according to the law. This article failed to describe the ambit of article 17 of the constitution, whether scope of untouchability is restricted to caste based discrimination or peoples based discrimination. In 21th century anybody can face untouchability irrespective of his religious or caste. Although mind-set of present society have enlarged, people discrimination for certain sector is still going on such as for transgender, homosexuals, acid victims, women's (Especially in certain places)

Research questions:

- What is the meaning of the untouchability? When the word originated?
- What is the scope of untouchability abolished in article 17 of the constitution?
- Do untouchability restricted to Dalit's, or it has widen scope?
- What's the ambedkar view on untouchability?

Research objects:

- To analyses the scope of untouchability as per article 17 of the Indian constitution
- To analyse the Ambedkar view on untouchability with especially reference to his speech annihilation of caste system
- To analyse the ambit of article 17 of the constitution with reference to other class and communities other than Dalit's facing untouchabilities.

Statement of Problem:

Untouchability has been the sin of decades; our constitution abolishes untouchability as per article 17 of the constitution. It's Scope and ambit is undefined in the constitution, whether it is restricted to caste based discrimination or people based discrimination this research is based on historical perspective of untouchability.

Research methodology:

I have used doctrinal form of research; I have taken various writers' perspective on untouchability and its historical perspective from various journals. The goals are to define the

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

ambit of Article 17 of the Indian constitution.

**Tentative chapertisation:**

Chapter 1: Abstract

Chapter 2: Introduction

Chapter 3: Research methodology

3.1: Statement of Problem

3.2: Research objectives

3.3: Research questions

3.4: Review of Literature

Chapter 4: ambit of abolition of untouchability as per Indian constitution

Chapter 5: B.R. Ambedkar view on untouchability (Analysing present view on untouchability)

Chapter 6: Conclusion & Suggestions

Chapter 7: References

**Review of literature:**

Untouchability, an ancient form of discrimination based on caste and creed, is a complex and pervasive problems in India. Although the concept of untouchability is not restricted to India alone. For untouchability the practice of untouchability has marginalised, terrorized, and relegated a sector of Indian society. Indian constitution prevent untouchability by article 17, but Our Indian constitution framers failed to describe the ambit of untouchability while framing our Indian constitution.

The question on the scope of untouchability initiated during Sabarimala case bench, whether prohibiting the women in Sabarimala temple during her menstruation age is a form of untouchability or not, other justice denied the presumption but it remained in doubt whether ambit of untouchability in our legal system is restricted to certain caste certain Dalit's because at present many communities suffers from untouchability.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

**Christophe Jaffrelot (2000)** states B.R. Ambedkar's life give us privilege ingress into the world of Dalit's and their social and political aspirants. Ambedkar's relevance in India today may be controvertible but what is beyond doubt is that the path he trod gave hope and ambition to millions of ex-touchable who were degraded for centuries in Hindu Society. In this book the author described about the untouchability restricted to its Dalit's scope. Almost 80 per – cent of the literature are restricted to Dalit's.

Untouchability outlawed in India, Nepal and Pakistan, but the meaning of untouchability is not legally defined in the constitution, so it is very difficult to describe our Indian constitution is working to avoid untouchability.

#### **Historical aspects of the untouchability:**

**Christoph von Furer – Haimendorf(1982)** theorized that untouchability originated as class stratification in urban areas of Indus valley civilization. In his theory poor worker who involved in uncleanliness work such as sweeping and leather were called as untouchables. His theory was criticized by Suvira Jaiswal, as this theory lacks evidence of Indus valley civilization & also his theory is irrelevant to caste system, according to him the one who does uncleanness work though to be untouchables irrespective of his caste but we can imply the statement as only Dalit's indulge in unclean work.

American scholar **George L. Hart(1975)**, based on his interpretation of old Tamil texts such as purananuru, traced the origin of untouchability to **ancient Tamil society** according to his theory there is certain sector of people who indulge In drumming during battles and Solemn during birth and death. His theory was also criticized by Indian scholar stating it to be irrelevant and lacks any evidence. His theory has no caste based discrimination; one who indulges in drumming and solemn during birth and death tends to be known as untouchables.

