

Caste And Its Interaction with The Law in Contemporary Indian Society

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Abstract

The law is an instrumental part of one's life and has been very much impactful on the concept of caste system in Indian society. The modern India has a wide range of history to be considered dating back to the creation of Indian laws and regulations in 18th and 19th century. The caste and its interaction with Law and development of legal culture and it recognises and regulates the caste system through the legislative policy making and the Executive directions along with judicial interpretation of customs and usages which is important component of law under Art. 13(2) of Indian Constitution. Courts has developed different doctrines and conventions to tackle the different cases of caste and its intrinsic conflicts.

The contribution could also be given to the founding father of the law development in the British times who have laid the foundation to develop the statutory and extensive framework for it's modification of caste system in 1930s.

The legal development and description on caste has been on three fronts or headings which are:

(1) personal laws, (2) caste Autonomy and (3) Caste Disabilities and Precedence.

In the initial phase of adjudication of family and religious matters, the focus has been given towards the interpretation of different commentaries and Dharmashastra for which the British judges has taken assistance of the Brahmin Pundits and respected priest of the locality, after some time when the Judges got the orientation and manner of interpreting the religious texts, the common law Judges started deciding the matter and deciding the religious disputes and it led to the end of the assistance of priests in 1864 .

Sufficient amount of Autonomy and freedom has been given to the caste and their manner of determining rules which could be enforced through different social sanctions¹ Sometimes situation arose that make the courts to take the jurisdiction of caste system and their questions as it is not about the social acceptance or the dignities but the enforceable civil rights including right or claim to caste property, rights to reputation and different kinds of pecuniary jurisdiction and emoluments. Court has also chartered out the extent of Judicial intervention on the matter of caste and mainly focused on the procedural aspect rather than substantive.

† LITERATURE REVIEW

The law and it's interrelationships with caste system has been a sound proposition to enlighten the duality of legal system which can have variety as per the time. Review of the literature of Law and Caste has been

¹ Caste Disabilities Removal Act, 1850 (Act XXI of 1850).

doctrinal and the judicial insights of various judicial pronouncement of the two dichotomy phase has been paradoxical and contradictory in nature. The judicial wisdom as per the text and literature of the judicial decisions has been controlled by the state and Customary practices and is rigid, fixed as cage. However the later phase of the has been insightful in text and liberal in interpretation to protect the interests of the community at large.

† STATEMENT OF PROBLEM

Determination of the role of Law as in the form of courts and it's prevalent legal orientation with the caste system and the groups and to find out the Conciliation path between the two to reach the harmony of law and Society.

† HYPOTHESIS

The dichotomous approach of the two phase of Judiciary role in administering caste system and it's caste question. The Conciliation in one phase is antithetical to the reconciliation phase after Constitutional law commencement.

† RESEARCH QUESTIONS

To find out that whether the judicial errors of law in stage of chronological maturity could lead to oppression of one segment of the society and how far the errors of jurisprudential law could be rectified by judiciary and it's interpolating role of Legislature

† OBJECTIVE OF STUDY

The objective is to find the impact of top-bottom Approach of judiciary and it's aftermath to the oppressed sections of the society which could be good or bad.

To find out the loopholes that the Indian judicial system has prior to the commencement of the constitution and the rectifying measures of judiciary from it's judicial decisions and the role of Legislature for the same.

I. INTRODUCTION

The law is an instrumental part of one's life and has been very much impactful on the concept of caste system in Indian society. The modern India has a wide range of history to be considered dating back to the creation of Indian laws and regulations in 18th and 19th century. The caste and it's interaction with Law and development of legal culture and it recognises and regulates the caste system through the legislative policy making and the Executive directions along with judicial interpretation of customs and usages which is important component of law under Art. 13(2) of Indian Constitution. Courts has developed different doctrines and conventions to tackle the different cases of caste and it's intrinsic conflicts.

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II. PERSONAL LAW

The law has been developed and modified in such a sense that the caste distinction or identify plays a crucial role in determining the impact, effect and resonating consequences of the force of law. Thereof, the Personal laws and the manner of developing the methodology is distinct and diverse in nature as with regard to the personal laws encompassing laws of inheritance, succession, partition, Property share holdings, divorce, adoption and marriage, the differential treatment has been preferred among the different religions denominations and caste entities reciprocating subdivision of different religions.

Other than the personal laws, the legal treatment has been uniform and same in Civil, commercial and criminal matters. The equality of treatment has been given in case of territorial matters and in case of personal matters, the treatment of laws has been differential through out the time. During the British times, the Path of modern India and it's legal application varied as the Court and judges took assistance of Brahmin Pundits or sastris to assist them in applications of rules and custom of the shastras and with the passing of time common law judges had started applying the law with their judicial wisdom.

