

UNTOUCHABILITY
A UNIQUE FORM OF VIOLATION OF HUMAN RIGHTS

**A Study of Practice of Untouchability in the form of Manual Scavenging
and Caste-based Discrimination in Higher Educational Institutions in India**

by

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ABSTRACT

Title of the Thesis: Untouchability, a Unique Form of Violation of Human Rights: A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based Discrimination in Higher Educational Institutions in India.

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““Untouchability” is abolished and its practice in any form is forbidden in India. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law”¹ declares the Constitution of India. The principles of equality and non-discrimination are woven to the fabric of progressive domestic legislation in India and international human rights conventions. Several of those conventions prohibit discrimination based on birth, descent, and social origin. Despite India having ratified those conventions, and even after over 70 years of the adoption of the Constitution, which propounds the doctrine of equality, a significant section of the Indian populace are still subjected to discrimination arising by virtue of their birth in the lowered castes of the Hindu Social Order. They are subjugated, humiliated, marginalised, and segregated. Their lives are cut short. The types and forms of untouchability have changed over time. Yet, it remains one of the most heinous forms of caste discrimination, prevalent in both urban and rural milieus, practised by both literate and illiterate privileged castes and suffered by both literate and illiterate Dalits. To understand this unique violation of human rights, two practices are taken into consideration in this thesis from seemingly opposite ends of the spectrum; manual scavenging, experienced mostly by illiterate Dalits, and caste-based discrimination in higher educational institutions, experienced by the literate Dalits. With a help of an in-depth qualitative analysis, it is found that even in the 21st century, untouchability stands on a distinctly different footing and walks in parallel to the modern industrialised India.

¹ Article 17, Constitution of India

DECLARATION

I confirm that the thesis is my own work, that it has not been submitted in substantially the same form for the award of PhD elsewhere. To the best of my knowledge and belief, this thesis contains no material previously published or written by any other person, except where due reference has been made.

Parts of this thesis have also been presented as papers at various international academic conferences.

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DEDICATION

To Dr. Babasaheb Ambedkar, a crusader for equality and my all-time inspiration.

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LIST OF ABBREVIATIONS

ABVP	Akhil Bharatiya Vidyarthi Parishad
AIIMS	All India Institute of Medical Sciences
APPSC	Ambedkar Periyar Phule Study Circle
ASA	Ambedkar Students' Association
CERD	Committee on Elimination of Racial Discrimination
CESCR	Committee of Economic Social and Cultural Rights
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CRSP	Central Rural Sanitation Programme
EWS	Economic Weaker Sections
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IIM	Indian Institute of Management
IISC	Indian Institute of Science
IIT	Indian Institute of Technology
ILCS	Integrated Low Cost Sanitation
IPC	Indian Penal Code
NCRB	National Crime Records Bureau
NCSC	National Commission for Scheduled Castes
NCSK	National Commission for Safai Karamcharis
NCST	National Commission for Scheduled Tribes
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission

NSKFDC	National Safai Karamcharis Finance and Development Corporation
NSLRS	National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents
OBC	Other Backward Classes
PCR Act	Protection of Civil Rights Act, 1955
PHRA	Protection of Human Rights Act, 1993
RTI	Right to Information
SC	Scheduled Castes
SC/ST (PoA) Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
SC/ST Cell	Scheduled Castes/Scheduled Tribes Cell
SKA	Safai Karamchari Andolan
SRMS	Self-Employment for Rehabilitation of Manual Scavengers Scheme
ST	Scheduled Tribes
UDHR	Universal Declaration of Human Rights
UGC	University Grants Commission
UN	United Nations Organisation

Chapter 1: Introduction

For ours is a battle, not for wealth or for power. It is a battle for freedom. It is a battle for reclamation of human personality.²

India, with a population of over a billion, is not only one of the oldest civilizations in the world, but also the world's largest democracy³ and has a very comprehensive and the world's lengthiest Constitution, which guarantees the right to life with dignity to her citizens. Yet, a section of her most marginalized populace faces inhuman discrimination and atrocities even in the 21st century owing to their birth in those castes which have been historically lowered in the Hindu Social Order. These communities are classified as Scheduled Castes⁴ (Dalits, former untouchables) and Scheduled Tribes⁵ (Adivasis) under the Indian Constitution. As per the latest 2011 Census of India, the former number 201,378,372 people constituting 16.63%⁶ of the total population and the latter comprise of 104,254,613 people constituting 8.61%⁷ of the total Indian population.

The Hindu caste system is a system of graded inequality, which is not merely notional, but also legal and penal.⁸ The Dalits have been historically considered as outcastes. They were forced to carry out the so-called menial or "polluting" tasks such as carrying unclaimed dead bodies, tanning leather, cleaning toilets etc. The people involved in the cleaning tasks came to be known as 'untouchables'.⁹ Their touch would pollute the privileged castes, who were at the top of the Hindu caste hierarchy. Even their shadow was considered to be impure. They had to tie

² Dr. Ambedkar quoted in Dhananjay Keer, *Dr. Babasaheb Ambedkar: Life and Mission* (4th edn., Reprint, Popular Prakashan, Bombay, 2010) 351.

³ 'India: The Biggest Democracy in the world' (European Parliament, October 2014) < [https://www.europarl.europa.eu/RegData/etudes/ATAG/2014/538956/EPRS_ATA\(2014\)538956_REV1_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2014/538956/EPRS_ATA(2014)538956_REV1_EN.pdf) > accessed 3rd May 2022.

⁴ See page 58 of Chapter 2.

⁵ See page 58 of Chapter 2.

⁶ Chandramouli, 'Release of Primary Census Abstract, Data Highlights', Census of India, 2011, Registrar General and Census Commissioner, India, Ministry of Home Affairs (30th April 2013), < https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/2013/INDIA_CENSUS_ABSTRACT-2011-Data_on_SC-STs.pdf > accessed 28th May 2022; also see 'Scheduled Castes Population', Census 2011, < <https://www.census2011.co.in/scheduled-castes.php> > accessed 28th May 2022.

⁷ 'State wise Total and Tribal Population of India (As per 2011 Census)' (Tribal Research & Training Institute, Government of Maharashtra) < <https://trti.maharashtra.gov.in/index.php/en/statewise-total-tribal-population> > accessed 3rd May 2022; also see 'State/UT wise overall population, ST population, percentage of STs in India' < <https://tribal.nic.in/ST/Statistics8518.pdf> > accessed 3rd May 2022.

⁸ BR Ambedkar, *Annihilation of Caste* (first published in 1936, Critical Quest, New Delhi, 2007) 14; BR Ambedkar, *Who Were the Shudras? How they came to be the Fourth varna in the Indo-Aryan Society* (2nd Edn., Samyak Prakashan, New Delhi, 2016) 6.

⁹ Varun K Aery, 'Born Into Bondage: Enforcing Human Rights of India's Manual Scavengers' (2015) 2 (4) Indonesian Journal of International & Comparative Law, 719, 722.

earthen pots hung around their necks to spit, lest their spit would pollute the ground, and a broom around their waist to sweep away their shadow.¹⁰ They lived in abject poverty, outside the villages. They were forced to live a life at the mercy of the privileged castes. They were denied education, their movement restricted by force, their activities confined to themselves, and their lives were reduced to only that of service to the higher castes. Their wishes and aspirations were subdued. They were deprived of even the most basic right to a life with dignity and fundamental freedoms. They were powerless and voiceless. They were seen as lesser humans. The untouchable women in certain areas were not allowed to cover their breasts.¹¹ In some other regions, they were openly thrown into prostitution in the name of God and tradition. They were not allowed to have control over their own bodies. They were sexually abused and raped by the privileged castes, who enjoyed impunity when it came to violence against untouchables.¹² This total slavery and utter violation of basic human rights of a section of society went on for two millennia with sanction from religion and various political dispensations. Such was the historical subjugation, economic deprivation, social exclusion, and political marginalization of a section of the silent masses for a prolonged time, that it has few parallels in world history.

The Constitution of free India entered into force in 1950. This legally put an end to the brutal practice of Untouchability suffered by the Dalits¹³. The Dalits were legally ensured equal rights and freedoms on par with the rest of the population. Affirmative action policies were designed to uplift them and bring them into mainstream. This included special quotas or reservation of seats in education, public employment, and reservation for political representation.¹⁴ Their condition started to improve. To eliminate the discrimination and disabilities suffered for more than two millennia, there needs to be considerable time and efforts by society and State. But the mindsets of the privileged castes are rooted deeply in the Hindu religious tenets which propound the doctrine of inequality based on birth. Changing political dispensation and granting rights to the downtrodden will not automatically make the privileged shed their privilege and accept the marginalized. Caste-based discrimination is rooted very deeply in

¹⁰ Ambedkar, *Annihilation of Caste* (n 8) 5,6.

¹¹ 'The Woman who cut off her breasts to protest a tax' (BBC News, 28th July 2016) < <https://www.bbc.com/news/world-asia-india-36891356> > accessed 4th May 2022.

¹² Soutik Biswas, 'Hathras case: Dalit Women are among the most oppressed in the world' (BBC News, 6th October 2020) < <https://www.bbc.com/news/world-asia-india-54418513> > accessed 4th May 2022.

¹³ Article 17, Constitution of India.

¹⁴ Articles, 15, 16 and 330, 332, Constitution of India; also see Section 3.2 of Chapter 3 at 80.

society.¹⁵ And disturbingly, untouchability manifests itself in new gruesome forms, even in 21st century post-independent India which is a participatory democracy.¹⁶

This thesis addresses two practices of Untouchability prevalent in present day India, namely manual scavenging, and caste-based discrimination in higher educational institutions. The former is faced by the illiterate Scheduled Castes and Scheduled Tribes and latter is faced by the literate among them in the university spaces. Manual scavenging is the most visible sign of untouchability in present day India. Manual scavengers are involved in cleaning sewers, septic tanks, pits, open defecation sites, open and closed drains, dry latrines etc.¹⁷ This is a hereditary caste occupation in which predominantly Dalits are employed by the privileged castes. Nowhere else in the world does such a system exists, where one person employs another to clean his night soil. Yet this is a system prevalent in independent democratic India. The majority of the Dalits who are employed in this occupation are illiterate and live in poverty.¹⁸ They do this task out of no choice of alternate employment. There have been several deaths of manual scavengers who were sent down septic tanks to clean them, with little to no punishment for those who were guilty of engaging them to carry out these tasks. There has been a lack of concern from the State, media, civil society and even the judiciary when it comes to this issue. The Indian Railways, a Government of Indian undertaking, is also one of the chief employers of manual scavengers.¹⁹ The first legislation was enacted in 1993 to ban manual scavenging, followed by further legislation in 2013. Despite these legislation and various governmental schemes, as of 2022, the practice is still prevalent in India. This thesis explores this aspect of practice of untouchability with the help of primary data collected through qualitative interviews.

The literate among the Dalits face a unique form of caste discrimination in higher educational institutions. Most of them are first generation learners in universities, entering through

¹⁵ Braj Ranjan Mani, *Debrahmanising History: Dominance and Resistance in Indian Society* (Manohar Publishers & Distributors, New Delhi, 2018) 28, 33; also see 'Caste Discrimination' (International Dalit Solidarity Network) < <https://idsn.org caste-discrimination/> > accessed 4th May 2022.

¹⁶ See Section 2.6 of Chapter 2 at 55.

¹⁷ Sec. 2(1)(g), Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

¹⁸ Deepa Joshi and Suzanne Ferron, 'Manual Scavenging: A Life of Dignity?' (2007) 26 (2), Practical Action Publishing, 24, 24.

¹⁹ 'Kanimozhi slams government for employing manual scavengers in Railways' (The Hindu, 11th July 2019) < <https://www.thehindu.com/news/national/kanimozhi-slams-govt-for-employing-manual-scavengers-in-railways/article28377410.ece> > accessed 4th May 2022.

affirmative action policies of the State.²⁰ There are multiple hurdles placed in their way of achieving academic excellence. The reason again is rooted in India being a caste-feudal society. The Dalits are the lowest rung in the caste ladder. They were historically denied education. Wealth in the hands of the lowered castes gives pain to the privileged, declares the Hindu religious texts.²¹ But due to the pro-people policies of the Constitution, today they can access education and employment. However, this is often not tolerable to the privileged castes. In some cases, the academic environment becomes so toxic that the Dalit students are left with no other choice but to commit suicide.²² There is no comprehensive legislation which deals with this issue. However, a few regulations have been issued by appropriate statutory bodies. With the help of qualitative interviews, this thesis investigates this crucial issue of caste-discrimination faced by Dalit students in institutions of higher learning, as a new form of practice of untouchability prevalent in the 21st century India. The reason for choosing these two groups lies in some arguments advanced by the privileged castes that untouchability has vanished from Indian society and that modern Indians are not caste conscious and prejudiced;²³ that with the development in education untouchability is not practiced anymore and that literate, educated Dalits do not face untouchability; and that literate educated privileged castes do not practice such discrimination. Hence two groups, on the one hand the most illiterate Dalits and on the other the literate among them, are chosen to explore how even in the 21st century untouchability continues to exist in India.

1.1 Research Question

The main research question that this thesis investigates is:

How does Untouchability operate in Indian society with respect to the illiterate class of Dalits in the form of manual scavenging, and the literate class of Dalits in the form of caste-based discrimination and exclusion in higher educational institutions?

The research will be addressed from a human rights law perspective, by examining whether international human rights law and Indian domestic laws may alleviate and eradicate socially and culturally embedded discriminatory practices.

²⁰ Rakesh Kumar Maurya, 'In Their Own Voices: Experiences of Dalit Students in Higher Educational Institutions' (2018) 20 (3), International Journal of Multicultural Education, 17, 20, 31.

²¹ See page 41 of Chapter 2; also see Manusmriti chapter VIII, verse 417 and chapter X verse 129 as cited in Ambedkar, *Who were the Shudras?* (n 8) 58.

²² Suicide of Rohith Vemula and Bal Mukund Bharati see Section 6.3.5 of Chapter 6 at 206.

²³ Ashwini Deshpande, 'The more India's Elite Claims to be Caste-mukt, the less we should believe them' (The Wire, 13th April 2018) < <https://thewire.in/caste/the-more-indias-elite-claims-to-be-caste-mukt-the-less-we-should-believe-them> > accessed 4th May 2022.

1.2 Aims and Objectives of the Research

This study seeks to understand untouchability and how it can be considered as a unique form of violation of human rights. The focus will be on how untouchability is operating in modern India, for which an analysis of manual scavenging and caste discrimination in institutions of higher learning is undertaken. For this purpose, the study examines legislation, governmental schemes, institutional mechanisms, policies, and case law on affirmative action enshrined in the Indian Constitution. One of the main objectives of this thesis is to include the voices of those who have been discriminated against by conducting interviews with them, for which Dalit students, manual scavengers, activists, members of faculties of universities, officers representing the universities and State are interviewed. Further, the study also evaluates the role of the State in protection of human rights of its populace. Therefore, the study analyses international human rights conventions and Indian domestic laws and their limitations. Finally, it appraises the role of the State, civil society, and the judiciary in abolishing as well as fostering caste-based prejudices and practices in 21st century India.

1.3 Rationale and Justification for the Study

The key question which often revolves around research, particularly dealing with sensitive issues like Untouchability, is “knowledge for what? and knowledge for whom?”²⁴ Accordingly, the question I asked myself before I embarked on my PhD journey was: untouchability has been in practice for thousands of years, caste has been a problem for successive generations, this has been common knowledge in Indian society, so what exactly was my research seeking to achieve? I realized that the significance of my study lies in the fact that this is one of the few studies to understand the way untouchability operates in manual scavenging and in higher educational institutions from a legal lens with an international human rights law perspective. Many articles and books are written on these issues but most of them deal with the socio-economic facet of it. There is very little legal research conducted on these issues. It is important to see the prevalence of untouchability also as an issue resulting from the failure of legislation and law enforcement mechanisms. Hence, a critical analysis of these issues from a human rights law perspective with the help of novel empirical data was needed. This study sits at this crucial juncture as it provides the much-needed analysis of law dealing with manual scavenging and caste discrimination in higher educational institutions in India. It also examines the

²⁴ Lisa Aronson Fontes, ‘Ethics in Violence Against Women Research: The Sensitive, the Dangerous, and the Overlooked’, (2004) 14 (2), *Ethics & Behavior*, 141, 163.

limitations of various laws and suggests ways in which the scope of the legal provisions could be widened and made stringent so that the practice of untouchability can be eradicated, and the rights of the Dalits be better protected. The rich empirical data I collected for this thesis which forms its core, is novel and original for a legal analysis and as such is a unique contribution to the understanding of these issues. The voices and lived experiences of the participants are woven into the narrative of this thesis. They helped me gain fresh insights and new visions. By trying to bridge the gap in academic literature, this thesis makes a unique contribution to the literature on discrimination and atrocities experienced by Dalits. Furthermore, the audience for these research findings extends beyond the academic realm. I believe that these findings when disseminated among the policy-makers may lead to discussions that flow from the recommendations made in this thesis.

1.4 Methodology

The focus of this thesis, untouchability, is social, political, economic, cultural, and legal in equal measure. Hence, it is vital to explore its facets in a holistic manner to the best of my abilities. Limiting my research to one methodology would not do justice to the issue. Hence, I have adopted mixed methods and an interdisciplinary approach in this thesis. “Interdisciplinarity describes research approaches that facilitate ‘the appropriate combination of knowledge from many specialities.’”²⁵

I have principally adopted a socio-legal methodology. Socio-legal studies is a “heterogenous field that encompasses a broad range of topics.”²⁶ Socio-legal research brings legal and social scholarship together, and analyses legal phenomena and the relationship between law and wider society.²⁷ It is sometimes referred to as ‘law in context’, ‘sociology of law’ and ‘law in action’.²⁸ This thesis stands on the bedrock of conjunction and interplay of legal principles and societal norms. As a student of both arts and law, I naturally navigated towards this

²⁵G Brewer, ‘The Challenges of Interdisciplinarity’, 32 Policy Sciences 327 (1999) 328 as cited in Andria Naudé Fourie, ‘Expounding the Place of Legal Doctrinal Methods in Legal-Interdisciplinary Research’, (2015) 8 (3), Erasmus Law Review, 95, 97

²⁶ Nicole Graham, Margaret Davies and Lee Godden, ‘Broadening Law’s Context: Materiality in Socio-legal research’, (2018) 26 (4), Griffith Law Review, 480, 480.

²⁷ Ibid 482, also see ‘Socio-legal Research’ (Pathshala, MHRD, Government of India) <http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09_research_methodology/04_socio-legal_research/et/8151_et_et.pdf> accessed 4th May 2022.

²⁸ Fiona Cownie and Anthony Bradney, ‘Socio-legal Studies: A Challenge to the Doctrinal Approach’ in Dawn Watkins Mandy Burton, *Research Methods in Law* (2nd ed., Routledge, London, 2017) 41; also see Laura Lammasniemi, *Law Dissertations: A Step-by-Step Guide* (1st ed., Routledge, 2018) 74.

methodology to see how law interacts with societal components. The difference between ‘blackletter law’ and how law is practised in real can be seen throughout this thesis, where I place law in the larger socio-cultural context. A sociological enquiry of law thus becomes vital, since law is the product of society.²⁹ Further, studying the influence of both legal and non-legal norms in Indian society in the context of caste and untouchability is important to do justice to the issues this thesis focuses on.³⁰ Socio-legal methodology helps in the main aims of this thesis; finding the root causes of manual scavenging and caste discrimination in higher educational institutions, which can then pave the way for recommending social and policy reforms.³¹ Along with the theories, concepts, case law, and legal instruments, I have gathered empirical data to understand the interaction of law and legal instruments with the people who are affected by law.³² I take into account, the contextual conditions for legal policies to be effective, which in this case is a caste-feudal Indian society.³³ One of the issues I probe into is whether law can effect social change and if so, to what extent. To understand this, gathering empirical data is crucial. The key is to understand law and the legal system and their interrelation with other aspects of society.³⁴ Hence I have adopted socio-legal methodology as it has a long-standing tradition of critical investigation of law’s context.³⁵

This is also an opportunity to reinforce my commitment to social justice, which runs as an invisible thread binding this thesis together.³⁶ It is exceedingly crucial that I place law in the broader socio-political context of Indian society, thereby studying legal phenomena vis-à-vis societal forces, which form a pre-requisite for the existence of legal system.³⁷ This will help me to interact with the realities of my study.³⁸ I want to go beyond mere description, analysis, and critique of law and to suggest how best law can be improved and amended with new approaches incorporated to make it better suited to address the issues in question. This analysis

²⁹ Graham *et al.*, *Broadening Law’s Context* (n 26) 484.

³⁰ Tanya Howard, ‘From International Principles to Local Practices: A Socio-legal framing of Public Participation Research’ (2014) 17 (4), *Environment, Development and Sustainability*, 747, 751.

³¹ MHRD, *Socio-legal Research* (n 27) 5

³² Carrie Menkel-Meadow, ‘Uses and Abuses of Socio-legal studies’ in Naomi Creutzfeldt Marc Mason and Kirsten McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods* (Milton: Taylor & Francis Group, 2019) 39.

³³ *Ibid* 43.

³⁴ MHRD, *Socio-legal Research* (n 27) 7.

³⁵ Graham *et al.*, *Broadening Law’s Context* (n 26) 502.

³⁶ Reza Banakar, ‘Having One’s Cake and Eating it: The Paradox of Contextualization in Socio-legal research’, (2011-12) 7 (4), *International Journal of Law in Context*, 487, 495.

³⁷ *Ibid* 488.

³⁸ Firdaus, Zulfadilla and Fakhri Caniago, ‘Research methodology: Types in the New Perspective’ (2021) 3 (1), *MANAZHIM*, 1,2,3.

can be seen throughout the thesis, in particular Chapter 7 which recommends amendments to the penal legislation dealing with the lives of the Dalits. But before venturing into this, there is a need to understand where the problem lies, for which uncovering of facts is critical. I, thus look into the entire picture before searching for policy solutions.³⁹ Accordingly, I delve into the history of the caste system, which had legal sanctions, and also how untouchability was legally abolished by the Constitution.

One of the key objectives of this thesis is to examine the experiences of those affected by the process of law and social structure. As with other socio-legal studies, the findings of this thesis are highly dependent on the information I was able to gather through extensive qualitative interviews.⁴⁰ To gain a better understanding of the two key areas of focus in my thesis, I have incorporated empirical methodology in this thesis. It has been described as

the study, through direct methods rather than secondary sources, of the institutions, rules, procedures, and personnel of the law, with a view to understanding how they operate and what effects they have.⁴¹

Socio-legal methodology employs sociology and other social sciences not in substantive analysis, but as a tool for data collection.⁴² Accordingly, I have conducted in-depth qualitative interviews with various stakeholders to garner their first hand experiences of caste discrimination. The rich empirical data I gathered is pivotal to answer the research question as I believe it will reveal problems, explore new angles and highlight reforms that pure doctrinal research cannot. To bring out the voices and lived experiences of the participants, the excerpts from the interviews are woven into the narrative of this thesis. A detailed discussion of the empirical research methods adopted can be found in Chapter 4.

I have also used doctrinal methodology, since there are legal concepts, principles, statutes, other legal instruments, case law, and rules which had to be examined.⁴³ “Doctrinal research,

³⁹ L. Barnett, *The Process of Law Reform: Conditions for Success* 39 *Federal Law Review* 161 (2011) 181 *as cited in* Terry Hutchinson, ‘The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law’ (2015) 8 (3), *Erasmus Law Review* 130, 138.

