
ABOLISHMENT OF SOCIAL EXCLUSION AS A CONSTITUTIONAL MANDATE

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ABSTRACT

The anti-discriminatory provisions under the Articles of 14, 15, 16 & 17 of the Indian Constitution have failed to address the different notions of social exclusion which altogether undermines the concept of 'equality'. The present article investigates the ambit of untouchability under Article 17 of the Indian Constitution. The existing pyramid of legislation fails to meet the objective of 'social justice' under the Preamble of the Indian Constitution. The social exclusionary practices have legitimized anti-social behavior as there is no legal framework to challenge it. Taking into account the existing gaps in the legislation and policies, the present article assesses social exclusion within the Constitutional framework suggesting a more coherent approach to address inequality and justice.

Keywords: Equality, Indian Constitution, Justice, Social Exclusion, Untouchability

1. INTRODUCTION

The long-standing social exclusion perceived within the pertinent inequalities challenges the limits of 'untouchability' under Article 17. To date, India exemplifies the starkest contradictions and striking disparities worldwide which tend to have become the identity of India. Indians are born with the facets of social exclusion. To them, it is very natural and part of life, and life continues to perish in the blame game of blaming society, family, traditions, government, and so on; the list is unending as inequalities are inevitable in every stage of life.

The understanding of 'social exclusion' is not merely related to historically segregated groups based on caste, religion, place of birth, gender, and race [1]. Rather, the concept of 'social exclusion' is broad enough to include every community, minority, socially vulnerable and disadvantaged groups that do not belong to typical criteria of historical segregation, for instance, a Hindu Brahmin becomes a victim of social exclusion owing to the practice of menstrual seclusion. Economic status is also one such grounds of social exclusion which ultimately results in a big fat poverty-stricken country like India. Social exclusion often termed as marginalization is basically a social phenomenon inherent in social structure coercing exclusion of vulnerable groups it is based on gender orientation, menstruation, disabilities, nomadic tribes, widows, slum dwellers, etc [2]. The salient drivers or propagators of social exclusion reinforce strategies and tools such as traditions, customs to ensure that the social differentiation gap remains as intact as their supremacy and superiority. The socially deprived population is not only deprived of their rights to make legit choices and access to various opportunities but also their voices are silenced whenever they raise them to fight against atrocities and infringements.

2. CONCEPTUAL FRAMEWORK OF EXISTING SOCIAL EXCLUSION

Social exclusion can be inferred as a form of social bias incorporated to segregate certain groups of individuals from involving in the mainstream society since they lack the inheritance of those qualities which are adjudged as social parameters of the civil society. Such kinds of bias are involuntary in nature since they do not include the wishes of the excluded groups. The long-lasting practice of social exclusion and discrimination reign the Indian society which is either protested against or silently accepted.

Today's modern society is the by-product of globalization advancing in a wayward manner. As a result, global inequalities are on the rise, disintegrating human society into smaller fragments. Though globalization aimed at the integration of relations worldwide at all social levels, the inherent inequalities within the social structures only widened in the local levels since the focus shifted to global relations [3]. To the already existing class and status stratification, the addition of new factors of differentiation such as occupation, religion & communal bias, sexual orientation, regional origin, marital status, physical deformities, etc. is just add on to the already existing social bias which altogether excludes larger social members from the mainstream. This gradual shift was marked by Pierre Bourdieu who claimed that the Marxist perspective of limiting social stratification to economic status is a withered concept that has been renovated in modern society [4]. The new social stratification aims for superior social positions in every social structure and is not limited to a particular kind of social action [5]. With the evolution of the concept of 'individualization' in this globalized era, independent status was gained by each member of the society which was a breakthrough for social consensus. Each fragmented social member-initiated its own social group independently treating other members as excluded from its group. This categorization has led to organized divisions of humans into innumerable groups, identifying themselves as superior [6]. Unfortunately, these groups assert their supremacy owing to their large group members and economic status. Irrespective of the fact that the practice of Social exclusion in whatever form it exists is group-oriented or individually directed, the practice forms the primitive part of an individual's social existence in India. It is always not necessary that exclusion ought to exist in form of physical isolation. Psychological exclusion is also a part of the complex structure of social exclusion. That's why policy-making bodies need to accept the complexities and intricacies of social exclusion before making laws or policies relating to it. Further, it is equally important to understand that the practice is being reinforced by the people who are practicing it to curb it in totality.