During the British time, people were treated equally in matters of civil, criminal and commercial laws and regulations and no distinction was made between them and sometimes caste also plays a major role in regulating and administering such law and rules. The concept of law during British times was territorial in nature and not that personal. But this is not the real picture of Caste and interplay with law. In some exceptional cases, Caste plays an instrumental role as there were some kind of restrictions imposed on the rights of few caste to purchase agricultural lands and properties, special kind of police rules and regulations were imposed to certain caste groups.

There is an admixture of law and caste and religious principles intermingled with each other as normally the British laws were territorial in nature but sometimes the personal character and nature of laws were also in place as could be witnessed in family law comprising of adoption laws, inheritance and succession laws, guardianship act, marriage and divorce laws and religious endowments laws where the laws of religious communities prevail over the general laws of the British common law because of the rationale that British laws are not aware of the subtleties and intricacies of Indian and customary laws which would make it difficult for the British officials and Judges to pass appropriate orders and Directions to the concerned individuals.

In the initial phase of adjudication of family and religious matters, the focus has been given towards the interpretation of different commentaries and Dharmashastra for which the British judges has taken assistance of the Brahmin Pundits and respected priest of the locality, after some time when the Judges got the orientation and manner of interpreting the religious texts, the common law Judges started deciding the matter and deciding the religious disputes and it led to the end of the assistance of priests in 1864.

With passage of time, one of a kind doctrine was adopted which said that the clear and explicit proof of usage among the caste groups would be taken into consideration to adjudicate a dispute rather than focusing and weighing a lot on the written text of the law. Court had started taking the custom and practices of the local communities in a geographical area. But despite the focus on the customs and usages, court had taken this from a narrower perspective and heavily relied on stringent conditions under British common law to prove a valid custom. Court has been flexible in applying different and diverse rules of Hindu law which were to be applied to members of different castes which could be foreseen in the law of succession, marriage, divorce and adoption. Sometimes the question arises how did the court decide that which group or class of individuals have been subjected to different caste system thereby categorising under different varna system leading to different treatment of laws by the courts on such individuals born in different varnas which in itself been determined by the courts. The complete cycle of determining the

caste or varna in cases of complexities to the stage of passing different judgements or decree the court becomes a pivotal Instrument and it can be said that courts are some way or the other are castified. One such system was the list of Diagnostic customs wherein certain individuals are labelled as shudras which would include the Illegitimate sons born out of wedlock or the second marriage of widows. And one another alternative developed was the prestige and reputation that one caste been given by the members of the other caste groups thereby deciding their self esteem and motivation.

III.

CASTE AUTONOMY

The court had been the deciding factor in determining the caste and their status in the varna system which has extended to the extent of giving legal recognition to the ceremonial status of the group and giving certification of their claims to the higher caste groups. However, this was an exception to the traditional and conventional rule of non-interference in caste matters and consideration. And later on, this caste question becomes instrumental and had been declared by the legislature directing the courts to not interfere with the caste question and withdrew the civil courts jurisdiction over caste questions by passing Bombay Regulations of 1827.² Later on this was expressly extended to civil procedure code of 1859 and it still exists as a substantial law today under CPC of 1908.³

There is a rationale as to why caste and their questions were put out of the jurisdiction of the court by the laws of British because the Caste were considered as juridical entities who have been entrusted with the power to sue and to get sued, to hold, retain, acquire and dispose of their properties. The Autonomy of caste and their system is very organized and systematic in pattern as caste have their usage to make their rules and govern themselves accordingly and they also constitute tribunals to decide disputes and enforce their rules which would not be interfered by Govt. But the absolute power has been taken away by the govt. From the caste by entrusting the courts to have the jurisdiction under Criminal law and to determine the validity of the marriages. Caste has their custom even to frame, regulate, revoke or modify their rules as per the situations and requirements of time and tide. The caste and their rules cannot be overridden by the civil courts. The caste question has been narrowed down to the idea that caste questions would include matters of internal autonomy and social relations of a caste. Caste groups among themselves could regulate the social regulations of giving or taking gifts from each other or inviting in functions or excommunicating other members from their group as an outcaste. Different questions poses different difficulties in deciding the caste question which would encompass claims to a caste office, claims to a leadership in caste etc.

Thereof, sufficient amount of Autonomy and freedom has been given to the caste and their manner of determining rules which could be enforced through different social sanctions⁴ Sometimes situation arose that make the courts to take the jurisdiction of caste system and their questions as it is not about the social acceptance or the dignities but the enforceable civil rights including right or claim to caste property, rights to reputation and different kinds of pecuniary jurisdiction and emoluments. Court has also chartered out the extent of Judicial intervention on the matter of caste and mainly focused on the procedural aspect rather than substantive.