⁴⁰ Michael Mopas and Sarah Turnbull, ‘Negotiating a Way In: A Special Collection of Essays on Accessing Information and Socio-legal Research’ (2011) 26 (3), *Canadian Journal of Law and Society*, 585, 585.

⁴¹ John Baldwin and Gwynn Davis, ‘Empirical Research in Law’ in Peter Cane and Martin Tushnet (eds) *The Oxford Handbook of Legal Studies* (Oxford University Press 2003), 880 *as cited in* Lammasniemi, *Law Dissertations* (n 28) 84.

⁴² Reza Banakar and Max Travers, ‘Theory and Method in Socio-Legal Research’, (2005) Hart Publishing, 4 < https://www.researchgate.net/publication/228262192_Theory_and_Method_in_Socio-Legal_Research > accessed 4th May 2022.

⁴³ Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17 (1) *Deakin Law Review*, 83, 84.

at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials.”⁴⁴ It is research into law and legal concepts.⁴⁵ It is important to give attention to detail and use comparative methods where necessary and work towards systematisation to achieve coherence of the legal order.⁴⁶ Doctrinal scholarship “is a combination of describing, interpreting, and arguing about legal norms and institutions.”⁴⁷ One of the key characteristics of this methodology lies in the interpretative stance of legal scholars who establish the meaning of given legal materials in the context of a system.⁴⁸ There are two processes involved in this, first locating the sources of law and second interpreting and analysing the text.⁴⁹ There is a need to critically analyse the concepts of equality and non-discrimination and see how they are applied in international human rights conventions pertinent to this thesis and also the Indian Constitution and domestic law. Further, a critical analysis of case law is needed to reveal how law is applied in the matter under investigation. This forms the essential feature of doctrinal scholarship.⁵⁰ The established pattern in legal research allows for individual scholar’s legal voice.⁵¹ Accordingly, as an academic lawyer, this is the second methodology I have adopted in this thesis. Sources I have relied to address the research questions include the Indian Constitution and domestic legal instruments, International Human Rights Conventions, case laws, empirical data collected through qualitative interviews, reports from governments, various stakeholders and academic research.

1.5 Limitations of the Study

To understand the practice of untouchability in 21st century, this thesis has taken up two key issues, manual scavenging, and caste discrimination in institutions of higher learning. However, these two issues are large and complex in their own rights, which is why narrowing them down became a necessity. The focus on manual scavenging in this thesis is on those who

⁴⁴ Council of Australian Law Deans, Statement on the Nature of Legal Research (2005) at 3 *as cited in* Terry, The Doctrinal Method (n 39) 131.

⁴⁵ Hutchinson and Duncan, Defining and Describing What We Do (n 43) 85.

⁴⁶ Sanne Taekema, ‘Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship’ (2021) 40, Law and Philosophy, 33, 45.

⁴⁷ *Ibid* 45, 46.

⁴⁸ Mark Van Hoecke, “Legal Doctrine: Which Method(s) for what kind of Discipline?”, in Mark Van Hoecke (ed.) *Methodologies of Legal Research: What kind of Method for what kind of Discipline?*, (Oxford, Hart, 2011) 1-18 *as cited in* *Ibid* 46.

⁴⁹ Hutchinson and Duncan, Defining and Describing What We Do (n 43) 110.

⁵⁰ Terry, The Doctrinal Method (n 39) 131.

⁵¹ *Ibid*.

clean sewers and septic tanks. This is done for two reasons; first, I was able to talk to manual scavengers who were cleaning sewers and septic tanks and understand their lives and work in a better manner. Second, there is considerable literature on Dalit women who work as manual scavengers cleaning dry latrines.⁵² However, there is a dearth of legal literature on Dalit men who clean sewers and septic tanks.

The second key area of caste-based discrimination in higher educational institutions has multiple facets. This thesis focuses only on the caste discrimination faced by Dalits, particularly Dalit students in higher educational institutions. The kind of caste discrimination that the Dalit faculty and administrative staff face in universities is not considered. For the qualitative data collection, a few higher educational institutions in my home State Karnataka have been selected. This is due to accessibility and financial limitations. On the issue of affirmative action, political reservation for Scheduled Castes and Scheduled Tribes is not taken up for study as it goes beyond the scope of the two key areas in focus. In dealing with Hindu religious texts, they are many in number, but the focus in this thesis is laid only on Manusmriti. This is done because it is one of the most influential of the Hindu religious texts which has continued to exert its powers over the collective conscience of the Indian society for a prolonged period. As noted previously, there is a dearth of academic literature on the two key areas of focus in this thesis. Hence, articles from newspapers/news websites are used to corroborate the claims made in this thesis.

1.6 Terminology

The below terms are used interchangeably in this thesis

Untouchables	Scheduled Castes were called untouchables in the pre-Constitution era; Outcastes
Dalits	Scheduled Castes (SCs)
Tribes	Scheduled Tribes (STs); Adivasis
Shudras	Other Backward Classes (OBCs); Socially and Educationally Backward Classes (SEBCs) under the Constitution

⁵² See Bhasha Singh, *Unseen: The Truth About India's Manual Scavengers* (Penguin Books, 2014).

Privileged Castes	Comprises the top three varnas - Brahmanas, Kshatriyas and Vaishyas; Upper castes; Higher castes; Forward castes; Caste elites; Caste Hindus
Research Scholar/ Researcher	PhD Student
Assistant Professor	Lecturer
Associate Professor	Reader
Guide	PhD Supervisor

1.7 Theoretical Framework

This dissertation deals with the issue of untouchability, which is a by-product of an iniquitous caste system. It centres around the changing dynamics of caste and untouchability and the way it operates in a rigid social structure. In order to appreciate this, it is vital to understand the core concepts of equality and non-discrimination.

1.7.1 Equality and Non-Discrimination

The principles of equality and non-discrimination form the bedrock on which the fundamentals of international human rights law stands, namely the concept that all human beings regardless of their status or membership of a particular group, are entitled to these rights.⁵³ The United Nations (UN) Charter, (1945)⁵⁴ places equality as one of the key guiding principles for the UN's purpose and mandate, when it states in Article 1(2) that the purpose of the UN is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Article 1(3) states that the UN must promote and encourage respect for human rights and for fundamental freedoms for all without distinction based on race, sex, language, or religion. The Charter makes the principle of equality an original structural foundation to guarantee, secure, and develop human rights.⁵⁵ The significance of the right to equality is also reflected in the very first Article of the Universal Declaration of Human

⁵³ Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, *International Human Rights Law* (3rd Ed., Oxford University Press, 2014) 148.

⁵⁴ Signed on 26 June 1945, entered into force on 24 October 1945. The UN Charter is the founding document of the United Nations.

⁵⁵ Dinah Shelton, *The Oxford Handbook of International Human Rights Law* (1st ed., Oxford University Press, 2013) 431.

Rights (UDHR)⁵⁶ which states “all human beings are born free and equal in dignity and rights.”⁵⁷

The idea that all human beings have the same set of fundamental rights has been the guiding principle behind the international human rights system.⁵⁸ “All men are created equal” was famously declared by the United States Declaration of Independence in 1776. This concept was then enshrined in most liberal democratic Constitutions of the world. The principles of equality and non-discrimination have been included in all international and regional human rights treaties.⁵⁹ The Vienna Declaration and the Programme of Action, adopted by the World Conference on Human Rights in 1993, described it as “a fundamental rule of international human rights law.”⁶⁰ Equality is not only important in its own right, but also a lack of equality is at the heart of many violations of human rights, especially since the victims of discrimination are often less powerful and more vulnerable to abuse on multiple levels. The concepts of equality and non-discrimination are hence truly fundamental in the human rights discourse.⁶¹ Hence it is essential to delve briefly into these concepts to have a better understanding of how they can be applied in the Indian context and in this thesis which focuses on caste discrimination.

The idea of equality is complex, challenging, contemporary, and dynamic in equal measure. For many people, it may mean many things. In a heterogeneous society, often the diversity that should be embraced and promoted triggers prejudice, oppression, and discrimination.⁶² It is often the case that laws, and policies end up making distinctions consciously or unconsciously that discriminate against specific groups or individuals. The effect of this is that in most cases

⁵⁶ Universal Declaration of Human Rights was proclaimed by the UN General Assembly Resolution 217 A on 10 December 1948.

⁵⁷ Article 1, Universal Declaration of Human Rights.

⁵⁸ Moeckli *et al.*, *International Human Rights Law* (n 53) 148.

⁵⁹ Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Articles 2(2) and 3 of the International Covenant on Economic Social and Cultural Rights (ICESCR). The three human rights treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the rights of Persons with Disabilities (CRPD) are specifically enacted to address certain forms of discrimination present in the society. Articles 2, 3, 18(3)-(4) and 28 of the African Charter on Human and Peoples’ Rights (ACHPR), Articles 1 and 24 of the American Convention on Human Rights (ACHR), Article II of the American Declaration of the Rights and Duties of Man, Article 14 and Protocol No. 12 of the European Convention on Human Rights (ECHR), Articles 2, 9 and 35 of the Arab Charter on Human Rights, Articles 1, 2 and 9 of the ASEAN Human Rights Declaration and Articles 20, 21(1) and 23 of the Charter of Fundamental Rights of the European Union.

⁶⁰ A/CONF.157/23 (23 June 1993) para 15; also see Moeckli *et al.*, *International Human Rights Law* (n 53) 148.

⁶¹ Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (2nd ed., Cambridge University Press, 2016) 76.

⁶² Shelton, *The Oxford Handbook of International Human Rights Law* (n 55) 420.

those groups or individuals who are perceived as different due to the policies and laws are often unable to enjoy fundamental human rights on an equal basis with others, and they continue to be abused and denied basic social goods, benefits, and safeguards.⁶³

It is within the context that international human rights law has developed a multi-dimensional approach to the principle of equality, where equality combined with the principle of non-discrimination provides for a moral and analytical mechanism to ensure that all people irrespective of any prejudices are able to enjoy human rights guarantees effectively.⁶⁴ Often the terms ‘equality’ and ‘non-discrimination’ have been used inter-changeably. They have been described as positive and negative sides of the same principle, where the concept of equality requires that equals be treated equally, while the principle of non-discrimination demands that there shall not be differential treatment on unreasonable grounds.⁶⁵ In recent years, it has been noted that the concept of equality is not only limited to the negative obligation not to discriminate, but also includes a duty to recognize differences between people and take positive steps to achieve equality in reality.⁶⁶ Non-discrimination as a concept is often preferred to frame policies and laws to achieve equality. Explaining this legal corollary, Evelyn Ellis stated that “the non-discrimination principle is essentially the non-dynamic part of the equality package; it works only in conjunction with dynamic measures of social reorganization.”⁶⁷ Referring to this special relationship between equality and non-discrimination, the Inter-American Court of Human Rights stated “the element of equality is difficult to separate from non-discrimination. Indeed, when referring to equality before the law...this principle must be guaranteed with no discrimination.”⁶⁸ Hence equality as non-discrimination is often promoted as a principle dynamic of international human rights law.

⁶³ Ibid 420.

⁶⁴ Ibid 420, 421.

⁶⁵ Moeckli *et al.*, *International Human Rights Law* (n 53) 149: OC-4/84, Proposed Amendments to the Naturalisation Provisions of the Constitution of Costa Rica, IAC-tHR Series A No 4 (1984), Separate Opinion of Rodolfo E Piza, J, para 10 (‘it appears clear that the concepts of equality and non-discrimination are reciprocal, like the two faces of one same institution. Equality is the positive face of non-discrimination. Discrimination is the negative face of equality’).

⁶⁶ Moeckli *et al.*, *International Human Rights Law* (n 53) 149.

⁶⁷ Evelyn Ellis, The principle of Equality of Opportunity Irrespective of Sex: Some Reflections on the Present State of European Community Law and Its Future Development’ in Alan Dashwood and Siofra O’Leary (eds.), *The Principle of Equal Treatment in EC Law* (Sweet & Maxwell 1997) 180; Shelton, *The Oxford Handbook of International Human Rights Law* (n 55) 426.

⁶⁸ Juridical Condition and Rights of the Undocumented Migrants, para 83 *as cited in* Shelton, *The Oxford Handbook of International Human Rights Law* (n 55) 426.

Non-discrimination is an immediate cross-cutting obligation in the International Covenant on Economic Social and Cultural Rights (ICESCR).⁶⁹ This Covenant is particularly important as this thesis focuses on two aspects covered by this Covenant; discrimination in higher education and working conditions of marginalised communities. The Committee on Economic Social and Cultural Rights (CESCR)⁷⁰ dealt with both formal and substantive discrimination. Elimination of the former requires non-discrimination on the prohibited grounds to be ingrained in the legal instruments of the States, including the Constitution; while elimination of the latter requires paying adequate attention to groups of individuals who suffer historical or persistent prejudice.⁷¹ Hence immediate and necessary “measures must be adopted by the State Parties to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination.”⁷² To the extent that they represent reasonable, objective and proportional means to redress substantive discrimination, such measures are legitimate. They are to be discontinued when substantive equality has been substantially achieved. CESCR also noted that such positive measures may be of permanent nature in certain exceptional circumstances.⁷³

It must also be noted that Article 2(2) of ICESCR covers both direct and indirect discrimination. Direct discrimination is when a person is treated less favourably than another in a similar situation for any reason specified in the prohibited grounds. The acts or omissions on prohibited grounds when situations are different, are also included. Indirect discrimination is when laws, policies or practises *ex facie* appear unbiased but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.⁷⁴ ICESCR also recognises the discrimination which takes place in the private sphere and urges State Parties to adopt measures, including legislation, to ensure individuals and entities in the private sphere do not discriminate on prohibited grounds.⁷⁵ On systemic discrimination CESCR in General Comment No. 20, noted the existence of discrimination against certain groups which is pervasive, persistent and entrenched deeply in social behaviour and

⁶⁹ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 20’ (42nd Session, Geneva, 2009) E/C.12/GC/20, Para 7.

⁷⁰ See Section 3.1.2 of Chapter 3 at 67.

⁷¹ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 20’ (42nd Session, Geneva, 2009) E/C.12/GC/20, Para 8.

⁷² *Ibid.*

⁷³ *Ibid.*, Para 9.

⁷⁴ *Ibid.*, Para 10.

⁷⁵ *Ibid.*, Para 11.

organisation and that it often involves unchallenged or indirect discrimination.⁷⁶ Systemic discrimination of such nature “can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.”⁷⁷ CESCR noted how crucial it is for the State Parties to enact legislation to address discrimination and comply with Article 2(2), and to alleviate formal and substantive discrimination and attributing obligations to both private and public actors.⁷⁸ This is particularly relevant as this thesis discusses caste discrimination in both the public and private spheres, with respect to higher education and manual scavenging.

While there is an underlying concept of equality, the way it is applied differs in different contexts. Normally the provisions dealing with equality and non-discrimination tend to take one or more of these approaches,

- (a) Equality as consistent treatment: closely associated with Aristotle’s maxim of equality that likes must be treated alike⁷⁹, this represents the simplest understanding of the concept of equality in today’s world. The core idea behind this is that everyone is equal under the law, and laws should apply to everyone equally without any distinction. Therefore, treating people unequally is unfair,⁸⁰ because an individual’s personal and physical characteristics or status should not find any relevance in determining whether he/she is entitled to any benefit or not. Prohibition against direct discrimination present in many legal systems is an example of this approach in practice. While the key advantage of this approach is its ability to protect against arbitrary treatment that might possibly arise from irrational biases, the issue with this approach is without there being substantive guidance, laws that are *prima facie* morally wrong could be applied equally to all, with the likely result that they would deepen the inequalities already existing in the society.⁸¹
- (b) Equality of opportunity: This approach aims to strike an appropriate balance between formal and substantive notions of equality. Accordingly, the key is to balance and

⁷⁶ Ibid., Para 12.

⁷⁷ Ibid., Para 12.

⁷⁸ Ibid., Para 37.

⁷⁹ Aristotle, the *Nicomachean Ethics* of Aristotle (JM Dent, 1911) Book V3, paras 1131a-31b, as cited in Moeckli *et al.*, *International Human Rights Law* (n 53)149.

⁸⁰ Murray Wesson, ‘Equality and Social Rights: An Exploration in Light of the South African Constitution’ (2007) PL 748, 751; also see Shelton, *The Oxford Handbook of International Human Rights Law* (n 55) 427.

⁸¹ Shelton, *The Oxford Handbook of International Human Rights Law* (n 55) 428.

equalize the starting points, for which this approach borrows the redistributive theory of justice and does not cross over to pure utilitarian approaches.⁸² The goal is to cultivate characteristics which enable persons to start at the same competitive position regardless of their background or status. While like formal equality, this approach tries to achieve full equality, it also uses substantive equality to address limitations.⁸³

- (c) Equality of outcomes: This approach adopts the substantive notion of equality but goes beyond levelling the starting points to achieve equality of opportunity. The goal of this approach is fair distribution of benefits and goods, targeted to improve those sections of the society who have been historically underprivileged and disadvantaged. Specific measures are put in place based on the belief that due to historical disadvantages, people belonging to certain groups continue to suffer discrimination and marginalization and will be unable to overcome their situation unless certain specific mechanisms are put in place to equalize the outcomes.⁸⁴ These mechanisms often go by the name of affirmative action, positive action, or special measures in different legal systems. More on this will be discussed later in this and upcoming chapters.
- (d) Transformative equality: this approach, like the preceding one, aims to accelerate equality for disadvantaged groups by changing existing social structures and the way that institutions and organizations function. This approach requires adaptive changes in the practices and structures of organizations and institutions, pursuant to how they fail the underprivileged groups, with the intention of making the organizations and institutions more accessible and more inclusive of people from all sections of society.⁸⁵

It is not always easy to put a principle of equality under one of the above headings. Different conceptions of equality underscore different human rights protections and one can often see how different forms of equality are applied in different contexts and legal systems. In international human rights law, the principle of equality manifests itself at multiple levels and it is neither linear, nor static, instead it is a dynamic concept. It tries to reflect the complexity and diversity of humanity and addresses the many ways that inequality and discrimination are rooted in society.⁸⁶

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid 429.

⁸⁵ Ibid 429, 430.

⁸⁶ Ibid 430.

With regard to the binding nature of these concepts, it must be noted that the treaties which embody these principles, are binding only on those States which have ratified them. However there are some Conventions like the ICERD and the Convention on the Rights of the Child which have been ratified by most member States of the UN where the provisions “may now have become a part of customary law of nations.”⁸⁷ It is also important to note that the right to non-discrimination on the grounds of race, sex, and religion binds all States irrespective of their ratification of human rights treaties since it has become a part of customary international law.⁸⁸ It was agreed that at the time of its adoption in 1948 that the UDHR did not impose any legal obligations on any State. It was seen as a basic declaration of human rights and freedoms.⁸⁹ The subsequent documents of International Covenant on Civil and Political Rights (ICCPR), its Optional Protocol, and the ICESCR, which together with the UDHR form the International Bill of Rights, were adopted as legally binding treaties and were open to be ratified or accessed by the member States of the UN, unlike that of the UDHR which is a General Assembly resolution. However,

with time, the Universal Declaration has itself acquired significant legal status. Some see it as having given content to the Charter pledges, part taking therefore of the binding character of the Charter as an international treaty. Others see both the Charter and the Declaration as contributing to the development of a customary law of human rights binding on all States.⁹⁰

An international conference of non-governmental organisations held to mark the twentieth anniversary of the adoption of the UDHR unequivocally proclaimed that the UDHR “constitutes an authoritative interpretation of the Charter of the highest order and has over the years become part of customary international law.”⁹¹ Further in 1994, it was observed by the International Law Association that the Universal Declaration of Human Rights

is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter and conclude that many if not all of the rights elaborated

⁸⁷ John P Humphrey, ‘The Implementation of International Human Rights Law’, 24 N.Y.L. Sch. Law Review (1978) 31, 32.

⁸⁸ Moeckli *et al.*, *International Human Rights Law* (n 53)152.

⁸⁹ Hurst Hannum, ‘The UDHR in National and International Law’, (1998) 3 (2), *Health and Human Rights*, 144, 147.

⁹⁰ L Henkin, *The Age of Rights*, (New York, Columbia University Press, 1990) 19; also see Ibid 147.

⁹¹ Montreal statement of the [nongovernmental] assembly for human rights (1968), reprinted in *Journal of International Commission of Jurists Review* 9 (1968) 94; Hannum, *The UDHR in National and International Law* (n 89)148.

in the...Declaration...are widely recognised as constituting rules of customary international law.⁹²

Hence it can be said that regardless of what its drafters intended it to be, the UDHR has now become a part of the customary law of nations. “The UDHR has now become the authentic interpretation of the human rights provisions of the United Nations Charter which neither catalogues nor defines the human rights to which it refers.”⁹³ Further, the Inter-American Court of Human Rights has held:

the guarantee against discrimination on other grounds include language, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property civil status, birth or any other status forms part of general international law and is a *jus cogens* norm that cannot be set aside by treaty or acquiescence.⁹⁴

Principles which have been seen and accepted only as goals and guiding norms can over a period of time develop into binding norms if they are accepted as customary international law. Hence, States are bound by the principles of equality and non-discrimination to which they have to adhere.

The below section deals with the concept of Affirmative Action which is one of the most vital aspects of equality and non-discrimination relevant to this thesis.

1.7.1.1 Affirmative Action

Affirmative action (also referred as Positive Action, Positive Discrimination or Reservation) refers to policies and programs designed and implemented to address various inequalities perpetuating in a given society, often to address “the socio-economic and political situations of those who are generally considered as historically disadvantaged”.⁹⁵ It is a global phenomenon practiced by various countries in different ways for different reasons. But the goal has often been the same, redressal of inequality or historical injustice.⁹⁶ Although the framework, philosophy and justification of affirmative action is the same, the domestic political, social, economic and cultural aspects matter in determining the final outcome of these

⁹² Resolution adopted by the International Law Association reprinted in “International Law Association, Report of the Sixty-Sixth Conference” (International Law Association, 1994) 29; also see Hannum, The UDHR in National and International Law (n 89) 148.

⁹³ Humphrey, The Implementation of International Human Rights Law (n 87) 32, 33.

⁹⁴ OC/18, *Judicial Condition and Rights of the Undocumented Migrants*, IACtHR Series A No 18 (2003) Paras 100-1 and 173.4 as cited in Moeckli *et al.*, *International Human Rights Law* (n 53) 152.

⁹⁵ ‘Affirmative Action and Transglobal Study’ in Steven Ratuva, *Politics of Preferential Development* (ANU Press, 2013) 1.

⁹⁶ Graham Brown and Arnim Langer, ‘Does Affirmative Action Work? Lessons from Around the World’ (2015) 94 (2), *Foreign Affairs*, 49, 49.

programs.⁹⁷ In many developing countries the affirmative policies and the resulting action have played a vital role in nation building by creating a political community committed to equality and equal representation.⁹⁸

Affirmative action policies range from providing highly institutionalized quota-based and sanction-driven policies implemented by the State to informal and voluntary systems.⁹⁹ Some of the common affirmative action policies include special political representation given to certain communities, educational opportunities by reserving certain seats in educational institutions and employment opportunities and access to means of economic advancement for disadvantaged social groups identified on the basis of race, gender, class, caste, ethnicity or physical disability.¹⁰⁰ The government has a vital role in the identification, categorization and prioritization of designated groups and also in conceptualization, planning and implementation of these affirmative action programs which are often seen as a means to bring the marginalized sections to the mainstream.¹⁰¹ In some cases affirmative action can also be a result of voluntary decisions by organizations, educational institutions or corporations to provide assistance to the marginalized groups.