The conceptual framework of social outcast given by Hilary Silver can be interpreted in three different paradigms wherein the first-named as 'solidarity paradigm' which ponders on the rupture of the existing bond between humans and society which is basically the cultural and moral ties existing within a social structure [7]. This specific paradigm is seen to have been in practice in France where the excluded groups are treated as outsiders. The second paradigm is the 'specialization paradigm' where the individuals are completely denied any kind of access to social participation or interaction thus creating group differentiation leading to sheer

discrimination. The last one is the 'monopoly paradigm' where the social structures follow a social order that is coercive in nature which is forced on the excluded groups by the existing hierarchy of power relations. Such kinds of social exclusion represent the dominance of a particular group in the social circle and its instances are rampant. For example, the Lower caste groups in India are subjected to inhuman treatment and biased rules framed by the Upper caste groups, and any kind of disobedience to these rules is dealt with punishments as severe as death. The point of discussing the theoretical foundations of social exclusion holds relevance in the present article since it emphasizes the changes that social structures have undergone while the law remains stagnant. The framers of the Indian Constitution specifically make no clear or exact definition of the term 'untouchability' under Article 17 to highlight the future lawmakers that there can be no particular boundaries of untouchability and it evolves with the changing society. The literal meaning of 'untouchability' is not to physically touch an excluded individual or group which was not the only meaning under Article 17. The interpretation of Article 17 is wide enough to include all kinds of exclusions that are penetrative through societal norms and structures. Further, Article 17 never aimed at temporary boycotts rather those minute exclusions which seem to have never existed yet their webs have paralyzed the functionality of human society, for instance, menstrual seclusion, slum-dwellers, transgender groups, sanitation workers, sex workers, etc.

With the global scenario estranged, India was at the forefront. With the prolonged caste system already a menace to social equality, the initiation of 'social exclusion' as a social structure was no new concept rather one step ahead of the established system of societal bias strengthening unequal access to social resources. Such inequality owing its roots to India's cultural past has been seen to have existed over generations under the ideology of fairness and inevitable by our ancestors. Exploitation and humiliation evaluated based on power relations have always been considered a part of social hierarchy. The prejudices which were merely attitudes and pre-judgment analysis, with time, grew as stereotypes stronger enough to perpetuate social discrimination. Social discrimination is an explicit manifestation of social exclusion, however, to date its legality is too difficult to be challenged in the court of law. Unjust disqualification of certain members of the society from equal opportunities and resources is unjust only in theory however in the real world such disqualification is very much just and fair. For instance, an acid attack survivor is denied a mainstream job claiming that she lacked essential qualifications for the job however in reality her beauty standards fail to match the societal parameters set for that job. Thus, such social exclusion and

discrimination are too difficult to be proved, and all the more difficult to be eradicated from society. The worst part is the non-acknowledgment of these societal exclusions as a social evil and illegal. Article 17 of the Indian Constitution abolishes all forms of untouchability wherein the word 'untouchability' finds no precise definition in the Indian Constitution or any other Acts. The current interpretation of Article 17 has been limited to the caste system and no other forms of social exclusion or boycott no matter how inhuman and non-dignified it is, if it is not based on caste, it is not abolished under Article 17. While the discrimination arising out of social exclusion has been to an extent dealt with under Articles 14, 15, and 16 of the Indian Constitution but the root cause finds no mention anywhere. Though the Indian Constitution has been in a transformative constitutionalism mode, it has failed to transform the societal bias.