² Bombay Regulation, 1827 (2 of 1827) s 21.

³ The Civil Procedure Code, 1908 (5 of 1908) s 9.

⁴ Caste Disabilities Removal Act, 1850 (Act XXI of 1850).

Therefore, courts would interrupt only in matters where decision of a caste tribunal is not bona fide or made in good faith or the decision has been made in mistaken belief or the decision is contrary to the regulation and rules of the caste system or it was adverse to the principles of natural justice which may include not giving notice to the other party or not providing equal opportunity to be heard.

IV. PRECEDENCE AND DISABILITIES

The court system and the British system of law had given sufficient amount of Autonomy to the prevalence of caste and religion system and to maintain the principle of non-interference in the Court and administration but only to the personal law and not absolutely. Court had declined to interfere with the enforcement of the caste rules and regulations. The principle of British is unlike to the earlier rules of princes who had enforced the rules and regulations of caste system. After 1860, courts has refrained from interfering with the caste, custom and usages of the customary rules. Thereof, the caste groups enjoy domination in their private and caste affairs and they enforce their rules which is not interfered by the courts despite knowing the existing fact of the discrimination.

And in fact at some points of time, court becomes an enabler to enforce the discriminatory rules of caste i.e., issuing injunction order to restrict members from entering temples and solidified by its judicial decisions the principle of purity and pollution. Because court ruled that practice of pollution would amount to trespass to the higher member of the caste and would be considered as a Criminal offence. Court which has been constituted to dispense justice and give equal treatment to people has been the legal oppressor to the lower caste and become symbol of untouchability.

However this was the bad and sin side of the judiciary and the British court system, courts was neutral and impartial in public and secular affair especially while giving public facilities like road, street, hospital, education, wells etc. Hence the public facilities were availed irrespective of the exclusionary practice of caste groups. And hence under these practices courts doesn't consider it as polluting and restricts it from considering it as Criminal offence.

The atrocities that the members of the lower caste has suffered has been very distressing because the exclusionary practices and disabilities in social and religious milieu to the lower caste has not only been practiced by the lower caste but gets equal support and favour from the lower judiciary including magistrate courts, the local govt., And the institutional govt. Support which could led to ousting of the people from caste and barring or boycotting the members for violation of customary privileges and disabilities and gave incentive to the caste Autonomy and it's preaching.

V. THE CONSTITUTIONAL SCHEME

The constitution has been the biggest protector of the lower caste groups. And it took a long time and it comes out successfully because of the freedom fighters , politician who were in favour of casting out the caste system, and persuading people that caste system is not good and is inimical to the democratic spirit and progress. And various legislative reforms to remove cast disabilities and different temple-entry Legislations.⁵

The various stages of development of constitutional. Protection of caste system is given under three broad categories which are:

⁵ Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (33 of 1989).

VI. PERSONAL LAW

The constitution has laid under article 44, of the constitution to constitute uniform civil code which would unify all religions altogether which in turn would remove the caste and Religious disabilities suffered by the lower section of the society and gender Inequality among caste and religion. And the efforts has been made in the Hindu Code Bill of 1955-56, which has mentioned explicitly that the sastric tradition and biased and insidious system of sastric law would be dispensed away with and the focus would be to remove the caste disabilities and curtail the caste Autonomy. And later on govt. Came up with the protection of Civil rights act of 1955 which prohibits discrimination. And further on to remove the oppression on the SC and ST segment of society laws have been laid down as in SC & ST Act, 1989 and Art. 15(4), Art. 16(4), art. 338 , 340, 342 etc. Which is promoting the interest of such segment of the society in multifold section of the society.

VII. PRECEDENCE AND DISABILITIES

All kinds of caste Discrimination has been prohibited and removed as mentioned under Constitution provisions and statutory laws. Art. 17 of the constitution prohibits Untouchability and the Untouchability Offenses Act (UOA) of 1955⁶ has forbid the caste disabilities in any form and the exclusion of caste groups to avail wells, tanks and public facilities like hotels and restaurants

have been made forbidden under Art. 15 of the constitution. The Untouchability and gruesome manner of treatment imparted to such individuals has been the gift of their birth in such designed lower caste⁷ The problem of enforcing the laws and acts constituted for these purposes is detrimental in long run because of the politician-power people and Bureaucratic nexus which would harm the lower section of the society in the long run. Govt. has been taking efforts to promote the Interest of the Scheduled caste, scheduled Tribes, Backward Class of society and Weaker sections of the society under Art. 15(4), 16(4), Art. 46, Art. 338 and Art. 338A of the constitution. And in order to determine whether a caste is vulnerable and backward or not the caste alone cannot be the criteria and addition of economic and educational criteria⁸

VIII. CASTE AUTONOMY

It has been removed due to various Constitutional Provisions as it discriminates between different caste groups and violates Constitutional Provisions. Now the different religious and linguistic minorities have their fundamental rights under Art. 29 and Art. 30 of the constitution. And Caste Discrimination has been done away with under Art. 15, Art. 16 and Art. 17 of the constitution.⁹ Judicial pronouncement has never support the caste system after 1950 as it could be witnessed in some cases for instance in one of the case the punitive levy of fine was imposed on a community on communal basis with the reason that some law

⁶ The Protection of Civil Rights Act, 1955 (22 of 1955).