The discourse surrounding affirmative action is multi-disciplinary. Scholars who take the legalistic approach often focus on the preferential legislation and legality of the quotas in education and employment, and also on deeper issues of equality and justice which are the ultimate goals which the affirmative action policies seek to achieve.¹⁰² Scholars taking the economic approach base their argument on the issue of re-distribution of public resources and often question the relationship between affirmative action and economic growth and the potential of affirmative action to undermine growth or to feed on it.¹⁰³ Recently scholars have also been studying the psychological aspects surrounding this area. The studies are significant as they focus on how the preferential treatment through affirmative action defines in-group and

⁹⁷ 'Trans-global Affirmative Action: Some Critical Lessons' in Steven Ratuva, *Politics of Preferential Development: Trans-Global Study of Affirmative Action and Ethnic Conflict in Fiji, Malaysia and South Africa* (ANU Press, 2013) 241.

⁹⁸ Brown and Langer, Does Affirmative Action Work? (n 96) 49.

⁹⁹ Ratuva, Affirmative Action and Transglobal Study (n 95) 1.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Girardeau, *The Laws of Affirmative Action: Twenty-Five Years of Supreme Court Decisions on race and remedies* (New York Press 2000) as cited in Ratuva, Affirmative Action and Transglobal Study (n 95) 1.

¹⁰³ Chand, Poverty and Redistributive Politics in post-independence Fiji, (2007) 22 (2), Pacific Economic Bulletin, 22 as cited in Ratuva, Affirmative Action and Transglobal Study (n 95) 1.

inter-group perceptions and behavioural dispositions and how they shape relationships within and between communities.¹⁰⁴ The power dynamics of affirmative action relating to political governance are analysed by political scientists. They also focus on the process of policy making and how affirmative action is used to cater to political ends in many countries.¹⁰⁵ Sociologists, on the other hand, tend to provide a larger, broader approach and focus on the relationship between affirmative action and the labour market, ethnic relations, culture, and conflicts arising as a result of it, as well as on power and equality.¹⁰⁶ Due to its multi-dimensional nature, the study of affirmative action has increasingly been transcending disciplinary boundaries. This is significant as the thesis addresses the issue of untouchability and the problems arising out of the practice of untouchability in various forms, with a particular focus on manual scavenging and caste-based discrimination in higher educational institutions. The issue of untouchability is legal, social, economic, political, and cultural in equal measure. Hence a holistic approach is needed to understand and analyse this subject of vital importance.

Affirmative policies and action around the world have enjoyed success and tasted failures. Several arguments are advanced to justify affirmative action and most of them are specific to domestic contexts like correcting historical injustice and providing compensation as in the case of the United States of America, South Africa, Canada, and Namibia; addressing inequality as in the case of Malaysia, Brazil, Northern Ireland, and India; or resolving ethnic conflict as in the case of Fiji.¹⁰⁷ Depending on the context, countries tend to use one or more of these justifications. Affirmative action raises several questions that are moral, philosophical, and legal, resulting in it being a contentious issue in many jurisdictions. There is a general consensus as discussed earlier that these policies and actions should fundamentally be based on the principles of justice and equality.

¹⁰⁴ L Bobo, 'Race interests and beliefs about Affirmative Action' (1998) 41, *American Behavioral Scientist*, 985; Stitka and Crosby, 'Trends in the Social Psychology of Justice' (2005) 7 (4), *Personality and Social Psychology Review*, 282 as cited in Ratuva, *Affirmative Action and Transglobal Study* (n 95) 1.

¹⁰⁵ Neblo, 'Three fifths a racist: A typology for analyzing public opinion about race', (2008) 31 (1), *Political Behaviour*, 31; Neblo, 'Meaning and Measurement: Reorienting the race politics debate', (2009) 62 (3), *Political Research Quarterly*, 474, as cited in Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2.

¹⁰⁶ Choo and Feree, 'Practising Intersectionality in Sociological Research: A Critical analysis of inclusions, interactions, and institutions in the study of inequalities', (2010) 28 (2), *Sociological Theory*, 129; Jain, Sloane and Horwitz, *Employment, Equity and Affirmative Action: An International Comparison* (New York: ME Sharpe, 2003) as cited in Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2.

¹⁰⁷ Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2.

The controversy arises when the rights of a particular group are seen to be undermined while addressing the disadvantaged situation of another. It has been argued that affirmative action is a form of reverse discrimination, that even though it is a form of compensation for past wrongs, they are still unjustified as they embody hallmarks of reverse discrimination.¹⁰⁸ The counter to this argument is that affirmative action involves redressing historical injustices which have crippled individuals belonging to certain sections of society to such an extent that on their own, it is very difficult, almost impossible, for them to come to the mainstream and attain a dignified life on par with the rest of society. These policies go beyond strict interpretations of anti-discrimination policies, and their ultimate goal is to counter deeply entrenched social practices.¹⁰⁹ On a general basis affirmative policies and action are associated with concepts of equity and justice. The assumption is that addressing historical injustice helps to set right grievances and resolve long standing conflicts, be it ethnic or otherwise and thus it may lead to overall progress and social transformation.¹¹⁰ As Hon. Sarakon and Goddard noted:

To bar affirmative action is to ignore reality and the past. The difference lies in whether we merely lift our heel off of the backs of minorities and women and say henceforth you will be treated equally, or reach down and lift them up to make amends for our past treatment. The former makes equality a goal of the next millennium; the latter makes it achievable in this one.¹¹¹

Hence these policies as a matter of compensation are contributing to good relations and future stability and should not be seen as a form of discrimination.¹¹²

Another contentious issue in this debate is the question of individual versus group rights.¹¹³ The argument for individual rights is that affirmative action is justified only as a remedy for individuals who have suffered discrimination. On the contrary, it can be argued that there is a need for individuals to be redressed because they are a part of a group which has suffered discrimination and, thus it is best for the group as a whole to be compensated.¹¹⁴ The concept of group rights is linked to the notion of distributive justice based on the utilitarian principle of

¹⁰⁸ Ibid 2, 3.

¹⁰⁹ Daniel Sabbagh, 'Affirmative Action' in Michael Rosenfeld and Andras Sajo (ed), *The Oxford Handbook of Comparative Constitutional Law* (2012), 2.

¹¹⁰ Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2.

¹¹¹ Hon. H. Lee Sarokin, Jane K. Babin and Allison H. Goddard, *Has Affirmative Action Been Negated? A Closer Look At Public Employment* (2000) 37 (3) *San Diego Law Review* 575, 577; Majorie Cohn, *Affirmative Action and Equality Principle in Human Rights Treaties: United States' Violation of its International Obligations* (2002) 262.

¹¹² Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2,3.

¹¹³ Also see page 81 of Chapter 3.

¹¹⁴ Ratuva, *Affirmative Action and Transglobal Study* (n 95) 3.

the greatest good for the greatest number.¹¹⁵ Hence, providing opportunities for the marginalized and disadvantaged is morally considered as a justified way of serving the entire community. In this context, these policies and actions are seen as essential ingredients in fostering greater equality, reducing tension, and thereby enhancing social and national integration.¹¹⁶

In India, as part of affirmative action, the Constitution specifically grants quotas in educational institutions, public employment, local government, assemblies and Lower House of the Parliament for certain specific categories of people as a means to set right the historical injustice and discrimination they have suffered for centuries, in the name of God and religion. The arguments for and against affirmative action in this context will be analyzed in detail in Chapter 3 as in the Indian context the issue of affirmative action in education and public employment has been highly contentious and has been a subject of intense debate and judicial rulings. Chapter 3 will analyze this debate considering the Indian Constitution and the judicial decisions of the Supreme Court of India which becomes the law of the land.

1.8 Overview of Chapters

Following this Introduction, Chapter 2 analyses the origin and development of caste system, in-built discrimination, and the practice of Untouchability. It then progresses towards resistance to Brahminism from diverse spheres of society. Various attempts to eradicate discrimination including that of affirmative action policies are also dealt with. The chapter ends by giving a glimpse into the prevailing condition of the Scheduled Castes as of 2021. The role of law in the eradication of caste discrimination is crucial. Hence Chapter 3 critically reviews three international conventions which India has ratified, pertinent to this thesis. This is followed by the relevant provisions of the Indian Constitution dealing with prohibition of discrimination and affirmative action. It then analyses the provision dealing with abolition of Untouchability. Various institutional mechanisms dealing with caste-based discrimination are also examined in detail. The chapter also highlights various lacunae in the legal instruments due to which there is a prevalence of caste-based discrimination in various forms. Central to this thesis are the voices and lived experiences of manual scavengers and Dalit students in higher educational institutions garnered through detailed qualitative interviews with various

¹¹⁵ See Article 39 (b), Constitution of India; also see Section 3.3 of Chapter 3 at 92.

¹¹⁶ Ratuva, *Affirmative Action and Transglobal Study* (n 95) 2.

stakeholders. Chapter 4 explains the empirical research methods used for data collection, including the recruitment of participants, key ethical principles, and incentives and compensation for participants. This chapter also explains methods of data analysis undertaken.

Chapter 5 deals with one of the two key areas of focus of this thesis: manual scavenging. The chapter investigates the undeniable nexus between caste and manual scavenging. It then analyses various attempts to abolish the practice. The chapter also deals with the prevailing conditions of manual scavengers in society and how there has been a failure to abolish it. The distressing conditions of the manual scavengers are brought to fore with the help of extracts from the qualitative interviews undertaken, which are woven into the narrative of this chapter. This is followed by an exploration of the rehabilitation of manual scavengers. The penultimate part of this chapter deals with child manual scavengers, and it concludes with an analysis of the Gandhi-Ambedkar debate on manual scavenging. Chapter 6 deals with the other key focus of this thesis: caste-based discrimination in higher educational institutions. This chapter examines the status of higher education in India. It then discusses the kind of caste-based discrimination that operates in Indian higher educational institutions. Many stakeholders have been interviewed for this chapter and interview excerpts are included in the narrative of the chapter to bring out the voices and experiences of participants. The chapter then examines the discrimination faced by Dalit women in universities. The issue of dropouts, suspension, and suicides of Dalit students in institutions of higher learning are deliberated. This chapter also analyses the legislation and institutional mechanisms which deal with caste discrimination in higher educational institutions.

Chapter 7 takes the research findings to further analyze the two key areas discussed in the previous two chapters and shows conclusively as to how Untouchability operates in a distinctly different plane, parallel to modern India. It delves into the failures of the Indian government in following its international treaty obligations and the failure of the enforcement mechanisms of the treaties which, have not taken any concrete, palpable measures to put an end to the practice of untouchability. This chapter then suggests amendments to legal instruments dealing with the issues of Dalits, followed by reforms in administrative structures. The chapter concludes with immediate measures that could be adopted to end to caste discrimination against Dalits in India.

Chapter 2. The Caste System in India and Attempts to Eradicate Discrimination

“The Hindu social system is undemocratic not by accident. It is designed to be undemocratic. Its division of society into varnas and castes, and of castes and outcastes are not theories but are decrees. They are all barricades raised against democracy.”¹¹⁷

India is stated to be the cradle of one of the earliest civilizations in the world.¹¹⁸ With the development of its civilization, the caste system, a unique system which believes in graded inequality and birth-based discrimination also developed, and became an integral and inseparable part of everyday life of India. In order to appreciate the dynamics of the social life of India, understanding the caste dynamics is crucial. Therefore, this chapter analyses briefly the genesis, mechanisms, and development of the caste system in India which will help to understand how and why the practise of Untouchability is still prevalent in India in its changing forms. The first part of this chapter deals with the emergence of the varna system and its transformation into the caste system. The second part deals with the evolution of various affirmative action policies in pre-independent India which aimed at the eradication of social inequalities. The final part deals with the prevalence of untouchability in 21st century India, which helps in contextualising the two key areas focused in this thesis.

2.1 Definition of ‘Caste’

The institution of caste is one of the most exclusive features of Indian society, particularly the Hindu Social Order, and is perhaps one of the longest surviving social hierarchies in the whole world.¹¹⁹ It reflects complexity and stratification as it situates people in a hierarchical order.¹²⁰ The term “caste” is generally accepted to have been derived from the Portuguese word “*casta*”

¹¹⁷ BR Ambedkar, *Riddles in Hinduism: The Annotated Critical Selection* (ed., S Anand and Shobhna Iyer, Navayana Publishing Pvt. Ltd., New Delhi, 2016) 172.

¹¹⁸ Étienne Lamotte, *History of Indian Buddhism, From the Origins to the Śāka Era*, (translated from the French by Sara Webb-Boin, original French Edn., 1958; Université Catholique De Louvain Institut Orientaliste Louvain-La-Neuve, 1988) 1. Indus Valley Civilisation flourished in the second half of the third millennium with its centres being Harappa and Mohenjodaro.

¹¹⁹ *Social Stratification* (Dipankar Gupta, ed., Oxford University Press, 2012) 1-2; Ursula Sharma, *Caste* (Open University Press, 1999) 1-3; Aniruddha Vithal Babar, ‘International Human Rights Law and the Menace of Atrocities on Dalit Communities in India’, (2016) 8 (2), *Contemporary Voice of Dalit*, 111, 112.

¹²⁰ Morton Klass, *Caste, the emergence of the South Asian Social System* (Institute for the Study of Human Issues, Philadelphia, 1980) 20; Murray Milner, Jr. *Status and Sacredness, A General Theory of Status and Relations and an Analysis of Indian Culture*, (Oxford University Press, 1994) 46.

meaning “pure breed”¹²¹ or “purity of blood.”¹²² Over the years, many scholars have attempted to define caste and list its parameters. One of the earliest written accounts is by Megasthenes, a Greek traveller, who visited Pataliputra (present city of Patna, Bihar) around 300 BC and wrote his travel accounts to the courts of Indian rulers Chandragupta Maurya and Pururava(Porus).¹²³ His work is generally accepted as authoritative by scholars of classic Greco-Roman times. Unfortunately today only fragments of his writings have survived in the writings and references of others. Arrian (Flavius Arrianus) whose work *Indika* which was written sometime before 180 AD takes Megasthenes’ accounts as its primary source.¹²⁴ Megasthenes has noted that India was divided into seven castes.¹²⁵ He reported that these social units followed a strict rule of group endogamy (marrying within the community-absence of inter-marriage).¹²⁶ Later European scholars like Abbé Dubois, whose studies derive from the early nineteenth century, stress the concept of “purity of descent” which consists of never mixing the blood of one family or caste with that of another.¹²⁷

However, Klass¹²⁸ believes that “endogamy” and “purity of descent” are two concepts that are unrelated to each other, having to do with totally different categories of phenomena. In cases where they are fused, as in the case of caste, the fusion reflects culturally biased or ethnocentric, categorizing.¹²⁹ Klass further derives from observations by European scholars that castes are endogamous, biologically separate, and occupationally distinct, meaning castes are occupational categories and that one must marry and work in the occupation and caste into which one has been born.¹³⁰

A French scholar Senart defines caste as:

a close corporation, in theory at any rate rigorously hereditary: equipped with a certain traditional and independent organization, including a chief and a council, meeting on occasion in assemblies of more or less plenary authority and joining together at certain festivals: bound together by common occupations, which relate more particularly to marriage and to food and to questions of ceremonial pollution, and ruling its members by the exercise of jurisdiction, the extent of which varies, but which succeeds in making

¹²¹ Ursula Sharma, *Caste* (n 119) 5.

¹²² Klass, *Caste, The emergence of the South Asian Social System* (n 120) 22, 26.

¹²³ *Ibid.*, 21.

¹²⁴ *Ibid.*, 22.

¹²⁵ *Ibid.*, 23, 24.

¹²⁶ *Ibid.* 27.

¹²⁷ *Ibid.* 28.

¹²⁸ Morton Klass (1927-2001) was a professor of anthropology at Columbia University and Barnard College.

¹²⁹ Klass, *Caste, the emergence of the South Asian Social System* (n 120) 28.

¹³⁰ *Ibid.* 29, 30.

the authority of the community more felt by the sanction of certain penalties and, above all, by final irrevocable exclusion from the group.¹³¹

According to Nesfield, caste is “a class of the community which disowns any connection with any other class and can neither intermarry nor eat nor drink with any but persons of their own community.”¹³² Ketkar defines caste as “a social group having two characteristics: (i) membership is confined to those who are born of members and includes all persons so born; (ii) the members are forbidden by an inexorable social law to marry outside the group.”¹³³ According to Hutton, the caste system is “one whereby a society is divided up into a number of self-contained and completely segregated social units (castes), the mutual relations between which are ritually determined on a graded scale.”¹³⁴

These definitions are not comprehensive by themselves and have missed one or the other vital issue with regard to caste. They try to define caste as an isolated unit by itself and not as a group within, and with, definite relations to the system of caste as a whole. However, collectively these definitions are all complementary to one another, each one emphasizing what has been obscured in the other.¹³⁵ For instance, it is safe to say that “idea of pollution” used by Senart, is the characteristic of caste only in so far as caste has a religious flavour.¹³⁶ The concept of pollution originates in priestly ceremonialism and is a particular case of the general belief in purity. It is possible to completely deny its connection with caste without damaging the working of caste. It can be said that the idea of pollution has been attached to the institution of caste only because the caste that enjoys the highest rank in the hierarchy is the priestly caste.¹³⁷

¹³¹ Emile Senart, *Caste in India* as cited in B.R Ambedkar, ‘Castes in India, Their Mechanism, Genesis and Development’, (Paper presented at an Anthropology Seminar taught by Dr. A.A. Goldenweizer, Columbia University, 9th May 1916, Text first printed in Indian Antiquary Vol. XLI (May 1917), Source: Dr. Babasaheb Ambedkar: Writings and Speeches, Vol. 1 (Frances W. Pritchett (ed.) Bombay: Education Department, Government of Maharashtra, 1979) 2 < http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/txt_ambedkar_castes.html > accessed on 6th May 2022.

¹³² Ambedkar, Castes in India (n 131) 4; also see John Nesfield, ‘Brief View of the Caste System of the North-Western Provinces and Oudh Together with an Examination of Names and Figures shown in the Census Report, 1882’, (Allahabad, 1885) < <http://piketty.pse.ens.fr/files/ideologie/data/CensusIndia/Administrators/Nesfield1885.pdf> > accessed on 6th May 2022.

¹³³ Sridhar venkatesh Ketkar, *The History of Caste in India: Evidence of the Laws of Manu on the Social Conditions in India during the Third Century AD as cited in Ambedkar, Castes in India* (n 131) 3.

¹³⁴ J. Hutton, *Caste in India* (4th edn., 1963) 50 as cited in Samuel M. Witten, “Compensatory Discrimination” in *India: Affirmative Action as a Means of Combatting Class Inequality*, (1983) 21 (2), *Columbia Journal of Transnational Law*, 353, 354.

¹³⁵ Ambedkar, *Castes in India* (n 131) 3.

¹³⁶ Ibid.

¹³⁷ Ibid.

Nesfield sees the absence of any connection with those outside the caste as one of the characteristics of caste. It seems that he has mistaken the effect for the cause since caste being a self-enclosed unit, naturally limits social interaction to members within it. As a result, the absence of not having any connection with outsiders is not due to positive prohibition but is a natural result of caste; that is exclusiveness. The absence of interaction with other castes, which was originally due to exclusiveness, did acquire the prohibitory character of a religious injunction. However it may be regarded as a later growth.¹³⁸ The definition given by Ketkar speaks of prohibition of intermarriage and membership by birth as the two characteristics of caste. It must be noted that they are not two separate things. In case there is a prohibition on intermarriage, the result is that there is a limit to membership to those born within the group.¹³⁹

A more convincing definition is given by Ambedkar¹⁴⁰, who defines Caste in India as:

an artificial chopping off of the population into fixed and definite units, each one prevented from fusing into another through the custom of endogamy. Thus the conclusion is inevitable that endogamy is the only characteristic that is peculiar to castes.¹⁴¹

And if one succeeds in showing how endogamy is maintained, one can practically prove the genesis and also the mechanism of caste.¹⁴² This is the definition I find most accurate since it can convincingly prove the genesis and mechanism of caste, I will use this definition in this thesis. It is also vital to note that “caste is an insoluble substance and once a caste is formed it maintains its separate existence, unless for any special reason it dies out. This can happen but to a few.”¹⁴³

Summarising, the caste system is a form of social stratification in which castes are hierarchised, occupationally specialised and separated from each other (in matter of marriage, physical contact, food) by rules of purity and pollution. The birth-based segregation is reinforced by endogamy and strict control over women’s sexuality. Caste is fundamentally different from class and other forms of stratification in the sense that while the latter is a system of production, caste is a system of both production and reproduction.¹⁴⁴

¹³⁸ Ibid 5.

¹³⁹ Ibid 4.

¹⁴⁰ (1891-1956), an Indian statesman, jurist, economist, journalist, the first law minister of independent India and the Chief Architect of the Indian Constitution.

¹⁴¹ Ambedkar, *Castes in India* (n 131) 4.

¹⁴² Ibid.

¹⁴³ Ambedkar, *Riddles in Hinduism* (n 117) 147.

¹⁴⁴ Mani, *Debrahmanising History* (n 15) 28.

To understand how the caste system came into being, it is important to understand the varna system which is its genesis. The Code of Manu is dealt with in detail below, as it reflects the social, political, cultural and economic system in prevalence till India became a Democratic Republic.

2.2 The Varna System

*He who would confine his thought to present time
will not understand present reality.¹⁴⁵*

The Varna system or ‘Varnashrama Dharma’ or ‘Chaturvarnya’ has survived for millenniums.¹⁴⁶ It is a social order, a hierarchy, in which a person’s occupation and position in life is determined by the circumstances of his/her birth. The most widely accepted theory is that sometime in the thirteenth century B.C the Indo-Europeans or more precisely the Aryans representing the eastern branch of the Indo-Iranians invaded northwest India in successive waves.¹⁴⁷ According to this theory, the Varna system developed as a result of this Aryan conquest in the second millennium B.C.¹⁴⁸ The Aryans spoke Vedic Sanskrit, a language which was closely connected to the people who lived on the Iranian plateau.¹⁴⁹ This language of the Aryans first served as a literary expression for the sacred texts compiled roughly from the fifteenth to sixth centuries B.C, the Vedas.¹⁵⁰

The Veda includes four classes of literary compositions, going by the strict meaning of the term. The *Mantra* “Sacred formula”, hymns or chants,¹⁵¹ dispersed into four *samhita* “collections”, Rig, Sama, Yajur and Atharva Samhita.¹⁵² The origins of the Varna System are traced to the “Purusha Sukta” of the Rig Veda¹⁵³, the oldest of the four Vedas,¹⁵⁴ believed to

¹⁴⁵ Jules Michelet, *The People (Le Peuple)* (tr. John P McKay, Urbana: University of Illinois Press, 1846), as cited in Mani, *Debrahmanising History* (n 15) 397.

¹⁴⁶ Brian K Smith, *Classifying the Universe, the Ancient Indian Varna System and the Origins of Caste* (Oxford University Press, 1994) 3, 8; Sundar Lal Sagar, *Hindu Culture and Caste System in India* (1st edn, Uppal Book Store, 1975) 5.