According to **Suvira Jaiswal(1978)**, the word untouchability emerged later Varna and caste system, he mentioned untouchability emerged after emergence of certain tribes who lives in uncultured manner with no maternal culture, and these tribes thought to be unclean by privilege class and treated as untouchables. According to **vivekanandaJha**, untouchables were to one who eats dead and unhygienic animals; these peoples are thought to be untouchables by privilege class (Who were vegetarian).<sup>6</sup>

As we analyse all these we couldn't find historically whether it is based on caste system because, some theorist predicts it to be certain tribal, some theorists predicts it to be one who drums and solemn during death the worth. There was no clear reasoning on untouchability,

---

<sup>6</sup> Candela, untouchability and caste in early India by Vivekananda Jha

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

whether it is based on caste system or it is based on every people irrespective of his/her caste. According to **B.R. Ambedkar (1949)**, father of Indian constitution depicts untouchability is restricted to Dalit's, According to his reasoning, untouchables are Dalit's of India who indulge in manual scavenging. But his theory lacks the scope of untouchability, he mentioned Dalit's are facing untouchability since decades but the question arise on his theory are only Dalit's faces untouchability, as he was the father Indian constitution and also he was Dalit he failed to widen the scope of untouchability.

#### **Chapter 4: ambit of abolition of untouchability as per Indian constitution:**

Untouchability is ostracising a particular minor sector of society due to social and legal mandate. The historical aspects of untouchability remained in controversy, some depicts it on certain tribes some depicts on particular minor section but there is no clarity who suffers from untouchability.

At the time of independence of India, the struggle was not only with Britishers but also with all the social evils such as untouchability which prevailed since centuries. After Independence the biggest challenge our Freedom fighter had was untouchability . It was prevailed in each and every part of country.

Our constitution is very precise in context of article 17, our constitution doesn't have proper definition of the stuttering, untouchability has various different perspective, and many religion beliefs depicts untouchability such as not allowing women to temples and kitchen during menstruation. Menstruation is a natural process which suffered by each and women, not allowing them in temples depicts untouchability, and in some cases women's are not allowed in their whole life during menstruation (Sabarimala case).<sup>7</sup>

Our religious belief has proper reasoning for it, but still it is untouchability In case of B.R. Ambedkar view on untouchability was restrict to Dalit's and also he was right at that time because untouchability with Dalit's prevailed with great extent all over India, they weren't allowed to take water from certain wells, they were not allowed to sit on the bench(in School), they were treated like slaves, there were news where Dalit boy was beaten to death for plucking flower, Dalit s weren't allowed to drink from the same wells, attend the same temples, wear shoes in the presence of upper caste or drink from the same cup of tea stalls and also they have to remove their shoes in front of upper class.

---

<sup>7</sup> <https://www.scobserver.in/court-case/sabrimala-temple-entry-case>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

**Chapter 5: B.R. Ambedkar View on untouchability:**

Historically India's Dalit's were relegated to the lowest jobs, such as manual labour, cleaning work and lived in constant fear of being publicly naked, humiliated, paraded naked, beaten or raped till death, in older taken merely Walking through an upper caste neighbourhood is a life threatening offense.

Historically Dalit's were not allowed to drink from the same well, attend the same temples, wear shoes in the presence of upper class or drink from the same cup from tea stalls, if we recall our biggest epic Mahabharata, Karna brother was killed to death because he chant some upper caste mantra's.<sup>8</sup>

B.R. Ambedkar was born in Maher (Dalit class) who were treated as untouchables and subjected to Socio-economic discrimination. Ambedkar was highly educated Dalit of British India, in 1927 he decided to launch active movement against untouchability (His movement was restricted to Dalit). He even criticised Manusmriti (Law of Manu) for justifying caste discrimination and untouchability, he ceremonially burned various ancient tax. In 1932 the British colonial government announced the formation of a separate electorate for Depressed Classes in the communal award. B.R. Ambedkar Whole heartily supported Poona pact but Gandhi fiercely opposed the separate electorate for untouchables, he fast against the pact, at last in a meeting Madan Mohan Malviya and Ambedkar had an agreement were certain seats were reserved for the depressed class (Dalit class) due to the pact Dalit class received 148 seats instead of 71 seats in Poona Pact.<sup>9</sup>

Ambedkar had various movement for untouchables, he criticised Hindu texts justification on caste based discrimination, According to him we all are born on the same field, all will die from the same field so why there is such discrimination on caste birth, A Dalit class although work as manual labour but they can be more prone to cleanliness than other classes.