3. CONSTITUTIONAL EVALUATION OF SOCIAL EXCLUSION

The legislation stressing equality and anti-discrimination provisions have been inadequate in addressing the unjust treatment of excluded groups. Article 14 of the Indian Constitution guarantees equality in treatment to all citizens while Article 15(3) of the Indian Constitution casts a responsibility on the State to make special provisions for women and children. However, a closer reading of these provisions reveals the embedded exclusions that these principles of equality exhibit in reality. For instance, discriminating against a woman at the workplace stating that owing to her special conditions, she needs to be treated differently as mandated by Article 15(3), rather here she needs to be treated par with men. There exist many such instances where the same treatment of humans is required rather than differential treatment. Pregnancy does not make a woman incapable of anything then why 'she' should be excluded from her usual routine sighting the reason for her pregnancy. Further, Article 16 provides for equality of opportunity to all citizens irrespective of any kind of discrimination. This is another dupe to idealize laws on equality. For instance, an acid attack survivor wanting to pursue a career in modeling is denied any legit opportunities due to facial incompetence. Even here, the legal provisions fail to provide an equal opportunity to pursue the career of her choice. The goal of discussing these provisions is to emphasize that how historically discrimination is institutionalized as a social structure in India and laws are framed accordingly. The existing anti-discrimination laws are just for name's sake and fail to reach the ultimate goal of legislation to achieve justice. To say discrimination or social

exclusion as a reasonable classification is a weapon to negate any social bias. It all depends on the object of the legislation, and what it seeks to achieve [8].

The objectives of the Indian Constitution are defined under the Preamble of the Indian Constitution which makes a clear mention to secure all its citizens with equality of status and opportunity. The objectives clearly portray that humanity and justice precede all. While status equality assures every human of its inherent dignity in society, opportunity equality assures every human of its rights to reach its full potential and growth in every possible way in society. Despite these elaborate objectives, exclusionary practices find no place in the Indian Constitution. The anti-discriminatory provisions under Articles 14, 15 & 16 seem to have nowhere met any of the objectives of the Preamble. If those objectives are met also, they just reach half-way. Another important aspect is that exclusion need not necessarily be caste-based. And, caste-based exclusions form just a part of the wider connotations of social exclusion. However, the existing legislation, research studies focus only on combating caste-based exclusions but despite such focus, to date caste barriers control societal relations. Laws seem only to be on paper. Further, there is a need to bring evolutionary laws that have a firmer grip towards all kinds of social exclusionary practices to enable social mobilization as and when necessary.

Coming Article 17 of the Indian Constitution which explicitly abolishes untouchability in all its forms, fails to address social exclusionary practices. The Indian judiciary has limited the interpretation of Article 17 to only caste-based exclusions [9]. Given such narrow interpretation, social exclusionary practices being gross violative to human dignity find no mention under the Indian Constitution. Untouchability in its every form perpetuates inequality which the Indian Constitution is deadly against and still social exclusions that are equally dangerous to human relations and profess inequality are not yet recognized under the Indian Constitution. The framers of the Indian Constitution definitely were far-sighted to leave the provision under Article 17 open-ended so that as the circumstances arise and there is a need for the change can be inculcated under Article 17. However, there is still a long way to go since the interpreters are yet to understand this loose end. Subjugation, inferiority, disgracing human habitation is the outcomes of social exclusion as well as untouchability which are abolished under Article 17 though there is no direct mention of social exclusion. The notions of superiority, purity & pollution which are the foundation of social exclusion also form the basis of untouchability abolished under Article 17. Untouchability or social exclusion both are forms of injustice and Article 17 attempts to make atonement of those