¹⁴⁷ This theory has been refuted by Dr. Ambedkar, see Ambedkar, *Who were the Shudras?* (n 8) 76-101.

¹⁴⁸ Romila Thapar, *Early India, From the Origins to AD 1300* (Allen Lane, an imprint of Penguin Books, 2002) 13; F. Max Müller, *Biographies of Words and the Home of the Aryas* (Longmans, Green, and Co. 1888) 92.

¹⁴⁹ Sara, *History of Indian Buddhism* (n 118) 1.

¹⁵⁰ Ibid.

¹⁵¹ BR Ambedkar, *The Buddha and His Dhamma* (Buddha Bhoomi Publication, Nagpur, reprint, 2015) 99.

¹⁵² Sara, *History of Indian Buddhism* (n 118) 1.

¹⁵³ Klass, *Caste, the emergence of the South Asian Social System* (n 120) 35.

¹⁵⁴ Murray Milner, Jr. *Status and Sacredness* (n 120) 46; Thapar, *Early India* (n 148) 63, 104. Vedas constitute the earliest literary source. The time period of Vedas is estimated to be from the mid-second millennium to the mid-first millennium B.C.

be composed between 1500-1200 BCE¹⁵⁵. During the Sutra period, believed to be from 600 BCE to 200 BCE, the Varna System became a prominent social institution.¹⁵⁶ The Vedic religion of the Aryans transformed when they settled in the Ganges basin. Vedism became Brahmanism, a collection of religious and social concepts, which were defined and directed by the Brahmins (who constituted the priestly body).¹⁵⁷

Over a period of time few scholars of ancient India have tried to codify this unique system in their own ways, prominently Manu, referred to as the first lawgiver by the Hindus, in his work the 'Manusmriti' or the 'Laws/Code of Manu'.¹⁵⁸ According to Manu, Lord Brahma (also referred to as Purusha), the Creator, caused the Brahmana, the Kshatriya, the Vaisya and the Shudra to proceed from his mouth, arms, thighs and feet respectively.¹⁵⁹ These formed the four varnas (divisions). Separate occupations were assigned to each of the four varnas and they had to be strictly adhered to. To Brahmanas, teaching and studying (the Veda),¹⁶⁰ to Kshatriyas, protecting the people,¹⁶¹ to Vaisyas, trade and lending money,¹⁶² and to Shudras, serving the other three Varnas meekly was the only one prescribed occupation.¹⁶³ Since Brahmanas originated from the mouth of the Creator, they are considered to be the purest and by right are the Lords of the whole creation.¹⁶⁴ Whatever exists in the world is the property of the Brahmana, due to his origin and he is entitled to all of it.¹⁶⁵ Endogamy is prescribed for all the Varnas.¹⁶⁶ Where there are cases of marriage outside the Varna, not only are there punishments prescribed, but inheritance also becomes an issue.¹⁶⁷

¹⁵⁵ 'Hindu Scripture' (BBC, 25th August 2009) <
<https://www.bbc.co.uk/religion/religions/hinduism/texts/texts.shtml>> accessed 6th May 2022.

¹⁵⁶ Sagar, *Hindu Culture and Caste System in India* (n 146) 10.

¹⁵⁷ Sara, *History of Indian Buddhism* (n 118) 5.

¹⁵⁸ Murray Milner, Jr. *Status and Sacredness* (n 120) 46. Some scholars in the eighteenth century believed that Manusmriti was composed in the period around 1250 B.C.E and 1000 B.C.E. However according to recent scholarship, Manusmriti dates back to between 200 B.C.E and 200 C.E.

¹⁵⁹ G. Bühler, *The Laws of Manu* (Translated with extracts from Seven Commentaries, Oxford at the Clarendon Press, 1886) Chapter I (31), 14 in F. Max Müller, *The Sacred Books of the East* (Translated by various Oriental Scholars, Vol. XXV, Oxford at the Clarendon Press, 1886); *The Laws of Manu*, (with an introduction and notes translated by Wendy Doniger with Brian K Smith, Penguin Books 1991).

¹⁶⁰ Manu Chapter I verse 88.

¹⁶¹ Manu Chapter I, verse 89.

¹⁶² Manu Chapter I, verse 90.

¹⁶³ Manu Chapter I, verse 91; Chapter VIII verse 410.

¹⁶⁴ Manu Chapter I, verse 92, 93.

¹⁶⁵ Manu Chapter I, verse 100.

¹⁶⁶ Manu Chapter III, verses 12, 13.

¹⁶⁷ Manu Chapter IX verses 149, 150, 151; Chapter IX verse 55; Chapter IX verse 157.

The Code of Manu was not merely a religious text, with notional form of graded inequality. It was the law of the land. It was both legal and penal,¹⁶⁸ containing both civil and criminal laws.¹⁶⁹ Strict punishments were imposed in case of violations of the rules including out-casting and threat of sanctions even after death.¹⁷⁰ It was for the Brahmanas to study the sacred law and they were forbidden from explaining¹⁷¹ or even reciting in front of Shudras.¹⁷² Touching or even seeing certain sections of society, namely the Kandāla (Chandala - a son born from a Shudra male and a Brahmana female), was considered to be impure.¹⁷³ The concept of purity and pollution thus stated in this text continues even to this day, due to which the present day Dalits (former untouchables) are considered to be impure and are assigned with tasks which are seen to be “dirty” such as manual scavenging.

On women, the Code of Manu says that a woman must never be independent.¹⁷⁴ In her childhood she should be under the control of her father, in youth her husband, and when her lord (husband) dies, under the control of her son.¹⁷⁵ The punishments for offences in the Code differs according to the Varna of a person. A Shudra, owing to his low origin suffered harsher punishments than men of upper varna for the same offence.¹⁷⁶ A Shudra is born to serve. No one can set him free.¹⁷⁷ A Shudra cannot amass wealth. A Brahmana may confidently seize the goods of a Shudra.¹⁷⁸ A Shudra, even when able, must never collect wealth, for his acquired wealth, gives pain to Brahmanas.¹⁷⁹ Service to Brahmanas alone is declared to be excellent occupation for the Shudras.¹⁸⁰ This is relevant for this thesis because, this text forms the crux of Hindu religion. While Indian polity might have been democratic post-independence, Hindu religion is not yet democratic. These concepts enshrined in Manusmriti help us in understanding the prevailing mindsets of the Indian population in the 21st century due to which there is perpetuation of discrimination in various forms even to this day.

¹⁶⁸ Ambedkar, *Who were the Shudras ?* (n 8) 6.

¹⁶⁹ Manu Chapter VIII.

¹⁷⁰ Manu Chapter III verse 17.

¹⁷¹ Manu Chapter IV verses 79,80,81.

¹⁷² Manu Chapter IV, verse 99.

¹⁷³ Manu Chapter V, verses 85,86.

¹⁷⁴ Manu Chapter V verse 147.

¹⁷⁵ Manu Chapter V verse 148.

¹⁷⁶ Manu Chapter VIII verses 270,271,272,279,280,281,282; also see Chapter V, verses 19-25 of Vishnu Smriti as cited in Ambedkar, *Who were the Shudras?* (n 8) 56, 57.

¹⁷⁷ Manu Chapter VIII verse 414.

¹⁷⁸ Manu Chapter VIII verse 417.

¹⁷⁹ Manu Chapter X verse 129 ; also see Ambedkar, *Who were the Shudras ?* (n 8) 58.

¹⁸⁰ Manu Chapter X verse 123.

According to Manu, there is no fifth Varna.¹⁸¹ Manu explains the origin of “Jatis” (castes/communities/new identities) by inter-mixture of the varnas. The text speaks of Anuloma (where an upper varna male marries a lower varna female) and Pratiloma (where a lower varna male marries an upper varna female) relationships. The former is allowed, but the six jatis originated through pratiloma relationships, are looked down upon by Manu.¹⁸² For example, a son born from a Brahmana female and Shudra male is called Kandala (Chandala).¹⁸³ These six castes have specific occupations prescribed for them.¹⁸⁴ Members belonging to these six castes were forced to dwell near trees, burial grounds, on mountains and in groves.¹⁸⁵ However, the dwellings of Kandalas, the lowest of men,¹⁸⁶ were to be outside the village. They were forbidden from collecting wealth.¹⁸⁷ Their dress was only formed of garments of the dead. They were to eat food in broken dishes. They were allowed to wear ornaments only of iron and never of gold. They were not allowed to settle in a particular place and they were to always wander from place to place.¹⁸⁸ Their transactions and their marriages were to be among themselves.¹⁸⁹ They were the outcastes.

It must be noted as seen above, that Manu in his Code recognises the emergence of new identities due to inter-varna marriages/sexual relations. However, he does not explain what these new identities are. He speaks of inheritance,¹⁹⁰ which the children born out of consummation between people belonging to different varnas get, but never of the actual identity which they carry. While he maintains that there is no fifth Varna (Panchama), he fails to recognise where exactly the newly created ‘Jatis’ fit within the Varna system and how their status, occupation and day to day conduct can be assigned. The mention of inter-varna marriages in the Code of Manu provides a clue to the development of crisis in the very structure of varna system which might have paved a way for its transformation from the varna system to caste system.

¹⁸¹ Manu Chapter X verse 4.

¹⁸² Manu Chapter X verse 26, 27.

¹⁸³ Manu Chapter X verse 16.

¹⁸⁴ Manu Chapter X verses 47,48,49.

¹⁸⁵ Manu Chapter X verse 50.

¹⁸⁶ Manu Chapter X verse 16.

¹⁸⁷ Manu Chapter X verse 51.

¹⁸⁸ Manu Chapter X verse 52.

¹⁸⁹ Manu Chapter X verse 53.

¹⁹⁰ Manu Chapter IX verses 149, 150, 151.

New castes (jatis) were formed, with the passage of time. They were endogamous and hereditary in nature¹⁹¹ but the Code of Manu remained in place with harsh punishments inflicted on those who deviated from it. During the period of Ramayana¹⁹² and Mahabharata¹⁹³, the system got sanctified by religion. “The ‘Hindu polity’ was founded on the religio-political bedrock of Brahminism”¹⁹⁴ and Bhagavad Gita¹⁹⁵ and Manusmriti are two of the most important texts perpetuating the concepts of birth-based discrimination. The unique ambiguity in the Gita appeals to the privileged castes since they were able to interpret them as per their needs solidifying its religious sanctity.¹⁹⁶ It is also to be noted that the term ‘Hindusim’ was used for the first time only in 1816-17 by Raja Rammohun Roy for a faith “practised by our brahmin ancestors”, traditionally called Varnashrama Dharma, Sanatana Dharma or plainly Brahminism.¹⁹⁷

Summarising, the Brahminic philosophy rested on the thesis that the Vedas are sacred and infallible and are not to be questioned. The ideal pattern of society is the varna system which is based in the Vedas. Hence, this pattern of society is binding and unquestionable.¹⁹⁸ The four classes discussed earlier in this chapter, are never to be equal, socially or with regard to rights and privileges, but must be based on graded inequality. There must a division of occupation. The right to education was available only to the upper three varnas. The Shudras and women of all varnas were denied education. The varna system was set in stone by the brahmins without any cracks or loopholes.¹⁹⁹ Inequality exists in every society. However, the inequality preached and practised by brahmins is an official doctrine of Brahminism. It was opposed to the very concept of equality. Its soul lays in graded inequality.²⁰⁰

The next section deals with the emergence of untouchability which is a by-product of the caste system and the key area of focus of this thesis.

¹⁹¹ Chandra Pal Singh Chauhan, ‘Education and Caste in India’ (2008) 28 (3) Asia Pacific Journal of Education, 217, 218.

¹⁹² It is an epic poem composed in ancient India. There is wide debate about the exact time period of its composition. It is widely believed that Ramayana predates Mahabharata, that is pre-8th century BCE.

¹⁹³ An ancient Indian epic, the origins of which are estimated to fall between 8th and 9th Century BCE.

¹⁹⁴ Mani, *Debrahmanising History* (n 15) 81.

¹⁹⁵ It is a Hindu scripture in Sanskrit, which is a part of the Hindu epic Mahabharata. It is also one of the holy books of Hinduism.

¹⁹⁶ Mani, *Debrahmanising History* (n 15) 79.

¹⁹⁷ Ibid 204.

¹⁹⁸ Ambedkar, *The Buddha and His Dhamma* (n 151) 105.

¹⁹⁹ Ibid 105-107.

²⁰⁰ Ibid 108.

2.3 The Emergence of Untouchability

*India is a strange place which collects all sorts of social groups, divided by different religions, thoughts, practices and understandings. But broadly speaking, they can be categorised into two – the majority low castes who have been devoid of humanity for centuries and a handful who take their pleasure, call themselves superior and live at the cost of the majority. One's welfare is another's misery; that is their connection.*²⁰¹

Until untouchability came into being, the Shudras were the lowest of the low for the Hindus.²⁰² But as explained above, the intermixture of varnas gave rise to new castes and the castes like Kandalas, came to be treated as Untouchables, the lowest of all.²⁰³ They were the outcastes. They lived and suffered at the bottom of Hindu Caste hierarchy for centuries. They were segregated, discriminated against, and humiliated in the name of God and religion. The untouchables were forced to live in degrading environments. They were denied a life with dignity. Their values, culture, and traditions were suppressed. Having a decent education was a distant dream to these communities. They were economically deprived, socially excluded and politically marginalized and were forced to live a life of surrender to the dominant castes. The untouchable women were forced to become prostitutes for dominant-caste patrons and village priests, as devadasis.²⁰⁴ Sexual abuse and other forms of violence against women were often used by landlords and the police to crush any form of dissent.

Throughout the dark pages of Indian history several instances have illustrated the treatment of untouchables.²⁰⁵ In the 18th century, during the Peshwa (who were Chitpavan Brahmins) regime in the Maratha country (present western India-Maharashtra region),

untouchables were not allowed to use the public streets if a Hindu was coming along, lest he should pollute the Hindu by his shadow. The untouchables had to identify themselves by wearing a black thread either on their wrist or around their neck, as prevention so that Hindus do not get themselves polluted by touching them by mistake. They were also required to carry, strung from their waist, a broom to sweep away from

²⁰¹ Mukundrao Patil (1913), See Gail Omvedt, *Cultural Revolt in a Colonial Society: The Non Brahman Movement in Western India 1873-1930* (Bombay: Scientific Socialist Education Trust, 1976) 157 as cited in Mani, *Debrahmanising History* (n 15) 291.

²⁰² Ambedkar, *Who were the Shudras?* (n 8) 6.

²⁰³ See page 42 of this Chapter.

²⁰⁴ A devadasi is a girl dedicated to the service of a deity or a temple for the rest of her life.

²⁰⁵ Bühler, *The Laws of Manu* (n 159) Manu, Chapter X verse 55- Manu prescribed the “menial” and “polluting” task of carrying corpses; Thapar, *Early India* (n 148) 303- Fa Hian, a Buddhist monk from China visited India from 405 to 411 AB. He recorded the practices of untouchability where untouchables had to sound clapper in the streets so others were warned of their presence. If an untouchable came nearer in proximity, a ritual ablution would have to be performed by the privileged caste person.

behind themselves, the dust they trod on, lest a Hindu walking on the same dust should be polluted. Further, they were required to carry an earthen pot hung around their neck wherever they went, for holding their spit, lest their spit falling on the earth should pollute a Hindu who might unknowingly happen to tread on it.²⁰⁶

Such a system continued to exist despite changes in the regime. Multiple princely States were ruled by Hindu and Muslims rulers but untouchability continued to exist in different forms in different states, with only stray instances of a few Kings who tried to eradicate the practice. The governing class was ruled by the discriminatory philosophy of Brahmanism. Ambedkar noted six 'lawless laws' of the Brahminic law books:

1. Graded inequality between different classes;
2. Complete disarmament of the Shudras and the Untouchables;
3. Complete prohibition of the education of the Shudras and the untouchables;
4. Ban on the Shudras and the untouchables occupying places of power and authority;
5. Ban on the Shudras and the untouchables acquiring property; and,
6. Complete subjugation and suppression of women.²⁰⁷

He noted that inequality was the cardinal doctrine of Brahminism which was rested on suppression of the lower classes by the upper classes. It must be noted that the intellectual class not only monopolised education, but also made it a punishable crime for the lower classes to acquire education.²⁰⁸

The defenders of the caste system have often argued that it is merely a division of labour.²⁰⁹ But Ambedkar points out that the caste system is also a division of labourers.²¹⁰ There is an unnatural division of labourers into watertight compartments in the caste system. It is not a division based on choice. It is a hierarchy in which the division of labourers is graded one above the other.²¹¹ There is no mobility. In the caste system, tasks are assigned to an individual in advance, not based on capacity but based on the social status of their parents.²¹² Ambedkar heading the movement of the vulnerable and marginalised sections publicly burnt the Manusmriti in 1937 at Mahad. Sociologist Gore notes, "the burning of a copy of the Munusmriti at Mahad was one way of symbolically rejecting the rules that it specified and the

²⁰⁶ Ambedkar, *Annihilation of Caste* (n 8) 5, 6.

²⁰⁷ Babasaheb Ambedkar Writings and Speeches, Vol 9: 215 as cited in Mani, *Debrahmanising History* (n 15) 354.

²⁰⁸ Mani, *Debrahmanising History* (n 15) 354.

²⁰⁹ MV Patwardhan, *Manusmriti, the Ideal Democratic Republic of Manu* (1st ed., Motilal Banarsidass, 1968) 5, 7.

²¹⁰ Ambedkar, *Annihilation of Caste* (n 8) 14.

²¹¹ Ibid.

²¹² Ibid.

doctrine of inequality at birth on which the caste system was based.”²¹³ Ambedkar shows how as an economic system Untouchability permits unbridled exploitation without obligation:

The system of Untouchability is a gold mine to the Hindus... in it the 240 millions of Hindus have 60 millions of Untouchables to be used as forced labourers and because of their state of complete destitution and helplessness can be compelled to work on a mere pittance or sometimes nothing at all. In it the 240 millions of Hindus have 60 millions of Untouchables to do the dirty work of scavengers and sweepers which the Hindu is debarred by his religion to do and which must be done by non-Hindus who could be no others than Untouchables....²¹⁴

2.4 Resistance to Brahminism

Some of the earliest instances of resistance to the Varna system or Brahminism can be seen over two thousand years ago, from the lives of the Buddha, the founder of Buddhism and Mahavira, one of the chief proponents of Jainism. Philosophically though different, none of them believed in caste and Brahminism. Anyone irrespective of their caste were admitted to their ranks.²¹⁵

The Buddha rejected absolutist speculations, the fiction of caste, theories of heaven and hell and the metaphysics of Atman-Brahmana.²¹⁶

Buddhism is based on the values of non-violence (*ahimsa*), humane application of knowledge (*prajna*), compassion (*karuna*) and equality (*samata*),²¹⁷ as opposed to the doctrine of birth-based discrimination propounded by Brahminism. Naturally it became a rallying point for the lowered castes, the outcastes, and women.²¹⁸ However, the decline of Buddhism in India and its replacement with Brahminism was one filled with violence, starting with the *smriti* period including that of Manusmriti, discussed above, which came down very harshly particularly on the lowered castes and women.²¹⁹ Ambedkar draws parallels between the Muslim invasion of ‘Hindu India’ and Brahminic invasion of ‘Buddhist India’, the key difference being the Brahminic invasion totally destroyed the Buddhist principles of life which had been accepted and followed by the masses as a way of life.²²⁰

²¹³ MS Gore, *The Social Context of an Ideology: Ambedkar's Political and Social Thought* (Delhi: Sage, 1993) 199 as cited in Mani, *Debrahmanising History* (n 15) 353.

²¹⁴ Babasaheb Ambedkar Writings and Speeches, vol 9: 196 as cited in Mani, *Debrahmanising History* (n 15) 364.

²¹⁵ Mani, *Debrahmanising History* (n 15) 99.

²¹⁶ Ibid 101, 102.

²¹⁷ Ibid 104.

²¹⁸ Ibid 111.

²¹⁹ Ibid 131.

²²⁰ Ibid 132.

In the centuries that followed, many movements rose from the ground, led by subaltern poets, as a resistance to Brahminism. These movements, also referred to as Bhakti (devotion) movement, peaked in the 15th and 16th centuries symbolising a cultural revolt marked by ordinary people's extraordinary creativity. The radicalism of the movement was shaped and spearheaded by people belonging to the lowered castes, the artisans, labourers, and cultivators who composed poems of exquisite beauty in vernacular language. This was particularly important since Sanskrit, the language of the privileged castes, in which holy books were composed, was not accessible to the lowered castes. They rebelled against the established system and challenged caste-feudalism in a caste-feudal age.²²¹

*We'll set fire to divisions of caste,
We'll debate philosophical questions in the market place,
We'll have dealing with despised households,
We'll go around in different paths.*²²²

One of the chief principles of the movement was to look within oneself to realise God and decide what is right and wrong for self and others.²²³ This was in contrast to Brahminism which necessitated the need for the priestly class, the Brahmins, as the only ones who were in direct connection with God. The reason why Bhakti movement became a social movement was because it looked at everybody as somebody and hence nobody was seen as low-caste or untouchable.²²⁴

Various regimes noted the disabilities created by the caste system and the practice of untouchability, in every sphere of life and how it had drastic impacts on the lives of the lowered castes. This compelled some policy makers, in different regimes, to take cognizance of the grave situation prevailing in their region and to provide a variety of alternative remedial measures to address the historical injustice meted out to the masses. Since untouchability is a social evil with multiple dimensions, each having a bearing on the other, it is important to understand the political aspect of it to understand its current status. The following section deals with the evolution of affirmative policies and actions over a period that paved a way for the present system in India.