---

<sup>8</sup> "Untouchable – Encyclopaedia Britannica"

<sup>9</sup> Kumar, Ravinder. "Gandhi, Ambedkar and the Poona pact, 1932." *South Asia: Journal of South Asian Studies* 8.1–2 (1985): 87–101.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

Ambedkar in his speech on annihilation of caste, wrote the agony of caste system, He mentioned how upper class tends to rule the lower class, how they are treated as subhuman, he gave various remedies to annihilate the caste system, he mentioned why the indignities of caste are inseparable form of Hinduism, the Brahmanical hegemony implicit within it and offers intermarriage as a possible solution to the insidiousness of the caste hierarchy. Another plan of action to abolition of caste system is inter – caste dinners (A upper class had been hesitant to eat food with Dalit's) but he find inter marriage is the perfect solution for abolition of caste system, According to him Fusion of blood can alone create the feeling of being kith and kin, and unless this feeling of Kinship of being kindred becomes paramount, the separatist feeling, the feeling of being aliens created by Caste will not vanish.

Ambedkar also mentioned caste is not a physical object, it is a notion, it is a state of mind, the destruction of caste does not mean the destruction of physical barrier, it means a notional change, historically the hate towards Dalit was not physical but it was a notion which exists due to caste system.<sup>10</sup>

#### **Present Scenario of untouchability:**

Historically Dalit's were prone to be untouchables but at present there are many fine but our constitution failed to depicts the ambit of untouchability as per article 17 of the constitution. At present untouchability meaning as broader perspective, not only Dalit's but also transgender, Women (in certain places) faces untouchability.

It is very difficult to infer the definite version of untouchability because the word untouchability has very controversial history nobody could had its definite meaning, during menstruation women's are not allowed in kitchen and temples(is it untouchability), Transgender are prohibited to enter certain places(is it untouchability?).

#### **Conclusion & Suggestions:**

Untouchability has been historical aspect of India; our Modern era depicts the agony of untouchability and the struggle faced by untouchables. Our Indian constitution abolished the untouchability as per article 17 of the Indian constitution but it failed to describe the ambit of article 17, Whether it is restricted to Caste system or to ever people of India irrespective of caste and creed. If analysing historically it is very difficult to derive the definite meaning of untouchability. Every historian has different reason for untouchability, some state it has community based discrimination, and some state on certain sector so to derive any particular

---

<sup>10</sup> Annihilation of caste by B.R. Ambedkar, 1936

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)



conclusion is not justiciable.

B.R. Ambedkar is the father of Indian constitution, Article 17 was instructed to Ambedkar idea on untouchability, our constitution do not depicts the ambit of untouchability but we may imply it as constitution was framed through Ambedkar mind-set that it is caste based discrimination.

At present it is times need to expand the scope of article 17, untouchability hasn't remained restricted to certain caste or creeds but extended to various communities, suppose if a transgender approaches to the supreme court claiming he was treated as untouchable would the supreme court entertain his claim?, if a women approaches The supreme court, would The court entertain her claim? There are various questions on the scope of article 17 but no definite answer due to narrow explanation of untouchability as per article 17.

Indian constitution needs amendments time to time because change is the nature of society, Article 17 needs amendment, the perspective of article 17 is undefined,

## References

Bayly, S. (2000) *Caste, Society, and Politics in India*. New Delhi: Cambridge University Press.

Charsley, S. (2001) "“Untouchable”: What is in a Name?" *Journal of the Royal Anthropological Institute (new series)*

Dumont, L. (1970) *Homo Hierarchicus: The Caste System and its Implications*. London: Vikas Publications.

Ambedkar BhimraoRamji; Moon, Vasant (1990). *Dr. Babasaheb Ambedkar Writings and speeches, Volume 7*

*W.H, Moreland (1931). Relation of Golconda in the Early Seventeenth Century. Halyukt Society. pp. 59, 78*

Kumar, Ravinder. "Gandhi, Ambedkar and the Poona pact, 1932." *South Asia: Journal of*

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

South Asian Studies 8.1–2 (1985): 87–101.



For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>