excluded groups whose identification and dignity have been subjugated by the society. Denial of rights and opportunities to particular groups that are fundamental to the observance of human rights & social interaction is a gross violation of the right to life and human dignity under Article 21 of the Indian Constitution. The meaning of 'law' under Article 21 as opined by Justice P.N. Bhagwati in the Maneka Gandhi case is inherent in the principles of natural justice, fairness, and equity. These are not mere words rather the watch-dog of State made laws. Any law will be void if it fails to meet the principles of natural justice. In the present context, social exclusion breaches the principles of natural justice which is why the law must condemn it rather favoring it. Caste, race, religion is the primary basis of segregation, however, this does not mean exclusionary practices based on occupation, beauty standards, body functionality, sexual orientation, status does not exist. Individuals deviating from the pre-conceived norms are treated as excluded groups however law does not address this exclusion as untouchability because it lacks historical evidence. Considering such interpretation, the question arises why the framers of the Indian Constitution did not make clear mention of caste in Article 17? It's just a five-character word that could have been easily inserted defining the limits of applicability of Article 17 but there has been no such mention. Further, in the current situation where there have been no sufficient laws to address social exclusionary practices, does this gap validates its existence? The answer is silent yes and silently because we, Indians have learned to endure these exclusionary practices as our fate and do nothing about it except frowning now and then. With such an attitude, the advancing contemporary Indian society has established a set of new rules of social stigma and stereotypes which just enhance the marginalization of excluded groups while continuing the dominance of so-called hierarchal superior groups.

The Indian Constitution is in a period of transition and decades of efforts have brought about this transformation into existence. Justice Krishna Iyer's reflection on the need for interpretation of 'transformation constitution' is as follows:

“The authentic voice of our culture, voiced by all the great builders of modern India, stood for the abolition of the hardships of the pariah, the mlechha, the bonded labor, the hungry, hard-working half-slave, whose liberation was integral to our independence. To interpret the Constitution rightly we must understand the people for whom it is made – the finer ethos, the frustrations, the aspirations, the parameters set by the Constitution for the principled solution of social disabilities”[10].

The essence of transformative constitutionalism underlies the foundation for social democracy which governs the principles of Indian society. It is quite evident that the modern state truly imbibes the transformative character of the Indian Constitution aiming to pursue it relentlessly however one of the key aspects of such transition being the elimination of social prejudices and bias remains unaffected. To strike down the prolonged social exclusion, Indian legislation still has a long way to go. Social exclusion and social discrimination are two parallel lines which complement each other however in India social discrimination to an extent have been addressed under Article 14, 15 and 16 while social exclusion remains unaddressed since time immemorial. Article 17 needs a bit of transformation too. There needs to be an explicit recognition of social exclusion which has already been inherent within Article 17. The express recognition is the need of the hour and those who change with time are winners in life. The day to day exclusionary practices are in growth and it's a constitutional mandate to stand for its abolishment before such practices claim more lives. Right to dignity is innate in human stature and demeaning practices ought to be brought under legal scrutiny to end their practice. The prevailing social exclusionary practices on whatever grounds they exist in Indian society, cannot defy the soul of the Indian Constitution. To uphold justice & equality, it is essential to eradicate these evil practices from the shadows of customs & beliefs and embark upon the transformed Indian Constitution in its truest sense.

4. CONCLUSION

Considering the existing exclusion discourse in Indian society, there have not been many developmental efforts in combating social exclusion. Though the rhetoric political agendas and policies considerably focus on women, religion & ethnic minorities, Dalits, however the prominent issues of injustice, inequality, civil rights and basic needs which are some of the other way linked with social exclusion are unaddressed and no integrated approach has been undertaken to address these issues.

As earlier stated in this article, the social exclusions are part of the society's functionality, and to eradicate this evil, it is necessary to have a complete understanding of institutional structures as well as societal processes. Since the social exclusion in India follows a hierarchal trend, there is a need for a disaggregated approach which not only understands the patterns of existing social exclusion but also strike at the roots of the disabilities to bring the excluded groups into the mainstream.

Apart from this approach, this is an urgent need to raise awareness especially concerning those social exclusion practices which are under the veil of cultural norms, customary & traditional practices. In addition to this, there ought to be an Amendment to Article 17 of the Indian Constitution to include social exclusion. The State also needs to enrich its parliamentary and legislative discourses and practices to widen the horizons for creating space for effective social interaction with the marginalized communities thus, strengthening 'social justice' potential growth of Indian democracy.

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