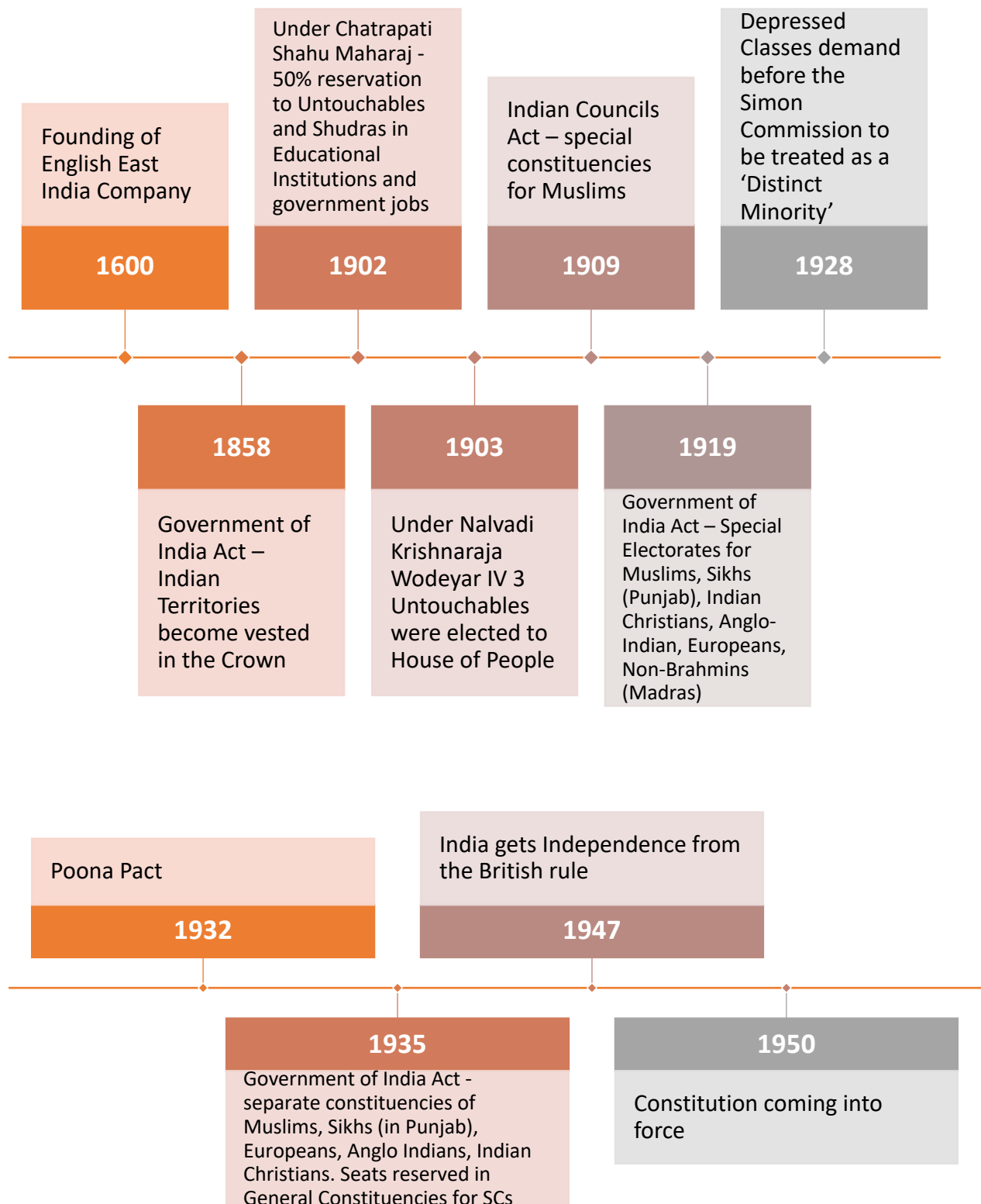
²²¹ Ibid 140.

²²² Pambatti Sittar, see K Kailasapathy, 'The Writings of the Tamil Siddhas' in K Schomer and WH McLeod ed., *The Sants: Studies in a Devotional Tradition of India* (Delhi: Motilal Banarsidass) 391 as cited in Mani, *Debrahmanising History* (n 15) 140.

²²³ Mani, *Debrahmanising History* (n 15) 141.

²²⁴ Ibid 142.

2.5 Affirmative Action under the Imperial Crown



The British came to India to trade. In late 1600 the East India Company, which was formed by some merchants of London secured a royal Charter from Queen Elizabeth I. By 1700, the East India Company had established its factories/trading centres with chief centres being Bombay (present Mumbai), Calcutta (present Kolkata), and Madras (present Chennai). Subsequently

various charters were passed granting different rights to them. Slowly they started taking control over territories in India, some through war and others through negotiations with the native rulers.²²⁵

It was only after the revolt of 1857, described by British historians as the Sepoy/Indian Mutiny, and as the First War of Indian Independence by Indian nationalist historians, that new legislation (the Government of India Act 1858) was passed for good governance of India. As per this legislation, all Indian territories which were then in possession of the East India Company became vested in the Crown and were to be directly governed by, and in the name of, the Crown acting through a Principal Secretary of State for India.²²⁶ The British then enacted several legislations through which they introduced the concept of Affirmative Action in India. The Indian Councils Act, 1909 was passed by the British Parliament,²²⁷ which *inter alia* granted six special constituencies for Muslims.²²⁸ This was followed by the Government of India Act, 1919,²²⁹ which brought changes to the structure of the legislature and the executive at the centre and in the provinces.²³⁰ Not only did the Act retain the separate electorates for Muslims but also extended this facility to other communities such as Sikhs in Punjab, Indian Christians, Anglo-Indians, Europeans and to Non-Brahmins in Madras Presidency.²³¹ Another important legislation passed by the British government is the Government of India Act, 1935, which is often stated to have provided the foundations for the present Constitution of India.²³² The chief characteristics of the Act include diarchy at the Centre, provincial autonomy, and an all Indian federation.²³³ The members of the Legislative Assembly were to be elected from the general constituencies as well as separate constituencies of Muslims, Sikhs (in Punjab), Europeans, Anglo Indians, Indian Christians. Some seats were also reserved in general constituencies for Scheduled Castes.²³⁴

²²⁵ Subhash C Kashyap, *Our Constitution: An Introduction to India's Constitution and Constitutional Law* (5th revised ed., National Book Trust, New Delhi, 2011) 10-13.

²²⁶ Ibid 14.

²²⁷ Anil Saxena, *British Empire in India* (Anmol Publications Pvt. Ltd., New Delhi, 2007) 225, 226.

²²⁸ Ibid 227-228.

²²⁹ Durga Das Basu, *Introduction to the Constitution of India* (12th edn., Prentice Hall of India Pvt. Ltd. New Delhi, 1987) 5.

²³⁰ Saxena, *British Empire in India* (n 227) 232.

²³¹ Ibid 233,235,236.

²³² Mahendra Pal Singh, *VN Shukla's Constitution of India* (13th ed., EBC, 2019) A-09.

²³³ JN Pandey, *Constitutional Law of India* (25th ed., 1993) 11, 12.

²³⁴ Anil Saxena, *British Empire in India* (n 227) 241, 242.

Meanwhile (1916-1929 approx.), the Brahmin families in Tamil Nadu and Mysore exercised social and economic power along with political leadership. They had large land holdings and had made educational and professional achievements.²³⁵ At the same time, people belonging to backward castes²³⁶ formed a number of non-Brahmin associations with the aim of strengthening their caste identities and fostering mutual assistance. Consequently, a non-Brahmin movement started where they demanded reservation of seats for non-Brahmins in educational institutions, public services and adequate political representation.²³⁷ A Government Order (G.O) was issued in 1921, which provided an increase in the percentage of seats reserved for non-Brahmins (Standing Order 128 of 1851), thereby restricting the privileged castes monopoly in government services. This is seen as the first recorded instance of removing upper caste monopolisation in government jobs.²³⁸ Wide-scale protests were staged by Brahmin leaders against this move of the government. But the government led by the Justice Party, dominated by non-Brahmins, once again issued a fresh notification in 1922 to ensure representation to non-Brahmins at all levels of posts. However, this policy of reservation though was stalled by the intervention of the British government and had strong Brahminic opposition, it laid the foundation for affirmative action in India.²³⁹

2.5.1 Affirmative Action under Progressive Kings

The rulers of two contemporary princely States of Mysore and Kolhapur, namely Nalvadi Krishnaraja Odeyar IV²⁴⁰ and Chatrapati Shahu Maharaj²⁴¹ undertook various pro-people measures to provide representation to various groups in their administration, including affirmative action.²⁴² The Praja Prathinidhi Sabha (the House of Peoples' Representatives) was established by the King of Mysore in 1903 and for the first time 3 Untouchables were elected to the 'House' in this process,²⁴³ which is totally against the principles laid down in the Code of Manu, discussed earlier. Further owing to the demand from non-brahmin associations for

²³⁵ Shri Prakash, Reservations Policy for Other Backward Classes: Problems and Perspectives, in *The Politics of Backwardness: Reservation Policy in India* (V.A Pai Panandiker (ed.) Konark Publishers Pvt. Ltd., Delhi, 1997) 29, 37-39.

²³⁶ Shudras-a large number of the Shudra castes later came to be classified as Other Backward Classes under the Constitution of India

²³⁷ Shri Prakash, Reservations Policy for Other Backward Classes (n 235) 39; also see MN Srinivas, 'Caste in Modern India', (1957) 16 (4), *The Journal of Asian Studies*, 529, 533, 534.

²³⁸ Mani, *Debrahmanising History* (n 15) 314.

²³⁹ Ibid 314, 315.

²⁴⁰ (4/6/1884 – 3/8/1940), ruled from 1894 till his death.

²⁴¹ Also known as Rajarshi Shahu Maharaj (26/6/1874 – 6/5/1922).

²⁴² N.Chinnaswamy Sosale, *Nalavadi Krishnana Mysore* (Kannada University, Hampi, 2005) 18.

²⁴³ Ibid 2.

adequate representation in all public posts including educational institutions and public employment, the King appointed a Commission headed by Sir Lesley Miller in 1918. As per the recommendations of the Miller's Commission, 75% of the jobs were reserved for 'Backward Communities'²⁴⁴ in public service.²⁴⁵

Similarly, in Kolhapur, the young King heavily influenced by the ideologies propounded by social reformers Jyotiba Phule²⁴⁶ and Savitri bai Phule²⁴⁷, undertook a path breaking step in 1902 when he brought in a 50 percent reservation for untouchables and Shudras in educational institutions and in government jobs in his State, amidst opposition from the dominant castes.²⁴⁸ Since the new reservation policy was implemented, in 1912 there were only 35 Brahmins (who were initially an overwhelming majority), holding the administrative posts out of 95, paving way for people belonging to the downtrodden communities to be a part of the administration.²⁴⁹ This is widely seen as the first instance of caste-based reservation in modern India. By 1917, Shahu Maharaj made primary education free and compulsory to all, irrespective of caste and creed, being one of the first Indian Kings to do so, thereby paving way for the untouchables to access education.²⁵⁰ The other progressive measures he undertook include allowing untouchables to hospitals to get treatment in 1919, which was till then denied to them, outlawing caste-based discrimination in primary and high schools and colleges, and issuing orders that government offices should be free from the practice of untouchability and that Dalit employees must be treated with dignity and respect.²⁵¹ "He was one of those rare Kings who

²⁴⁴ Non-Brahmin communities dominated by Shudras and the Untouchables. Also see Miller Committee Report, 1919 (Adequate Representation of Communities in Public Service) (Round Table India, 11th December 2016) < https://roundtableindia.co.in/index.php?option=com_content&view=article&id=8894:miller-committee-report-1919&catid=115&Itemid=127 > accessed 6th May 2022.

²⁴⁵ Sosale, *Nalavadi Krishnana Mysore* (n 242) 85.

²⁴⁶ (1827-1890) Social reformer, thinker and anti-caste activist in Maharashtra. Worked extensively on eradication of untouchability and caste system and emancipation of women. Together with his followers, the Phule couple founded the Satya Shodhak Samaj (Society of Seekers Truth) to fight for equal rights to the people belonging to lower castes; also see Srinivas, *Caste in Modern India* (n 237) 533.

²⁴⁷ (1831-1897) Social reformer, poet and educationist in Maharashtra. Savitri bai is widely regarded as the first female teacher of India. Together with Jyotiba, she fought against discrimination based on caste and gender and opened first school for girls in Pune in 1848.

²⁴⁸ Siddharth, 'Shahu ji Maharaj: The Saviour King of the Backwards and Dalits' (2021) 13 (9), *Ambedkar Times* < <http://m.ambedkartimes.com/AT-19-May%2012,%202021.pdf> > accessed 6th May 2022; also see Tata Sivaihi, 'Bahujan Revolutionary King Chatrapati Shahu Maharaj', (14th January 2017, *Countercurrents.org*) < <https://countercurrents.org/2017/01/bahujan-revolutionary-king-chhatrapati-shahu-maharaj/> > accessed 6th May 2022; also see Srinivas, *Caste in Modern India* (n 237) 533.

²⁴⁹ Siddharth, *Shahu ji Maharaj* (n 248) 1.

²⁵⁰ *Ibid* 2.

²⁵¹ Siddharth, *Shahu ji Maharaj* (n 248); Abhiram Ghadyalpatil, *Rajarshi Shahu Chhatrapati of Kolhapur, a reformer ahead of his time* (10th August 2018, *Mint*) < <https://www.livemint.com/Leisure/PLkr7jdpCeZepho8RMVJbN/Rajarshi-Shahu-Chhatrapati-of-Kolhapur-a-reformer-ahead-of.html> > accessed 6th May 2022.

had a passionate concern for the upliftment of the poor and the downtrodden. He was a King and at the same time a fighter in the vanguard of social reform aimed at the lowered castes.”²⁵²

Apart from these Kings, in the first quarter of twentieth century, the rulers who introduced affirmative action policies for Backward classes include that of princely States of Baroda and Travancore.²⁵³ Untouchability was targeted as a major social disability arising out of caste system by the British ruled territories and some of the princely States and hence they enacted certain progressive legislation aimed at this end.²⁵⁴

2.5.2 Demand for Representation by the Depressed Classes

One of the first instances of the demand for representation of the Depressed Classes (untouchables) can be seen in 1925, where the Depressed Classes Mission Society of India, at its All India Conference, demanded their own elected representatives in all local and central bodies aligned with the percentage of their population in their respective jurisdictions.²⁵⁵ Further, in 1926, the Untouchables’ Conference demanded from the government, a complete separation from the Hindus, Muslims and Christians, stating that they were either oppressors or their competitors, from whom nothing could be expected.²⁵⁶

The Imperial Crown sent the Simon Commission to India in 1928. The leaders of political parties, who were opposing the policy of reservation, boycotted the Commission. However, Ambedkar and other leaders, as representatives of the Untouchables, met the Commission and demanded they consider the untouchables as a ‘distinct minority’ and provide them separate electorates. The Commission finally stated:

in all eight provinces there should be some reservation of seats for the depressed classes and the number of these seats, in relation to seats in general constituencies, should be three-quarters of the proportion of the depressed classes population to the total population of the electoral area of the province.²⁵⁷

²⁵² Translated from Marathi by GP Deshpande, originally in KK Chowdary, *Gazetteer*, as cited in GP Deshpande, ‘Modern History and Unmodern Minds’ (1991) 26 (27/28), *Economic and Political Weekly*, 1653, 1654.

²⁵³ Ashwini Deshpande, *Oxford India Short Introductions: Affirmative Action in India* (1st edn, Oxford University Press, 2013) 46.

²⁵⁴ *Ibid* 46,47.

²⁵⁵ C. Rupa, *Reservation Policy: Mandal Commission and After* (Sterling Publishers Pvt. Ltd., New Delhi, 1992) 8.

²⁵⁶ *Ibid* 8-10.

²⁵⁷ *Ibid* 10.

In the Second Round Table Conference in London in 1931, Ambedkar, as a representative of the depressed classes, reiterated his demand for reservation of seats for the depressed classes in separate electorates. But Gandhi, who represented the Indian National Congress, opposed special representation of depressed classes in any form, saying it would disintegrate the Hindu religion.²⁵⁸

The imperial government considered the importance of the demands for separate electorates by Ambedkar. Prime Minister Ramsay MacDonald announced his scheme of representation of Minorities on 16th August 1932. This scheme not only retained the separate electorates already provided to Muslims, Sikhs, Indian Christians, and Anglo Indians, but also extended it to the depressed classes.²⁵⁹ The scheme stated, “qualified voters of all depressed classes, could vote with caste Hindus in general constituencies and in addition, they were entitled to an extra vote for next twenty years in 71 special depressed classes constituencies.”²⁶⁰ By the creation of these special depressed classes constituencies, the members of the depressed classes could send their representatives who would become their voices in the legislature.

What followed is a classic example of Manusmriti and the mindsets rooted in Hindu dogmas at play in the 20th century. The privileged castes who had already accepted separate electorates for Muslims, Sikhs, Anglo Indians, and Indian Christians, took strong opposition to this move of the Prime Minister. Gandhi, who was a Vaishya by caste and upholder of the Hindu values, opposed the separate electorates for the Untouchables and declared ‘Fast Unto Death’ against their rights.²⁶¹ Ambedkar was firm on his stand. Ambedkar pointed:

There have been many Mahatmas in India whose sole objective was to remove Untouchability and to elevate and absorb the Depressed Classes, but every one of them has failed in his mission. Mahatmas have come and Mahatmas have gone. But the Untouchables have remained Untouchables.²⁶²

Many nationalist leaders undertook measures to bring consensus between the two giant leaders. As part of these efforts, temples, wells and other public places, which previously banned their entry were opened to untouchables.²⁶³ Finally Ambedkar and Gandhi met followed by

²⁵⁸ Saxena, *British Empire in India* (n 227) 240.

²⁵⁹ Ibid.

²⁶⁰ Rupa, *Mandal Commission and After* (n 255) 13.

²⁶¹ Mani, *Debrahmanising History* (n 15) 358.

²⁶² Babasaheb Ambedkar Writings and Speeches, vol 9: 315, as cited in Mani, *Debrahmanising History* (n 15) 360.

²⁶³ Rupa, *Mandal Commission and After* (n 255) 14; Praveen S Rashtrapal, *The Betrayal: An Inside Story* (Samrudh Bharat Publication, Mumbai, 2003) 4.

prolonged deliberations on the issues of eradication of untouchability and the representation of untouchables. An agreement was then signed on 24th September 1932, between the leaders of untouchables and caste Hindus. This agreement popularly came to be known as the ‘Poona Pact’. Under this agreement, the depressed classes were to get 148 reserved seats in joint electorates in provincial legislatures instead of 71 seats reserved in the separate electorates as provided in the Prime Minister’s Scheme.²⁶⁴ The Poona Pact is significant because that agreement brought the present form of political reservation into being. The provisions for reservation were incorporated in the Government of India Act, 1935. Finally after due deliberations it was included in the present Constitution of India under Articles 330 and 332.²⁶⁵ Indeed, the numerous affirmative action policies undertaken in pre-independent India had a huge influence on the framers of the Indian Constitution as they drafted a Constitution for a free India and they incorporated various provisions on similar lines to provide adequate representation to all sections of the society.²⁶⁶

At this juncture it must also be noted that Ambedkar himself was a victim of caste-based humiliation and untouchability. Beverley Nicholas who considered Ambedkar as one of the six best brains in India in the mid-twentieth century wrote:

...a creature from whose touch the extreme orthodox must fly as though he were a leper, a monster whose slightest contact compels them to precipitate themselves into the nearest bath-tub, to soap and pray and pray and soap, so that the fifth of Dr. Ambedkar –(M.A. London) – the shame of Dr. Ambedkar –(high honours at Columbia University)- the plague and scourge of Dr. Ambedkar –(special distinction at Heidelberg)- should be washed for ever from their immaculate and immortal souls.²⁶⁷

Nicholas further added “we are not talking of the past, but of the year 1944. These are not legends, fairy tales, gypsy songs; they are news paragraphs, stop press.”²⁶⁸

It must be noted that some scholars argue that caste system is constructed by the colonial regime of the British.²⁶⁹ Nicolas Dirks’ argued that:

Caste (as we know it today) is a modern phenomenon, that it is specifically, the product of a historical encounter between India and Western colonial rule. By this I do not mean

²⁶⁴ Saxena, *British Empire in India* (n 227) 240.

²⁶⁵ Rashtrapal, *The Betrayal* (n 263) 5, 6.

²⁶⁶ See Section 3.2 of Chapter 3 at 79.

²⁶⁷ Beverley Nicolas, *Verdict on India* (Thacker & Co., Bombay, 1946), 30 as cited in Mani, *Debrahmanising History* (n 15) 350.

²⁶⁸ Ibid 350, 351.

²⁶⁹ Frank de Zwart, ‘The Logic of Affirmative Action : Caste, Class and Quotas in India’ (2000) 43 (3) *Acta Sociologica* 2000, 235, 235, 237.

to imply that it was simply invented by the too clever British...But... it was under the British that 'caste' became a single term capable of expressing, organising, and above all 'systematising' India's diverse forms of social identity, community, and organisation... in short, colonialism made caste what it is today...making caste the central symbol of Indian society.²⁷⁰

However, the discussions in this chapter reveal that caste system was present in Indian society centuries before the arrival of the British. Even if the British gave greater institutional prominence to it as argued by Dirks and others, caste had to be existing in some form or the other for them to do so. As discussed above, there were many social movements led by people of the marginalised communities against caste system centuries before the British arrived in India. Many native Kings also recognised caste and enacted affirmative action policies in favour of the downtrodden castes to give them representation.²⁷¹ The British however conducted the first caste census in 1881. It was held once every 10 years, the last one conducted in 1931.²⁷² The idea was to put down on paper the variety of castes in a hierarchical manner, one that could be illustrated through statistics and tables. The graded hierarchy however existed prior to the arrival of the British as noted earlier in this chapter. It was not simply one of the many identities, it was the basis of social identity. Caste had already percolated every core of socio-political life in India when the British established their rule.²⁷³ They only officially recorded the pre-existing system. In the pre-British era, the rules laid down by Hindu religious texts like Manusmriti dictated a person's occupation based on his caste. However, by conducting caste census, the British based policies on it. One such is the affirmative action policy to the depressed classes which was opposed by Gandhi as discussed above. The thesis that the British imperialists created a new social structure which was accepted by Indians as reality, is far from the truth. Indians were only able to accept it because the system was already existing. The British merely acknowledged and legally recorded it.

2.6 Untouchability in Post-independent India

It is important to note that the caste system is not a system of the past as will be discussed throughout this thesis. It is very much present today and forms an essential feature of Hinduism, with graded inequality being the essence of it. The cardinal faith of every Hindu rests on the

²⁷⁰ Nicolas Dirks, *Castes of Mind : Colonialism and the Making of Modern India* (Delhi : Permanent Black, 2002) 5 as cited in Mani, *Debrahmanising History* (n 15) 197.

²⁷¹ See Sections 2.4 at 46 and 2.5.1 at 50 of this Chapter.

²⁷² Krzysztof Iwanek, 'Counting Castes in India' (The Diplomat, 06th August 2016) < <https://thediplomat.com/2016/08/counting-castes-in-india/> > accessed 20th October 2022.

²⁷³ Mani, *Debrahmanising History* (n 15) 198.

fact that the Hindu Social Order is a divine order.²⁷⁴ The institution of caste remains the same but the types and forms of discrimination have changed over a period of time. Taking cognizance of the disabilities created by the caste system, the framers of the Indian Constitution specifically enacted provisions for the protection and advancement of the lowered castes, particularly the Scheduled Castes (SCs, former untouchables) and the Scheduled Tribes (STs, tribal population).

When India became independent, the objectives before the Constituent Assembly were to constitute India into a sovereign democratic republic and to secure its citizens justice, liberty, equality, and fraternity.²⁷⁵ The ultimate aim of the founding fathers of the Indian Constitution was to have a welfare State and an egalitarian society protecting the aims and aspirations of the people of India.²⁷⁶ As it stands today, the Constitution proclaims India to be a Sovereign Socialist Secular Democratic Republic.²⁷⁷ More significantly it must be noted that the Indian Republic is democratic. The institutions that are set up under the Constitution shall seek to give effect to democracy in India, which is to be sustained by adult suffrage, fundamental rights, and an independent judiciary.²⁷⁸ In many rulings, the Supreme Court has held democracy to be a part of the basic structure of the Constitution.²⁷⁹

It must be noted that the Constitution is egalitarian and progressive in its very letter and spirit. This supreme law of the land came into being in a soil which is basically undemocratic and believes in discrimination based on birth as an accepted value. The provisions dealing with the eradication of untouchability and affirmative action in post Constitution era will be dealt in detail in Chapter 3. Despite all the efforts made by various rulers over a period of time and the provisions of the Indian Constitution, to abolish discrimination, the identity of caste continues to play a dominant role in deciding the fate of individuals in various fields in India. Caste-based discrimination, untouchability in particular, manifests itself in variety of forms, adapting to changing times and circumstances.