⁷ *Devarajiah v Padmanna*, AIR 1958 Mys. 84.

⁸ *Balaji v State of Mysore*, AIR 1963 SC 649.

⁹ The Constitution of India, art 17.

abiding citizen resides among the penalised community which was struck down by SC and held unconstitutional¹⁰

Caste Autonomy has been derailed because constitution control individual directly and not via any medium of caste groups or community. To give boost to the caste inclusion SC held that right to manage one's own affairs in religious matters is subsidiary to temple entry rights.¹¹ However the right of excommunication for violation of religion rules and principles is included as part of religious discipline and is a part of religious denomination to manage its own affairs.¹² SC also

ruled that managing religious affairs and practicing Different ideas of religious denomination doesn't mean to subvert the state rules and laws for common good of the community.¹³ SC also ruled that constitutional intent is to preserve the heritage and culture of one caste and community included under Art. 29 which also incorporates right to impart instructions in one's own institutions to their children of their community¹³

IX. CONCLUSION AND SUGGESTIONS

The Law and caste system and its diabolical dichotomy of chronological time span of PreConstitutional Phase and Post-Constitutional phase has been mind nerving and the role that Courts and Judiciary played in both the phases has been instrumental in stating that law is dynamic and is created as per the will of the state and the societal maturity. The time of British where the Court who was to dispense justice was dispensing injustice instead was enforcing the Discriminatory practices of the caste groups, protecting the purity and pollution principles intact, maintaining the boycotting of the casteism and caste system.

The non-interference of the courts, local authorities and Govt. Support to the caste Discrimination and exclusionary practices and preachings has been detrimental to the lower segments of the society. But after the commencement of the constitution, all the Exclusionary practices, pure and pollution principles, and state and judiciary non-interference has been done away with by incorporating in the constitution the numerous provisions to uplift the Weaker, vulnerable, Schedule Caste and Scheduled tribes and Backward classes of the society. As the Constituent assembly had a constitutional intention to uplift the societal Oppressed sections of the society and give them level playing field to groom and progress which could be witnessed from provisions of Art. 14, Art. 15, Art. 16, Art. 17, Art . 46, Art. 29, Art. 30, Art. 338, Art. 338A and Art. 340 of the constitution. And various legislative reforms like Protection of Civil Rights Act of 1955, SC & ST Act of 1989 has been created for the upliftment of vulnerable Section of the society.

However there are some loopholes which still prevail for which the suggestion would be to remove the fault under Section 9 of Code of Civil Procedure, 1908 which is barred to entertain the caste question as in the form of suits and therefore closed the door of civil authorities and civil court to take cognizance of caste disputes and thereby chose to remain ignorant of caste Discrimination despite having sufficient knowledge of the same.

¹⁰ *State of Rajasthan v Pratap Singh*, AIR 1960 SC 1208.

¹¹ *Sri Venkataramana Devaru v State of Mysore* AIR 1958 SC 255.

¹² *Saifuddin Saheb v State of Bombay*, AIR 1962 SC 853.

¹³ *Dipendra Nath v State of Bihar*, AIR 1962 Pat. 101, 108. ¹³ *State of Bombay v Education Society*, AIR 1954 SC 678.

REFERENCES

1. Caste Disabilities Removal Act, 1850 (Act XXI of 1850)
2. .Bombay Regulation, 1827 (2 of 1827) s 21.:
3. The Civil Procedure Code, 1908 (5 of 1908) s 9.
4. Caste Disabilities Removal Act, 1850 (Act XXI of 1850).
5. Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (33 of 1989).
6. The Protection of Civil Rights Act, 1955 (22 of 1955).
7. Devarajiah v Padmanna, AIR 1958 Mys. 84.
8. Balaji v State of Mysore, AIR 1963 SC 649.
9. The Constitution of India, art 17
10. State of Rajasthan v Pratap Singh, AIR 1960 SC 1208.
11. Sri Venkataramana Devaru v State of Mysore AIR 1958 SC 255.
12. Saifuddin Saheb v State of Bombay, AIR 1962 SC 853.
13. Dipendra Nath v State of Bihar, AIR 1962 Pat. 101, 108.
14. State of Bombay v Education Society, AIR 1954 SC 678.