²⁷⁴ Ambedkar, *Riddles in Hinduism* (n 117) 105.

²⁷⁵ Singh, *VN Shukla's Constitution of India* (n 232) A-21.

²⁷⁶ Ibid.

²⁷⁷ Preamble, Constitution of India.

²⁷⁸ Singh, *VN Shukla's Constitution of India* (n 232) A-23.

²⁷⁹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1: AIR 1975 SC 2299; *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651: AIR 1993 SC 412.

The National Crime Records Bureau (NCRB) data reveals that the total reported crimes against SCs in 2020 was 50,291, the rate of total crime being 25%.²⁸⁰ The data shows variety of crimes against SCs including murder, attempt to commit murder, simple and grievous hurt, acid attack, assault on women with intent to outrage her modesty, sexual harassment, assault or use of criminal force on women with intent to disrobe, voyeurism, stalking, assault on children under Protection of Children from Sexual Offences Act, kidnapping and abduction, rape, attempt to commit rape, rape of children, rioting, robbery, dacoity, arson, criminal intimidation, intentionally insult or intimidate with intent to humiliate, occupy/dispose land belonging to SCs, prevent or deny or obstruct usage of public place/passage, social boycott and crimes under the SC/ST (POA) Act.²⁸¹ The number of cases pending investigation from previous years was 18,115. The total cases for investigation was 68,456.²⁸² Total cases for trial was 230,653.²⁸³ Cases convicted amount to 3,241, while cases acquitted amount to 3,778.²⁸⁴ Rate of conviction was 42.4%. Cases pending trial at the end of the year was 222,979 with pendency percentage of 96.7%.²⁸⁵

This data reveals the vast number of atrocities that take place on Scheduled Castes on a daily basis. The poor rate of conviction, high rate of acquittal and large percentage of pendency of cases is also very evident. The fact that separate sections for crimes against SCs and STs is given in the NCRB show how vulnerable they are compared to the rest of the population. It also reveals how caste operates in the 21st century India and how such heinous atrocities are meted out on Dalits. It must be noted that the above data amounts to only reported cases. Hundreds of cases go unreported due to various reasons. This shows how Untouchability and the disabilities that arise due to it, are still prevalent in India and how they are taken to be a part and parcel of the Indian life.

The Indian State can deliver a nuclear bomb and launch satellites but not universal primary education and decent public health. This is not an accident. It is a choice made by the elite who have been in power for 60 years and reflects their values... The Indian

²⁸⁰ 'Crime in India 2020 – Statistics Volume II' (National Crime Records Bureau, Ministry of Home Affairs, Government of India, New Delhi) < <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%202.pdf> > accessed 6th May 2022, 517.

²⁸¹ Ibid 518-532.

²⁸² Ibid 539.

²⁸³ Ibid 551.

²⁸⁴ Ibid 553.

²⁸⁵ Ibid 554.

State has been mainly manned by upper caste elites and they do not consider the lower orders deserving of education and health.²⁸⁶

These are not merely biproducts of historical injustices. We must appreciate that these inequalities are being reproduced in independent India which is a democratic Republic with one of the most progressive Constitutions in the world.

Data point more towards continuation of traditional hierarchies rather than towards their dissolution, with upper castes at the top, SCs-STs at the bottom and OBCs somewhere in between... what is very revealing is that lip-service to merit notwithstanding, contemporary, formal, urban sector labour markets show a deep awareness of caste, religious, gender and class cleavages, and that discrimination is very much a modern sector phenomenon, perpetuated in the present. So it is neither a thing of the past nor confined to the rural areas.²⁸⁷

Thus, the erstwhile untouchables came to be known as Scheduled Castes (SCs) under the Constitution of India,²⁸⁸ and Dalits (oppressed, crushed or broken) in common parlance,²⁸⁹ and the tribal population came to be known as Scheduled Tribes (STs)²⁹⁰ and Adivasis (indigenous population) in common parlance. A large part of the Shudras came to be classified as socially and educationally backward classes (SEBCs) / Other Backward Classes (OBCs). As seen in this chapter, untouchability continues to exist in the modern Indian society with multiple forms of discrimination and atrocities on the lowered castes resulting from its practice. The next chapter discusses the provisions for its eradication and upliftment of the downtrodden through *inter alia* affirmative action measures.

²⁸⁶ Meghnad Desai, 'The Hindu Rate of Backwardness', (28th July 2013) The Sunday Express, *as cited in* Mani, *Debrahmanising History* (n 15) 397.

²⁸⁷ Ashwini Deshpande, *The Grammar of Caste: Economic Discrimination in Contemporary India* (Oxford University Press, Delhi, 2011) xiv-xv as cited in Mani, *Debrahmanising History* (n 15) 401.

²⁸⁸ Article 341, Constitution of India, also see The Constitution (Scheduled Castes) Order, 1950.

²⁸⁹ 'Dalits', World Directory of Minority and Indigenous Peoples < <https://minorityrights.org/minorities/dalits/> > accessed 6th May 2022.

²⁹⁰ Article 342, Constitution of India, also see The Constitution (Scheduled Tribes) Order, 1950.

Chapter 3: Laws Against Discrimination: A Critical Review

“The abolition of Untouchability is the arch of the Indian Constitution to make its Preamble meaningful and to integrate the Dalits in the national mainstream.”²⁹¹

The previous chapter traced the trajectory of caste system and the practise of untouchability which is the most heinous form of caste-based discrimination. It is practised even to this day, in its changing types and forms. Taking cognizance of this, several laws have been framed over a period of time, to regulate, prohibit, and eradicate various discriminatory practises in India, which this chapter critically reviews. The previous chapter ended with the present status of the Dalits in India. The first part of this chapter deals with the International human rights conventions pertinent to this thesis, that India has ratified. The second part analyses the provisions of the Indian Constitution on non-discrimination, affirmative action, and other relevant mechanisms dealing with the issues of caste discrimination.

3.1 India and International Human Rights Instruments

India is a signatory to various Human Rights Conventions and has ratified several of them. Though the table below lists the human rights instruments India is party to, which contain provisions for the protection of the rights of the vulnerable, this section briefly analyses India's obligations with respect to three important human rights treaties. For the purposes of this chapter, the scope is limited to only those aspects which relate to caste-based discrimination against Dalits, with a particular focus on education and employment.

The table²⁹² below shows the Ratification Status for India.

²⁹¹ K Ramaswamy J in State of Karnataka v. Appa Balu Ingale, AIR 1993 SC 1126 at 1134 *as cited in* MP Jain, *MP Jain Indian Constitutional Law*, (Justice J Chelameswar and Justice DS Naidu ed., 8th ed reprint, Lexis Nexis, 2020) 1049.

²⁹² ‘UN Treaty Body Database’, United Nations Human Rights Treaty Bodies, <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN> accessed 7th May 2022.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
CAT- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	14 Oct 1997	
CAT-OP – Optional Protocol of the Convention Against Torture		
CCPR – International Covenant on Civil and Political Rights		10 Apr 1979 (a)
CCPR-OP2-DP – Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of death penalty		
CED – Convention for the Protection of All Persons from Enforced Disappearance	06 Feb 2007	
CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women	30 Jul 1980	09 Jul 1993
CERD- International Convention on the Elimination of All Forms of Racial Discrimination	02 Mar 1967	03 Dec 1968
UNESCO Convention Against Discrimination in Education		

CESCR- International Covenant on Economic, Social and Cultural Rights		10 Apr 1979 (a)
CMW- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families		
CRC- Convention on the Rights of the Child		11 Dec 1992 (a)
CRC-OP-AC- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict	15 Nov 2004	30 Nov 2005
CRC-OP-SC- Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	15 Nov 2004	16 Aug 2005
CRPD- Convention on the Rights of Persons with Disabilities	30 Mar 2007	01 Oct 2007

It must be noted that the term ‘caste’ finds no place in any of the international conventions. However, there are certain other terms such as ‘social origin’ and ‘birth’ used in Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and ‘descent’ and ‘ethnic origin’ used in Article 1(1) of the International Convention on Elimination all forms of

Racial Discrimination (ICERD), which may be broad enough to include caste as a prohibited marker against discrimination.

3.1.1 International Covenant on Civil and Political Rights

As a State Party to the ICCPR, India,

undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status.²⁹³

India is bound by the provisions of the Covenant which include taking necessary steps in accordance with its constitutional processes and provisions and adopting such laws or other measures as may be necessary to give effect to the rights recognized in the Covenant,²⁹⁴ and also ensuring that any person whose rights are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity.²⁹⁵ It must be noted that Article 2(3) requires that the “State Party make reparations to individuals whose covenant rights have been violated.”²⁹⁶ “General comments” or “general recommendations” are published by treaty bodies. They consist of authoritative interpretations of their respective human rights conventions covering a range of subjects from interpretation of substantive provisions to general guidance to States on the information that should be included in the State reports relating to specific articles.²⁹⁷ General Comment No. 31 specifically notes that “without reparations to individuals whose rights under the Covenant are violated, the obligation to provide an effective remedy, which is central to the efficacy of Article 2(3) is not discharged.”²⁹⁸

This was also noted by the Committee on Elimination of Racial Discrimination (CERD), established under the ICERD. The committee recorded that although the Supreme Court of India and the High Courts have the jurisdiction to award compensation to the victims of human

²⁹³ International Covenant on Civil and Political Rights, 1966, Article 2 (1).

²⁹⁴ Ibid., Article 2 (2).

²⁹⁵ Ibid., Article 2 (3).

²⁹⁶ Human Rights Committee, ‘General Comment No. 31’ (80th Session, 2004) CCPR/C/21/Rev.1/Add.13, Para 16.

²⁹⁷ ‘General Comments: Treaty Bodies’, United Nations Human Rights Office of the High Commissioner, <<https://www.ohchr.org/en/treaty-bodies/general-comments>> accessed 7th May 2022.

²⁹⁸ Human Rights Committee, ‘General Comment No. 31’ (80th Session, 2004) CCPR/C/21/Rev.1/Add.13, Para 16.

rights violations,²⁹⁹ there is no specific statute providing for the right of individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination as required by Article 6 of the Convention.³⁰⁰ The Committee recommended special measures to be taken by authorities to prevent discrimination against Scheduled Castes and Tribes, and in cases where such acts are committed, investigations need to be conducted thoroughly, punish the guilty, and provide just and adequate reparations to victims.³⁰¹ This is important to assess if India has complied with its obligation of providing effective remedies to victims of caste-based discrimination, in particular manual scavengers and Dalit students who are victims of caste discrimination in higher educational institutions, and if yes, what reparations are granted. This will be discussed in Chapter 7.

The State Parties undertake to submit reports on the measures they have adopted to give effect to the rights enshrined in ICCPR and the progress made (i) within one year of the entry into force of the covenant (ii) whenever the Human Rights Committee (HRC), established by the Covenant, requests.³⁰² The reports must also include factors and difficulties, if any, in the implementation of the covenant.³⁰³ The Committee considers the reports and submits its Concluding Observations to the State Party.³⁰⁴ However, it must be noted that to-date, there have only been four periodic reports submitted by India.

In its report in 1997, India acknowledged that *inter alia* the size of the country, huge population, poverty, and disparities in the wealth among different social groups, affect the advancement of rights. It also noted the persistence of traditional practices and customs which lead to discrimination against the underprivileged castes and classes and other minorities, as well as recognising ethnic, cultural, and religious tensions as impediments to the implementation of the Covenant.³⁰⁵ However it is important to note that the Covenant is designed with the purpose of correcting the very issues India is acknowledging as impediments in its report.

²⁹⁹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995 and 2006 provide compensation for SCs and STs. Also see page 231 of Chapter 7.

³⁰⁰ Para 25, CERD, 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: India', (49th Session, 1996) CERD/C/304/Add.13.

³⁰¹ Ibid., Para 27.

³⁰² International Covenant on Civil and Political Rights, 1966, Article 40 (1).

³⁰³ Ibid., Article 40 (2).

³⁰⁴ Ibid., Article 40 (4) (5).

³⁰⁵ Human Rights Committee, 'Concluding Observations of the Human Rights Committee: India', (1997) CCPR/C/79/Add.81, Para 5.

The HRC positively noted India's explanation of there being a "broad range of democratic institutions and a comprehensive Constitutional and legal framework for the protection of human rights,"³⁰⁶ including the establishment of the National Commissions for Human Rights, Scheduled Castes, Scheduled Tribes, Women and Minorities.³⁰⁷ It also noted references to the international human rights instruments by the higher judiciary.³⁰⁸ Mainly, the Committee recommended that since international treaties are not self-executing in India and that individuals cannot invoke them before the courts of law, steps need to be taken to incorporate the provisions of the Covenant into domestic law to its full extent. It was also recommended that the Optional Protocol to the Covenant be ratified so that the Committee would be able to receive individual communications relating to India.³⁰⁹ However, to-date India has not ratified the Optional Protocols to the Covenant.

One of the major concerns expressed by the Committee is that despite a number of measures being taken by the government, people belonging to underprivileged groups including the Scheduled Castes and the Scheduled Tribes continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant including, inter-caste violence, bonded labour and discrimination of all kinds. It further noted with regret that the *de facto* perpetuation of the caste system entrenches social differences and contributed to such violations.³¹⁰ The Committee acknowledged the efforts made by the State over the years to eradicate discrimination. It recommended measures including education programmes to be adopted at national and state levels, to combat all forms of discrimination against vulnerable groups, in accordance with Article 2, paragraph 1 and Article 26 of the Covenant.³¹¹

It must be noted that Article 26 of the Covenant embodies the content of Articles 14 and 15 of the Indian Constitution which deal with the principles of equality and non-discrimination, and will be discussed later in this chapter. The Indian Constitution came into force in 1950 and India ratified the Covenant in 1979. The comments by the HRC were made in 1997. The Indian Constitution, being the supreme law of the land, was in place, essentially propounding the same

³⁰⁶ Ibid., Para 6.

³⁰⁷ Ibid., Para 7,8.

³⁰⁸ Ibid., Para 6.

³⁰⁹ Ibid., Para 13.

³¹⁰ Ibid., Para 15.

³¹¹ Ibid.

values and principles as the Covenant, even before the Covenant was drafted. The main problem lies in the poor implementation of laws, be it the Constitution, domestic legislation, or the Covenant, which has not been majorly commented upon by the Committee in its report. On a concluding note the Committee requested that the government of India take the necessary measures as suggested in its report and submit its periodic report by 31st December 2001.³¹² In 2004, the Committee noted in its General Comment No. 31 that even in those cases where the legal systems of State Parties are formally endowed with the appropriate remedy, rights granted under the Covenant are still violated and that this can be attributed to the failure of the remedies to function effectively in practice. Accordingly the Committee urged the State Parties to provide information on obstacles to the effectiveness of existing remedies in their periodic reports.³¹³

The fourth periodic report was initially due in 2001. However India submitted its report on 22nd September 2021. In its report India answered HRC's list of issues prior to reporting. Relevant to this thesis are the issues on non-discrimination on which HRC had listed specific questions.³¹⁴ India noted how the Constitutional framework for anti-discrimination has evolved over time through legislations and interpretation of laws by the Supreme Court. It stressed the values of non-discrimination and substantive equality enshrined in Articles 14 to 18 of the Indian Constitution (discussed later in this chapter). It further stated that the Indian legal framework prohibits both horizontal and vertical discrimination. The normative framework established by Articles 2 and 26 of the Covenant is embodied by the legal framework of India. To demonstrate this, it cited the Supreme Court decision on *Jeeja Ghosh v. Union of India*³¹⁵, where the “court held that equality implies “embracing the notion of positive rights, affirmative action and reasonable accommodation.””³¹⁶ It further noted how the anti-discrimination legal framework in India takes into account direct, indirect and also intersectional discrimination at both horizontal and vertical levels. The case of *Vidyadharan v. State of Kerala*³¹⁷ was used to demonstrate this, where the Supreme Court observed “experiences of assault are different in the case of a woman who belongs to a SC community and has a disability because the assault

³¹² Ibid., Para 35.

³¹³ Human Rights Committee, ‘General Comment 31’ (80th Session, 2004) CCPR/C/21/Rev.1/Add.13, Para 20.

³¹⁴ Human Rights Committee, ‘List of Issues Prior to Submission of the fourth periodic report of India’ (2019) CCPR/C/IND/QPR/4, Para 7.

³¹⁵ *Jeeja Ghosh v. Union of India* (2016) 7 SCC 761.

³¹⁶ Human Rights Committee, ‘Fourth Periodic Report submitted by India under Article 40 of the Covenant pursuant to the optional reporting procedure’ (2021) CCPR/C/IND/4, Para 18.

³¹⁷ *Vidyadharan v. State of Kerala* (2003) < <https://indiankanoon.org/doc/9699283/> > accessed 7th May 2022.

is a result of the interlocking of different relationships of power at play.”³¹⁸ It further noted that the administrative bodies are also bound by the principles of natural justice, non-discrimination and equality in their actions and decisions.³¹⁹ As of February 2022, the HRC was yet to consider this report and make its concluding observations.

Dealing with how international conventions can be executed in the country, India noted Article 51 of the Constitution which states that international conventions are not self-executing and require specific legislative incorporation for execution in domestic courts.³²⁰ However it also noted the Supreme Court judgment in *Vishaka v. State of Rajasthan*³²¹ which held that “any international convention not inconsistent with fundamental rights and in harmony with their spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.”³²² Hence, specific legislation is not required to the extent that international norms are consistent with the domestic normative principles. It is interesting to note that India has pointed out this in its report, while it has continued to deny the application of a few conventions like the ICERD when it comes to specific issues relating to caste, incorporating it under social origin and birth, as will be discussed further in the sections below.

India also dealt with the importance of institutional mechanisms such as National Human Rights Commission(NHRC), National Commission for Scheduled Castes(NCSC) and National Commission for Scheduled Tribes(NCST).³²³ A detailed analysis of these commissions are made later in this chapter. However, it is important to note that a Parliamentary Committee’s report as recently as March 2022 stated that NCST has been dysfunctional for the last 4 years, and that a single report has not been delivered to the Parliament. Further the rate of pendency of resolution of cases and complaints and the cases received by it is almost 50%.³²⁴

³¹⁸ Human Rights Committee, ‘Fourth Periodic Report submitted by India under Article 40 of the Covenant pursuant to the optional reporting procedure’ (2021) CCPR/C/IND/4, Para 19.

³¹⁹ Ibid., Para 21.

³²⁰ Ibid., Para 6.

³²¹ AIR 1997 SC 3011.

³²² Human Rights Committee, ‘Fourth Periodic Report submitted by India under Article 40 of the Covenant pursuant to the optional reporting procedure’ (2021) CCPR/C/IND/4, Para 6.

³²³ Ibid., Para 9.

³²⁴ ‘National Commission for Scheduled Tribes is dysfunctional: House Panel’, (The Hindu, 18th March 2022) <<https://www.thehindu.com/news/national/national-commission-for-scheduled-tribes-is-dysfunctional-house-panel/article65238335.ece>> accessed 7th May 2022.

As noted above, India acknowledged that it has taken note of direct and indirect discrimination with intersectional angles at horizontal and vertical levels. However, as can be seen in the upcoming chapters, there is very poor implementation of the legal framework on the ground. India further noted that it is committed to securing to all, particularly the weaker sections of society, the Covenant rights, especially the right to life with liberty and dignity. In this regard, there have been efforts at addressing violence against the SCs and STs by ensuring that the law is stringent and effective and the enforcement agencies are sensitised to the issue.³²⁵ It also dealt with the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and stated that the “amendment imputes the knowledge regarding the caste or tribal identity of the victim on to the accused if the accused has personal knowledge about the victim or his family and thus strengthens the accountability for offences under the Act.”³²⁶ While this is a welcome move, the loopholes in this section are discussed in Chapter 7, where recommendations are also made as to how to improve the Act. India also noted that there is a timeline of 60 days being prescribed for completion of investigation and filing of charge-sheet in the court.³²⁷ However, as seen towards the end of the previous chapter, the pendency rate of cases before the court is extremely high, only to show that the legislation has not been effective on the ground.

On manual scavenging, India noted that the 1993 Prohibition Act has been repealed by the 2013 Act on manual scavenging.³²⁸ It must be noted that nowhere in the 2013 Act does it mention that the 1993 Act has been repealed. In the absence of such a provision, it only means that the 1993 Act is still in place. India also mentioned that the 2013 Act specifically prohibits engagement or employment of any person for hazardous cleaning of a sewer or a septic tank.³²⁹ However it conveniently does not cite cases where such cleaning is allowed, using safety equipment prescribed in the Rules. The report also failed to acknowledge the poor rate of conviction in cases where the Act is not implemented resulting in the deaths of manual scavengers.³³⁰

³²⁵ Human Rights Committee, ‘Fourth Periodic Report submitted by India under Article 40 of the Covenant pursuant to the optional reporting procedure’ (2021) CCPR/C/IND/4, Para 22.

³²⁶ Ibid., Para 23.

³²⁷ Ibid.

³²⁸ See Chapter 5 for detailed discussion.

³²⁹ Human Rights Committee, ‘Fourth Periodic Report submitted by India under Article 40 of the Covenant pursuant to the optional reporting procedure’ (2021) CCPR/C/IND/4, Para 25.

³³⁰ See Chapter 5 for detailed discussion.

3.1.2 International Covenant on Economic, Social and Cultural Rights

As a State Party to ICESCR, India undertakes to:

take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.³³¹

This emphasises the role of the international community and also the enactment of domestic legislation to give effect to the rights enshrined in this Covenant. India also undertakes to:

guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³³²

The Committee on Economic Social and Cultural Rights (CESCR), established to carry out the functions of monitoring allotted to the Economic and Social Council (ECOSOC) under part IV of the Covenant,³³³ noted in General Comment No. 20, the role that socio-economic inequality and historical and contemporary forms of discrimination play in undermining the fulfilment of economic, social, and cultural rights.³³⁴ It also emphasised that equality and non-discrimination are fundamental components of international human rights law and are essential for the enjoyment of the rights guaranteed by the Covenant,³³⁵ including the rights to just and favourable conditions at work (Article 7), and the right to education (Article 13). Article 2(2) recognises ‘social origin’, ‘birth’ and ‘other status’ as prohibited markers of discrimination, like Article 2(1) of ICCPR, discussed above. CESCR noted specifically that the inclusion of “other status” shows that other grounds may be incorporated and that the list is not exhaustive.³³⁶ It noted how the nature of discrimination evolves over time and changes with contexts and that a flexible approach needs to be taken in interpreting this phrase. The kinds of differential treatment which reflect the experiences of vulnerable social groups which have suffered and continue to suffer marginalisation tend to fall in this category.³³⁷ Further, CESCR explained that “social origin” refers to a person’s inherited social status.³³⁸ It referred to

³³¹ International Covenant on Economic, Social and Cultural Rights, 1966, Article 2 (1).

³³² Ibid., Article 2 (2).

³³³ Ibid., Article 16 (2); also see ‘Committee on Economic, Social and Cultural Rights’, United Nations Office of the High Commissioner < <https://www.ohchr.org/en/treaty-bodies/cesecr> > accessed 8th May 2022.

³³⁴ Committee on Economic Social and Cultural Rights, ‘General Comment No. 20’ (42nd Session, Geneva, 2009) E/C.12/GC/20, Para 1.

³³⁵ Ibid., Para 2.

³³⁶ Ibid., Para 15.

³³⁷ Ibid., Para 27.

³³⁸ Ibid., Para 24.

General Comment No. 29 of CERD, discussed below, and noted that the prohibited marker of “birth” under Article 2(2), includes descent, especially on the basis of caste and analogous systems of inherited status.³³⁹

Further, it must also be noted that the Covenant may not be interpreted to mean that any State, group or individual, has any right to engage in any activity aimed at the destruction of the rights or freedoms recognised by the Covenant or “their limitation to a greater extent than is provided” for therein.³⁴⁰ Also that any “restriction or derogation from any of the fundamental human rights so recognised in this Covenant or existing in any country by virtue of law, conventions, regulations, or custom, shall not be admitted merely on the pretext of the Covenant not recognising such rights.”³⁴¹ This is particularly important since the Indian Constitution, discussed later in this chapter, recognises the right to non-discrimination and holds caste as a prohibited marker.

Going by the above, even though ‘caste’ is not specifically mentioned as a prohibited marker of discrimination, it can be inferred that ‘caste’ falls within Article 2(2) of this Covenant, as it falls within the terms, ‘social origin’, ‘birth’, and ‘other status’. Giving an inclusive interpretation, it can be said that this Covenant prohibits caste-based discrimination. It must also be noted that Article 2 of the Convention of the Rights of the Child to which India is a Party, also holds “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status” as prohibited markers of discrimination.³⁴²

CESCR stated in General Comment No. 20 that discrimination constitutes:

any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment.³⁴³

³³⁹ Ibid., Para 26.

³⁴⁰ International Covenant on Economic, Social and Cultural Rights, 1966, Article 5.

³⁴¹ Ibid.

³⁴² Convention on the Rights of the Child, 1989, Article 2.

³⁴³ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 20’ (42nd Session, Geneva, 2009) E/C.12/GC/20, Para 7.

With regards to the right to education, CESCR also makes it very clear that prohibition against discrimination under Article 2(2), “is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”³⁴⁴ That is to say, the principle of non-discrimination is inalienable and needs to be followed throughout without any preconditions or prejudices. Further it noted:

the adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.³⁴⁵

Consequently, this implies that affirmative action policies to bring the marginalised groups to the mainstream are not a violation of the right to non-discrimination. CESCR also encourages the State Parties to evolve such strategies, policies, and action plans to address discrimination, both formal and substantive, and adopt temporary special measures to achieve equality. Economic policies must be so designed as to not discriminate the enjoyment of the Covenant rights. It is also vital for public and private institutions to develop action plans to address discrimination. It is incumbent on the State to ingrain human rights education on public servants like judges by conducting required training programmes to that effect. The very foundations on which discrimination survives and thrives, and the notions of superiority and/or inferiority based on the prohibited grounds need to be dismantled through incorporating the doctrines of equality and non-discrimination in all-inclusive education systems. The onus lies on the State Parties to adopt preventive measures to avoid marginalisation of new groups.³⁴⁶ How the Indian Constitution embodies the provisions for affirmative action is dealt with later in this chapter.

CESCR considered India’s report in 2008 and regretted in the introduction that information on Articles 1 to 5 of the Covenant was not furnished by India.³⁴⁷ But the contribution of the Supreme Court of India to the development of international jurisprudence on justiciability of economic, social, and cultural rights by proactively interpreting the Constitution was

³⁴⁴ Committee on Economic, Social and Cultural Rights, ‘General Comment No. 13’ (21st Session, 1999) E/C.12/1999/10, Para 31.

³⁴⁵ Ibid., Para 32.

³⁴⁶ Ibid., Para 38.

³⁴⁷ Committee on Economic, Social and Cultural Rights, ‘Concluding Observations of the Committee on Economic, Social and Cultural Rights: India’ (40th Session, 2008) E/C.12/IND/CO/5, Para 2.

appreciated.³⁴⁸ The Committee listed subjects of concern and regretted India's position apropos its legal obligations arising under the Covenant and their claim that the realisation of the rights under the Covenant are progressive in nature.³⁴⁹ The lack of domestic legislation which gives total effect to the Covenant was noted along with the lack of effective mechanisms to co-ordinate and ensure administrative and policy measures relating to the rights in the Covenant, and the Committee held this to be a major impediment to the equal and effective implementation of the Covenant.³⁵⁰ However, as discussed below, the Committee noted that India has the ability to immediately implement some of the core obligations.³⁵¹

CESCR observed that despite the guarantee of non-discrimination by the Constitution and also penal statutes, widespread and often socially accepted discrimination, harassment, and violence against marginalised groups including SCs and STs is persistent.³⁵² It was gravely concerned about the lack of progress made by India in combating *de facto* caste-based discrimination despite the legal prohibitions like the SC/ST(POA) Act 1989. It noted particularly the low rate of prosecution of crimes against SCs and STs and the prevailing hostility and discriminatory attitude in law enforcement, especially the police, which is a very serious obstacle in access to justice for the victims of atrocities.³⁵³ It also noted with concern that SCs and STs women and children constitute a large proportion of victims of sexual exploitation and trafficking.³⁵⁴ It observed that, despite the enactment of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 and other legislation, there remains a prevalence of bonded labour, child labour, and other exploitative labour conditions in India, including weak enforcement of minimum wages for work. It noted the insufficient enforcement of labour legislation at all levels and the lack of awareness amongst employers of the existing rules and standards.³⁵⁵ A critical analysis of the prevailing situation on the ground is made in Chapter 5.

The Committee observed that in its pursuit of economic growth, India has overlooked its obligations to fully integrate human rights, especially the ones enshrined in this Covenant in

³⁴⁸ Ibid., Para 6.

³⁴⁹ Ibid., Para 8.

³⁵⁰ Ibid., Para 10.

³⁵¹ Ibid., Para 45.

³⁵² Ibid., Para 13.

³⁵³ Ibid., Para 14.

³⁵⁴ Ibid., Para 27.

³⁵⁵ Ibid., Paras 19, 22.

its poverty-reduction strategies.³⁵⁶ It noted the low quality of education in, and underfunding of public schools, and the widespread disparity in enrolment and drop-out rates in primary schools negatively affecting girls and children belonging to SCs, STs and Muslim communities.³⁵⁷ The Committee was of the view that India has the ability to immediately implement the rights enshrined in Part II of the Covenant (relating *inter alia* to the general obligations and non-discrimination provisions), and to at least meet the core obligations under Part III, which provides the substantive rights, including the right to education, and rights related to safe working conditions. It recommended India take appropriate legal measures to integrate the Covenant in domestic law and update the committee in its next periodic report on the direct applicability of the Covenant by Indian courts with relevant case law.³⁵⁸ It also recommended enhancing the effectiveness of NHRC and State Human Rights Commissions.³⁵⁹ It urged India to strengthen the enforcement of existing legal prohibitions of discrimination and consider enacting comprehensive legislation inclusive of civil, criminal, administrative, and anti-discrimination provisions, guaranteeing equal treatment and protection against discrimination.³⁶⁰

The Committee emphasised the need for a determined enforcement by the criminal justice system and urged India to take measures to strengthen procedures for prompt and impartial investigations and effective prosecutions of all allegations of violations under the SC/ST(POA)Act 1989. Awareness-raising and training programmes need to be improved for the treatment of caste-based and other crimes related to discriminatory attitudes and prejudices, especially targeting professionals engaged in the administration of justice including judges, public prosecutors, lawyers, and police. Hurdles faced by victims in accessing justice also need to be removed. India was also encouraged to expand preventive programmes to curb violence against SCs and STs, particularly women.³⁶¹

These observations are important as they highlight the knowledge of the Committee and the international community of the prevailing condition of the SCs and STs and India's omission to honour its legal obligations arising out of the Covenant. What is lacking in these observations by the CESCR are the ways in which India can be held accountable for violating the provisions

³⁵⁶ Ibid., Para 28.

³⁵⁷ Ibid., Paras 40, 41.

³⁵⁸ Ibid., Paras 45, 47, 58.

³⁵⁹ Ibid., Para 49.

³⁶⁰ Ibid., Para 52.

³⁶¹ Ibid., Para 53.

of the Covenant and perpetuating human rights abuses. The inhuman conditions of life and livelihood of manual scavengers are noted by the Committee, yet when India has refused to take concrete action to bring in practical impacts, the international community has chosen to stay silent. Sufficient research needs to be conducted to devise ways to hold State Parties legally accountable when they do not honour obligations arising out of the international legal instruments they are party to. It must be noted that the due date for the submission of the next periodic report was in 2011.³⁶² As of February 2022, it has not been submitted.

3.1.3 International Convention on Elimination all forms of Racial Discrimination

As a State Party to the ICERD, India condemns racial discrimination and undertakes *inter alia* “not to sponsor, defend or support racial discrimination by any persons or organizations”.³⁶³ It also undertakes “to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by *any persons, group or organisation*” (emphasis supplied).³⁶⁴ The Convention defines the term ‘racial discrimination’ as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.³⁶⁵

The term “racial discrimination” under this Convention covers race, colour, descent, or national or ethnic origin, but does not expressly mention caste.³⁶⁶ From the deliberations between CERD and the Indian delegation over a period of time, discussed briefly below, it becomes clear that the disputed issue with regard to this definition is whether caste can be covered within the meaning of descent and ethnic origin, thereby falling within the purview of this Convention.

As a State Party, India undertakes to submit to CERD a report on the measures which they have adopted and which give effect to the provisions of the Convention: “(a) within one year after the entry into force of the Convention and (b) thereafter every two years and whenever the Committee so requests.”³⁶⁷ To-date, India has submitted two reports to CERD, the first in 1994

³⁶² ‘UN Treaty Body Database: Reporting Status for India’, United Nations Human Rights Treaty Bodies <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN> accessed 8th May 2022.

³⁶³ International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 2(1).

³⁶⁴ Ibid., Article 2(1)(d).

³⁶⁵ Ibid., Article 1 (1).

³⁶⁶ Ibid.

³⁶⁷ Ibid., Article 9.

and the second in 2006. There are no records of other reports submitted. The Indian delegation maintained a series of arguments in both reports chiefly aiming to show how caste does not fall within the purview of the Convention and hence India is not obligated to report to CERD on the issue of caste discrimination.

In the 1996 report, India submitted that it is the term “descent” which is included in the definition of racial discrimination in Article 1 of the Convention. India argued that though both castes and tribes are systems based on “descent” since people are normally born into a particular caste or tribe, the use of the term “descent” in the Convention clearly refers to “race”. Communities which constitute the Scheduled Castes and the Scheduled Tribes are unique to Indian society and its historical process.³⁶⁸ Hence, the policies of the Indian government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of Article 1 of the Convention and that it is only as a matter of courtesy to the members of the Committee the government may provide any information that they may require on this subject.³⁶⁹ CERD, in its concluding observations on the first report, in 1996, expressed a grave concern on this and stated that the term “descent” mentioned in Article 1 of the Convention does not solely refer to race. It affirmed that the situation of Scheduled Castes and Scheduled Tribes falls within the scope of the convention.³⁷⁰ It noted that India is a large multi-ethnic and multi-cultural society with poverty, the caste system, and a climate of violence in certain parts, and that they contribute to impeding the full implementation of the Convention, but regretted that India’s report lacked concrete information on the implementation in practice.³⁷¹

The Committee also expressed its concern over the absence of information on the functions, powers, and activities of the National Commission on Scheduled Castes,³⁷² Scheduled Tribes,³⁷³ and Minorities, which makes it impossible to assess whether these commissions have a positive impact upon the enjoyment of human rights and fundamental freedoms by members

³⁶⁸ Committee on the Elimination of Racial Discrimination, ‘Fourteenth Periodic Reports of States Parties due in 1996 Addendum: India’ (1996) CERD/C/299/Add.3, Para 7; *also see* Clifford Bob, “Dalit Rights are Human Rights”: Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue, (2007) 29 (1), Human Rights Quarterly, 167, 177, 178.

³⁶⁹ Committee on the Elimination of Racial Discrimination, ‘Fourteenth Periodic Reports of States Parties due in 1996 Addendum: India’ (1996) CERD/C/299/Add.3, Para 7.

³⁷⁰ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination’ (49th Session, 1996) CERD/C/304/Add.13, Para 14.

³⁷¹ *Ibid.*, Introduction and Para 4.

³⁷² See Section 3.4 of this chapter at 94.

³⁷³ See Section 3.4 of this chapter at 94.

of the groups in question.³⁷⁴ It noted the existence of the Constitutional provisions and legal texts which abolish untouchability and protect the members of Scheduled Castes and Tribes, and policies aiming at social and educational upliftment of these communities and to protect them. However, the relative impunity of those who abuse them, reveal the limited effect of such measures.³⁷⁵ In particular the Committee expressed its concern at reports that people belonging to the SCs and STs are often prevented from using public wells or from entering cafes or restaurants, and that their children are sometimes separated from other children in schools which constitute a violation of Article 5(f) of the Convention.³⁷⁶

The Indian delegation reiterated its earlier stance that the Indian Constitution prohibits discrimination on any grounds including race in the report submitted in 2006 and considered by CERD in March 2007. It took the same line of argument stating that caste-based discrimination falls outside the purview of the definition of racial discrimination under the Convention. The delegation stated that the Indian caste system was not racial in origin and that members belonging to Scheduled Castes are considered to be of the same racial and ethnic origin as other Indians.³⁷⁷ Caste was an institution unique to India and was not considered by those who drafted the Convention, and that CERD had first raised the issue of caste-based discrimination within the concept of descent as covering under Article 1(1) over 30 years after its establishment.³⁷⁸ It stressed that the Indian Constitution directly addressed the issue of caste through rights clearly guaranteed and affirmative action and that the Constitution drew a distinction between caste, race, and descent, considering them as separate concepts.³⁷⁹ The delegation further confirmed that there was no State-sponsored, institutionalised discrimination against any individual citizen or group of citizens in India.³⁸⁰ It also claimed that India has managed to legally *abolish caste* (emphasis supplied) long before many other independent States.³⁸¹ This contradicts its own statement, as the Indian delegation has claimed that caste is unique to India. It further claimed that the affirmative action or the reservation system for SCs,

³⁷⁴ Committee on the Elimination of Racial Discrimination, 'Concluding Observations of the Committee on the Elimination of Racial Discrimination' (49th Session, 1996) CERD/C/304/Add.13, Para 17.

³⁷⁵ Ibid., Para 23.

³⁷⁶ Ibid.

³⁷⁷ Committee on the Elimination of Racial Discrimination, 'Summary Record of the 1797th Meeting – Consideration of Reports, Comments and Information submitted by States Parties under Article 9 of the Convention' (Geneva, 2006) CERD/C/SR.1797, Para 2.

³⁷⁸ Ibid., Paras 2, 7, CERD.

³⁷⁹ Ibid., Para 2,3.

³⁸⁰ Ibid., Para 4.

³⁸¹ Ibid., Para 14.

STs and OBCs is aimed not to ensure representation of different races, colours, or communities within public organisations, but to eradicate caste.³⁸²

The Country reporter on the other hand noted that the Committee in its

General Recommendation XXIX clearly held that “descent” in Article 1 para 1 did not solely refer to “race” and had a meaning and application which complemented the other prohibited grounds of discrimination based on “descent” included discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullified or impaired their equal enjoyment of human rights.³⁸³

He further acknowledged the practices against Dalits which are widely documented by the National Human Rights Commission³⁸⁴, NGOs, United Nations treaty bodies, and other international instruments. These practices include extra-judicial punishment like lynching or rape of couples as punishment for inter-caste marriages, manual scavenging, and forced prostitution. Further there is the practice of untouchability in terms of access to water, housing, education, civil-service employment, property, displacement without compensation leading to de facto segregation, discrimination with regard to political rights, non-implementation of reservation policies, abuse by the police, failure to protect Dalits from acts of looting, sexual assault, rape, and other inhuman treatment.³⁸⁵

Considering the arguments of the Indian delegation that caste could not be equated with race as somewhat immaterial, CERD noted that in international law, an evolutionary interpretation of terms was common practice, and that over a period of time the Committee has developed a broad interpretation of the term “descent”. They agreed that the language contained in the Convention was adequate to capture the notion of caste-based discrimination. The main purpose of investigating racial discrimination is to engage in public reflection and dialogue and thereby address deep-rooted social patterns of discrimination.³⁸⁶ The Committee also noted that whilst descent and caste were not one and the same, children are born into the caste of their parents and hence the issues were clearly linked.³⁸⁷ The issue of caste and race was not a

³⁸² Ibid.

³⁸³ Ibid., Para 17.

³⁸⁴ See page 96 of this Chapter.

³⁸⁵ Committee on the Elimination of Racial Discrimination, ‘Summary Record of the 1797th Meeting – Consideration of Reports, Comments and Information submitted by States Parties under Article 9 of the Convention’ (Geneva, 2006) CERD/C/SR.1797, Para 18.

³⁸⁶ Ibid., Para 36.

³⁸⁷ Ibid., Para 43.

conceptual problem, it raised a real question of discrimination particularly against the Dalits. It noted that some problems could be resolved through educational measures while others require legislative amendments.³⁸⁸ The Committee questioned the delegation on the caste of a child born out of a mixed marriage. The Indian delegation replied that a child born out of such a union belonged to no caste, that such cases were frequent in India, and the persons concerned were satisfied with their status.³⁸⁹ It further went on to state that regardless of what some members of the Committee may say, members of Scheduled Castes are not disenfranchised.³⁹⁰

With regard to the term “ethnic group”, CERD noted that the term did not refer only to the physical characteristics of a particular group but also encompassed far wider concepts like culture and way of life.³⁹¹ The Committee suggested that it is preferable to move away from the theoretical debate about caste and race and since India has acknowledged that the caste system is discriminatory in nature, a common ground needs to be found in order to solve the problems India is facing in implementing the Convention.³⁹² In its concluding observations, CERD maintained its position expressed in general recommendation No. 29 that:

discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.³⁹³

Hence, the Committee reaffirmed that caste-based discrimination is fully covered by Article 1 of the Convention.³⁹⁴ It expressed its concern over a very large number of Dalits being forced to work as manual scavengers and child workers, and them being subjected to extremely unhealthy working conditions and exploitative labour arrangements, including debt bondage covered under Article 5(e), (i) and (iv) of the Convention. The Committee urged India to effectively implement the laws in place and report on the measures taken on the employment and working conditions of Dalits in the next periodic report,³⁹⁵ due to be submitted on 4th January 2010.³⁹⁶ However, India has not submitted any periodic reports since 2006.

³⁸⁸ Ibid., Para 45.

³⁸⁹ Ibid., Paras 17, 18.

³⁹⁰ Ibid., Para 37.

³⁹¹ Ibid., Para 22.

³⁹² Ibid., Para 23.

³⁹³ Preamble, Committee on the Elimination of Racial Discrimination, ‘General Recommendation XXIX on Article 1, paragraph 1, of the Convention (Descent)’, (61st Session, 2002).

³⁹⁴ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination: India’ (70th Session, 2007) CERD/C/IND/CO/19, Para 8.

³⁹⁵ Ibid., Para 23.

³⁹⁶ Ibid., Para 35.

Analysing the above arguments, references may be made to Cambridge dictionary which defines the term “descent” as “the state or fact of being related to a particular person or group of people who lived in the past.”³⁹⁷ The Oxford dictionary defines “ethnicity” as “a group of people with common cultural or national tradition”.³⁹⁸ Going by these definitions, giving a literal interpretation, caste comes under both descent and ethnic origin. Moreover, the prohibited markers under Article 1(1) of the Convention, that is discrimination based on race, colour, descent, national or ethnic origin all denote one important factor; they are all discrimination based on birth. The Preamble to the Convention clearly states “that all human beings are equal before the law and are entitled to equal protection of the law against *any* (emphasis supplied) discrimination and against *any* incitement to discrimination”.³⁹⁹ As shown in the previous chapter, caste is also based on birth. A person gets his/her caste from his/her parents.⁴⁰⁰ Castes are also social groups with distinct cultures. Therefore, the arguments put forth by the Indian government before CERD do not hold merit; caste comes under both descent and ethnic origin under Article 1(1) of the Convention, making it a parameter under ‘racial discrimination’. It must also be noted that social origin is also a part of the definition of the ICCPR and the ICESCR on the provision on non-discrimination.

Despite this, if one were to argue that caste still holds a distinctively different character, both the Indian government and CERD agree that the caste system is discriminatory in nature and it is a hierarchy that survives on graded inequality, as noted in the previous chapter. I would hereby recommend that ‘caste’ be added as a separate entity/identity/parameter under the definition of the term “racial discrimination” for the purposes of this Convention. This is particularly important since the issue of caste is not confined to a particular country (India) now since people, Hindus in particular, who have caste identities have migrated all over the world. They are continuing their religious rituals outside India, meaning they have not given up their caste identities, and as a result, the problem of caste or the issue of inherited discrimination in the caste system is essentially an international issue. It is no longer an internal

³⁹⁷ ‘Descent’, Cambridge Dictionary < <https://dictionary.cambridge.org/dictionary/english/descent> > accessed 8th May 2022.

³⁹⁸ ‘Ethnicity’, Oxford Learner’s Dictionaries < https://www.oxfordlearnersdictionaries.com/definition/american_english/ethnicity > accessed 8th May 2022.

³⁹⁹ International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Preamble.

⁴⁰⁰ See Section 2.1 of Chapter 2 at 38.

issue as claimed by the Indian government. It has an international dimension.⁴⁰¹ It must be noted that in January 2022, California State University in the United States of America, announced that it has added caste as a protected category in its systemwide anti-discrimination policy.⁴⁰² I believe, that any issue with an international dimension needs to be dealt by an international body with wider jurisdiction to protect people from discrimination. Hence the CERD needs to identify and know the unique character of caste-based discrimination and take steps to address the problems posed by it.⁴⁰³

Some of the other claims made by the Indian delegation include the confirmation that there was no State-sponsored, institutional discrimination against any individual citizen or group of citizens in India.⁴⁰⁴ This will be considered in Chapter 5 on Manual Scavenging, since one of the chief employers of manual scavengers are the Indian Railways. The Indian delegation also claimed that India has managed to legally abolish caste. As seen in the previous chapter, caste is an integral and essential part of the Hindu religion. Article 25 of the Indian Constitution gives the freedom to practice and propagate any religion.⁴⁰⁵ Therefore, caste cannot be abolished, as claimed by the Indian government. However the State is empowered to make reforms in relation to religion, like opening Hindu religious institutions of a public character to all classes and sections of Hindus.⁴⁰⁶ Also the Constitution declares that any laws which are inconsistent with the provisions of Part III of the Constitution dealing with Fundamental Rights, shall to the extent of such inconsistency be void.⁴⁰⁷ Hence the Hindu religious laws which propound the doctrine of inequality can be considered void under this provision, to the

⁴⁰¹ Peter Szekely, 'Dalit Workers Allege 'Shocking Violations' in Building Temple in New Jersey', (12th May 2021), The Wire, < <https://thewire.in/caste/dalit-workers-allege-shocking-violations-in-building-hindu-temple-in-new-jersey>> accessed 8th May 2022; also see WGBH News, 'Even with a Harvard Pedigree, caste follows 'like a shadow'' (5th March 2019) The World < <https://theworld.org/stories/2019-03-05/even-harvard-pedigree-caste-follows-shadow>> accessed 8th May 2022; and Tinku Ray, 'No Escape from Caste on these Shores, 'Untouchables' from India say' (26th February 2019) GBH News < https://www.wgbh.org/news/national-news/2019/02/26/no-escape-from-caste-on-these-shores-untouchables-from-india-say?fbclid=IwAR3EO2N0oZetLpHUoXusZ_0BiCWiH-XrRPYadVPuZDHavytHrgD86Bxr-g> accessed 8th May 2022.

⁴⁰² Nani Sahra Walker, 'Cal State System adds Caste to anti-discrimination policy in ground-breaking decision' (20th January 2022), Los Angeles Times < <https://www.latimes.com/california/story/2022-01-20/csu-adds-caste-to-its-anti-discrimination-policy>> accessed 8th May 2022.

⁴⁰³ Lists are capable of extension through including a prohibition of discrimination based on 'other status' additional to named grounds see Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (1st ed., Oxford University Press, 2016) 98.

⁴⁰⁴ See page 74 of this Chapter.

⁴⁰⁵ Constitution of India, Article 25.

⁴⁰⁶ Constitution of India, Article 25(2)(b).

⁴⁰⁷ Constitution of India, Article 13.

extent that they violate the egalitarian principles enshrined in Part III. However, caste as a concept cannot be abolished, because primarily it is an identity.

Another claim by the Indian delegation is that the affirmative action under the Indian Constitution is not aiming to ensure representation, rather it is to eradicate caste.⁴⁰⁸ As will be discussed below, the intentions of the makers of the Indian Constitution in relation to the provisions of affirmative action were to provide adequate representation to all. The Indian delegation also claimed that a child born out of mixed marriage did not have any caste.⁴⁰⁹ The Supreme Court of India has ruled that a child born out of inter-caste marriage can get the caste of either of the parents depending on the upbringing of the child.⁴¹⁰ As explained above, a person has to be primarily a member of a caste in order to be a Hindu. Hence, this statement by the Indian government is far from the truth.

We can clearly see that the Indian government has been evading its obligations under the Convention in the pretext of caste not being named expressly as a prohibited marker of discrimination.⁴¹¹ We can also see that even though CERD was able to acknowledge that there was large scale discrimination against SCs and STs taking place in India, there has not been any concrete measures taken up to protect their rights. There is a clear breach of procedural obligations on India's part, in all of the above conventions, with regard to reporting. What is also glaringly obvious is the breach of more substantive obligations, with regard to preventing discrimination against Scheduled Castes in particular, and taking measures to eradicate the practises of untouchability. This being the case, as we see throughout this thesis, the practises of untouchability has been evolving with the changing times and the international community, though aware of this, are unable to take any concrete measures in this regard. This also points at the lack of mechanisms in the Conventions to deal with issues of this nature, where there are human rights violations acknowledged by the Committees under the Conventions but the State Party refuses reporting obligations. The question of what the larger role of the international

⁴⁰⁸ Committee on the Elimination of Racial Discrimination, 'Summary Record of the 1796th Meeting: Consideration of Reports, Comments and Information submitted by States Parties under Article 9 of the Convention' (70th Session, Geneva, 2007) CERD/C/SR.1796, Para 14; also see page 74 of this Chapter.

⁴⁰⁹ See page 76 of this Chapter.

⁴¹⁰ Rameshbhai Dabhai Naika V. State of Gujrat and Ors (Supreme Court, 2012) <<https://indiankanoon.org/doc/197038546/>> accessed 8th May 2022.

⁴¹¹ Aniruddha Vithal Babar, 'International Human Rights Law and the Menace of Atrocities on Dalit Communities in India' (2016) 8 (2), Contemporary Voice of Dalit-Sage Publications, 111, 119.

community is, in such cases, needs to be looked into, in order to protect human rights of the victims of atrocities.

The next part of the chapter reflects upon the provisions of the Indian Constitution dealing with prohibition of discrimination and other domestic mechanisms relevant to this thesis.

3.2 The Indian Constitution, Equality and Non-Discrimination

The cardinal principle of equality and non-discrimination is etched within the fabric of the Indian Constitution. Article 14 states that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”⁴¹² As discussed in Chapter 1, equality before law or equal protection under the law does not necessarily mean the same treatment of everyone. Since no human beings are equal in all respects, the same treatment of them in every respect would result in unequal outcomes.⁴¹³ Hence the underlying principle of equality is not that uniformity must be maintained in all respects, but rather to give the same treatment in those respects where people are similar and different treatment where they are different.⁴¹⁴ That is to say, “equals must be treated equally, while unequals (sic) must be treated differently.”⁴¹⁵ This exercise is expressed as reasonable classification. The framers of the Constitution made it very clear, especially within the provisions that deal with affirmative action, particularly under Articles 15 and 16, discussed below, that equality not only prohibits unequal treatment, but it also demands equal treatment. Hence the State must not only not treat people unequally, but it must also strive to take positive steps to remove existing inequalities, especially those kinds of inequalities which treat human beings as less than human beings. Our common humanity, which is often formulated as human dignity, demands distributive justice, and both dignity and distributive justice are essential to equality.⁴¹⁶

The Supreme Court in the landmark decision in *Keshavananda Bharti v. State of Kerala*⁴¹⁷ stressed that “the Preamble to the Constitution emphasises the principle of equality as basic to

⁴¹² Constitution of India, Article 14.

⁴¹³ Also see Section 1.7.1 of Theoretical Framework at 22.

⁴¹⁴ Also see Section 1.7.1 of the Theoretical Framework at 22.

⁴¹⁵ Mahendra Pal Singh, *V.N. Shukla's Constitution of India* (12th edn, Eastern Book Company, Lucknow, 2013) 49.

⁴¹⁶ Ibid 50.

⁴¹⁷ 1973 (4) SCC 225; AIR 1973 SC 1461.

the Indian Constitution. This is the basic feature of the Constitution, which no legislature in India can transgress. Even an Amendment of the Constitution offending a basic structure of the Constitution is *ultra vires*.⁴¹⁸ However it is important to note that the concept of equality in the Indian context is dynamic and not static, as it permits equalisation and protective discrimination. Measures which are adopted to eliminate group discrimination and promote collective equality are not regarded as antagonistic to the concept of equality on the grounds that every individual is entitled to equality of opportunity based purely on merit.⁴¹⁹ Such an approach would perpetuate existing inequalities. Those who are unequal cannot be treated by identical standards. Whilst it may amount to equality in law or formal equality, it will not be real or substantial equality.⁴²⁰ Therefore, it is essential to take into account the *de facto* inequalities, which exist in society. This is where the role of affirmative action comes into play. Such affirmative action “though apparently discriminatory, is calculated to produce equality on a broader basis by eliminating *de facto* inequalities.”⁴²¹ It must be noted that though the term ‘equity’ is not mentioned in the bare text of the Indian Constitution, it mirrors this concept throughout its provisions, and affirmative action is also its reflection. The Supreme Court rightly observed in *Valsamma Paul v. Cochin University*,⁴²² that “equal protection requires affirmative action for those unequals (sic) handicapped due to historical facts of untouchability practised for millennium which is abolished by Article 17; for Tribes living away from our national mainstream due to social and educational backwardness of OBCs.”⁴²³

The drafting of Article 14 can be seen as a revolutionary step towards achieving an egalitarian society, especially since the Hindu religious texts treat people differently based on their position in the caste hierarchy. However, the need to have a larger framework of laws and provisions guaranteeing equality and non-discrimination was felt by the framers of the Constitution in order to elevate the marginalised and the downtrodden. India has been the home of the Buddha, who was one of the earliest proponents of equality and non-discrimination, followed by many social reformers, including Shahu Maharaj, the Phule couple, and the radical saints of the Bhakti movement, as discussed in the previous chapter. The framers noted that despite this, there was wide-spread existence of economic, political,

⁴¹⁸ MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1466.

⁴¹⁹ Also see page 32 of the Theoretical Framework.

⁴²⁰ Also see pages 25-27 of Theoretical Framework which discusses the same issue.

⁴²¹ MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1467.

⁴²² AIR 1996 SC 1011, 1015 as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1467.

⁴²³ AIR 1996 SC 1011, 1015 as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1467; See Section 3.2.3 of this chapter for discussion on Article 17 at 89.

and social inequalities especially sanctioned by public policies, the exercise of public power by the State dominated by privileged castes, supported by religion, practices, and norms.⁴²⁴ Article 14 alone cannot minimize such kinds of discrimination and inequalities, which have been practiced in Indian society for centuries. Hence, as discussed below, the framers of the Constitution expressly abolished and prohibited some of the practices of inequality not only by the State but also by private individuals, and expressly authorized the State to take necessary steps to minimize and remove such practices.⁴²⁵ Thus, it can be said that the right to equality under the Indian Constitution is not merely a negative right not to be discriminated against, but also a positive right to be treated as an equal.⁴²⁶

Due to the multi-faceted and systemic discrimination against certain groups, the normal process of development might not automatically bridge the gap between the privileged and the marginalized communities, because the dominant privileged sections will disproportionately benefit from development. This forms the rationale for Affirmative Action.⁴²⁷ These policies when implemented to their letter and spirit, give way for the members of disadvantaged communities to enter educational institutions and access public employment on par with the rest of the population. This provides an opportunity for them to voice their opinions in decision-making.⁴²⁸ Against this background, two main Articles, 15 and 16, in the Fundamental Rights chapter of the Constitution, incorporate the principle of affirmative action vis-à-vis education and employment.

3.2.1 Prohibition of Discrimination and Affirmative action

Article 15 is the specific application of the general principle of equality enshrined in Article 14, dealing with prohibition of discrimination by the State only on the grounds of religion, race, caste, sex, or place of birth.⁴²⁹ Article 15 (2) states:

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
(a) access to shops, public restaurants, hotels and places of public entertainment; or

⁴²⁴ Singh, *V.N. Shukla's Constitution of India* (n 415) 47.

⁴²⁵ Ibid 47, 48; Articles 15-18 clearly express this intention of the Constitution makers.

⁴²⁶ Ibid 48.

⁴²⁷ Deshpande, *Affirmative Action in India* (n 253) 9.

⁴²⁸ Ibid 10.

⁴²⁹ Constitution of India, Article 15.

- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.⁴³⁰

This clause is particularly important because it reflects the practices in India at the time of independence in 1947, where people from the weaker sections of society, particularly the untouchables were largely banned by the dominant higher castes from accessing shops or from using water from public tanks because of fears of “pollution”. This is yet another step taken by the framers of the Constitution to minimize discrimination that exists in Indian society. Furthermore, the State is also entitled to make special provisions for the advancement of women and children, who are recognised as vulnerable sections of society.⁴³¹

Article 15(4) embodies the provision for affirmative action for SCs, STs and OBCs. It states:

Nothing in this Article or in clause (2) of Article 29⁴³² shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.⁴³³

The Supreme Court’s decision in *State of Madras v Champakam Dorairajan*⁴³⁴ resulted in the insertion of clause(4) to Article 15 through the Constitution (1st Amendment) Act, 1951. The Supreme Court held that “the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of fundamental rights.”⁴³⁵ Overruling this interpretation, Clause (4) was inserted by Parliament, to Article 15, which enables States to make special provisions for the advancement of socially and educationally backward classes of citizens, or for SCs and STs. Such provisions include quotas or reservation, which can be made by the exercise of executive power, without any legislative support.⁴³⁶

The two most contentious issues in the application of Article 15(4), which is also the case for Article 15(5) and Article 16(4),⁴³⁷ have been (i) determination of backward classes and (ii) the

⁴³⁰ Ibid., Article 15(2).

⁴³¹ Ibid., Article 15 (3). The Supreme Court in *Government of Andhra Pradesh v. Vijayakumar* {(1995) 4 SCC 520} held that reservation for women in State employment was also permissible under Article 15 (3) notwithstanding separate provision in this regard under Article 16.

⁴³² Constitution of India, Article 29 (2): “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

⁴³³ Ibid., Article 15(4).

⁴³⁴ AIR 1951 SC 226: 1951 SCR 525.

⁴³⁵ AIR 1951 SC 228.

⁴³⁶ *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217) also referred to as *Mandal Commission case*.

⁴³⁷ Both Articles 15 (5) and 16 (4) will be discussed later.

extent or quantum of reservation. For our purpose, we are considering the second of these issues in detail, since the first concerns mainly the ‘Other Backward Classes’ (OBCs).⁴³⁸ With regard to the quantum of reservation, in *M.R. Balaji v State of Mysore*⁴³⁹ (hereinafter *Balaji*), the Supreme Court held:

A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4)⁴⁴⁰ must be within reasonable limits...A special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances in each case.⁴⁴¹

The case was decided on the plea that Articles 15(4) and 16(4) were exceptions to the general rule embodied in Articles 15(1) and 16(1) respectively, as well as Article 14. The general rule required that in the interests of society as a whole, admission to the institutions of higher learning or employment under the State must be made on merit in order to ensure an efficient society and administration. The Supreme Court noted that an exception could not be so construed as to substantially dilute the general rule.⁴⁴²

The quantum of reserved seats for SCs, STs, and OBCs, in the impugned Government Orders in the above case, exceeded 50% of the total seats and the Supreme Court struck them down. But it is crucial to note that Articles in the bare text of the Constitution do not speak of the quantum of reservation. This formula was devised by the Supreme Court, so that the remaining 50% is kept for ‘general category’ in admissions. The word of the Supreme Court becomes the law of the land.⁴⁴³ In effect, they denied the proportional share for SCs, STs and OBCs. How this affects access to higher education for different groups is critically analysed in Chapter 6.

Further, in the landmark decision in the *Mandal Commission case*,⁴⁴⁴ the Supreme Court held that barring any extraordinary situations, reservation should not exceed 50%. The Supreme Court also rejected the argument that Articles 16(4) and 15(4) are exceptions to Articles 16(1) and 15(1) respectively. High reliance was placed on the balancing of interests under the two provisions and also on a reasonable exercise of power under Article 16(4).⁴⁴⁵ It was also held

⁴³⁸ A large part of the Shudras, according to the Hindu religious texts fall under OBCs.

⁴³⁹ AIR 1963 SC 649.

⁴⁴⁰ See Section 3.2.2 of this Chapter at 86.

⁴⁴¹ AIR 1963 SC 649; Singh, *V.N. Shukla’s Constitution of India* (n 415) 100.

⁴⁴² Ibid 101.

⁴⁴³ Kashyap, *Our Constitution* (n 225) 54.

⁴⁴⁴ *Indra Sawhney v. Union of India* 1992 Supp (3) SCC 217; AIR 1993 SC 477.

⁴⁴⁵ Singh, *V.N. Shukla’s Constitution of India* (n 415) 102.

that these provisions are not exceptions to Article 14, rather, they are a means of achieving the concept of right to equality enshrined in those Articles. However, the Court stated that it is not advisable to grant reservation in education for super specialties,⁴⁴⁶ nor in certain services that require special skills such as defence, technical, and scientific services, professors in universities, pilots etc.⁴⁴⁷ The *Mandal Commission case* is a long commentary on Articles 15(4) and 16(4) which resolves many contentious issues but also opens up many new ones.⁴⁴⁸ A critical analysis of Supreme Court decisions which affected reservation policies in higher educational institutions is made in Chapter 6.

In light of the misinterpretation of Article 15(4),⁴⁴⁹ Parliament brought in one more amendment to Article 15⁴⁵⁰ and inserted Clause (5) to enable the Government to enforce the reservation policy, even in Private educational institutions.⁴⁵¹ Article 15(5) states:

Nothing in this article or in sub-clause (g) of clause (1) of Article 19⁴⁵² shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private education institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.⁴⁵³

This amendment restored the pre-amendment position subject to the condition that special provisions can be made only by law, while before this amendment, it could have been made by executive action as well.⁴⁵⁴ Parliament then immediately enacted the Central Educational Institutions (Reservation in Admission) Act 2006, which provides for 15%, 7.5%, and 27% reservation in Central Universities of higher education and research for members of the SCs, STs, and OBCs respectively. The Constitutional validity of this Act and the amendment which introduced clause (5) to Article 15, was challenged in *Ashoka Kumar Thakur v Union of India*.⁴⁵⁵ The Court upheld both the Amendment and the Act. The contention that Article 15(5)

⁴⁴⁶ These are specialist courses in Medical Science. The Medical council of India has a list of courses like Cardiology, Child and Adolescent Psychiatry etc.

⁴⁴⁷ Singh, *V.N. Shukla's Constitution of India* (n 415); Mandal Commission case, 1992 Supp (3)SCC 217.

⁴⁴⁸ Also see page 181 of Chapter 6.

⁴⁴⁹ See pages 176-179 of Chapter 6

⁴⁵⁰ The Constitution (93rd Amendment) Act, 2005.

⁴⁵¹ See page 174 of Chapter 6.

⁴⁵² Constitution of India, Article 19(1)(g): all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

⁴⁵³ Constitution of India, Article 30(1): all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

⁴⁵⁴ Singh, *V.N. Shukla's Constitution of India* (n 415) 107.

⁴⁵⁵ (2008) 6 SCC 1.

was contradictory to Article 15(4) was rejected. However, the exclusion of minority educational institutions from the purview of Article 15(5) was upheld. Most notably, the court firmly declined to apply the creamy layer⁴⁵⁶ principle for SCs and STs. Further it was held that the absence of a time limit for reservation was not fatal to the legislation, but a periodic review of 10 years was suggested.⁴⁵⁷

A new Constitutional Amendment was introduced by Parliament in 2019 inserting clause (6) to Article 15 which provides reservation to ‘Economically Weaker Sections’ of citizens, in other words, forward or upper castes who are economically weaker.⁴⁵⁸ This provision goes against the very spirit of the kind of reservation enshrined under the Indian Constitution by its framers. It also broke the 50% upper limit put on reservation by the Supreme Court, in the cases discussed above. However, to date, the court has chosen to remain silent over this, with several writ petitions challenging the constitutional validity of this amendment pending before the Supreme Court. This move by the Parliament and the silence of the Supreme Court is contextualised and discussed in detail in Chapter 6.⁴⁵⁹

3.2.2 Public Employment

Another important provision dealing with equality and prohibition of discrimination is Article 16, a part of which has already been touched upon above. This Article deals with equality of opportunity for all citizens in matters of public employment, according to which “no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against, in respect of any employment or office under the State.”⁴⁶⁰ Both Articles 15 and 16 are very relevant to this thesis as they resonate throughout in Chapters 5 and 6 dealing with the studies on manual scavenging and caste-discrimination in higher educational institutions.

Article 16(4) embodies reservation thus:

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, which

⁴⁵⁶ Creamy layer is a criteria developed by the Supreme Court to exclude the relatively forward OBCs from availing reservation facilities. The criteria is generally income limit.

⁴⁵⁷ Singh, *V.N. Shukla's Constitution of India* (n 415) 107.

⁴⁵⁸ Constitution of India, Article 15(6).

⁴⁵⁹ See Section 6.2 of Chapter 6 at 173.

⁴⁶⁰ Constitution of India, Article 16(2).

in the opinion of the State, is not adequately represented in the services under the State.⁴⁶¹

Article 16(4-A) deals with reservation in matters of:

promotion with consequential seniority to any class or classes of posts in the services under the State, in favour of the SCs and STs, which in the opinion of the State are not adequately represented in the services under the State.⁴⁶²

The 50% upper limit for reservation in a year under clause (4) was laid down in the *Balaji* and *Mandal Commission* cases discussed above. This left no scope to fill the backlog of vacancies and hold special recruitment drives.⁴⁶³ The Constitution (81st) Amendment Act 2000 was introduced to overcome this handicap. This acts as an exception to the 50% limit only for the purposes of filling backlog vacancies.⁴⁶⁴ The validity of the amendments introducing clauses (4-A) and (4-B) have been unanimously upheld by a five-judge Bench of the Supreme Court in *M Nagaraj v. Union of India*.⁴⁶⁵

The issue of reservation for SCs, STs, and OBCs has been extremely contentious for a prolonged period of time. It has invoked wide-spread debates in all spheres of society, including the argument that economic criteria must be the sole rationale for reservation and not social status (caste), or historical injustice.⁴⁶⁶ People who availed reservation were branded to be direct threat to ‘merit’.⁴⁶⁷ Massive country wide anti-reservation agitations by the privileged castes with visible demonstrations, ransacking of government offices, destruction of public property and arson were also seen.⁴⁶⁸ This being the case, Parliament in 2019 introduced clause (6) to Article 16, like it did to Article 15, through the Constitution (103rd) Amendment Act,⁴⁶⁹ according to which:

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten percent of the posts in each category.⁴⁷⁰

⁴⁶¹ Ibid., Article 16(4).

⁴⁶² Ibid., Article 16(4-A).

⁴⁶³ RK Sabharwal v. State of Punjab (1995) 2 SCC 745, 753 as cited in Singh, *VN Shukla's Constitution of India* (n 232) 123.

⁴⁶⁴ Ibid.

⁴⁶⁵ (2006) 8 SCC 212; AIR 2007 SC 71, as cited in Singh, *VN Shukla's Constitution of India* (n 232) 123.

⁴⁶⁶ ‘Caste or Economic Status: What should we base reservations on?’, (16th January 2019) Economic Political Weekly Engage, < <https://www.epw.in/engage/article/caste-or-economic-status-what-should-we> > accessed 9th May 2022.

⁴⁶⁷ Ibid.

⁴⁶⁸ Indu Bharti, ‘Politics of Anti-Reservation Stir’, (1990) 25 (6), Economic and Political Weekly, 309, 309.

⁴⁶⁹ Constitution (103rd) Amendment Act, 2019.

⁴⁷⁰ Constitution of India, Article 16(6).

This amendment not only strikes against the ethos of reservation (social and educational backwardness) enshrined in the Constitution, but also breaks the 50% upper limit set by the Supreme Court. It must be noted that although the Mandal Commission in its 1982 report to the government submitted that the OBC population stood at 52%, it recommended only 27% of reservation to be given to the OBCs, as the SCs and STs already availed 22.5%, which was then proportional to their population. The Supreme Court had laid down the upper limit of 50% in the *Balaji* case discussed above.⁴⁷¹ The 50% upper limit was again reiterated by the Supreme Court in the *Mandal Commission* case in 1992. That is to say, the OBCs had to settle for reservation much less than the percentage of their population, due to the upper limit set by the Supreme Court. This being the case, the 2019 Amendment mentioned above introducing Clause (6), breaks both the rules; (i) a new class of citizens have been introduced in the Constitution in order to provide reservation, the criteria being ‘economically weaker’, which goes against the very purpose of the introduction of the concept of reservation in the Indian Constitution; (ii) the upper limit of 50% imposed by the Supreme Court is broken.

In a participatory democracy like India, in order to provide proportionate representation to all categories of people in the services under the State, and to provide opportunities to access resources, caste-based census is vital. But that has not been done in independent India; the last census was conducted under British rule in 1931. The obvious objection to it comes from the dominant privileged castes who, currently, hold most of the top positions in government and private spheres. Having a caste census and re-doing a reservation policy based upon it, is detrimental to their interests.⁴⁷² But it is vital to conduct a caste-based census to evaluate the policy of reservation. This will also reveal who the marginalised sections are and where the ownership of resources lie.

Furthermore, there is no estimation of the percentage of the population who are classified as the ‘economically weaker sections’ among the forward upper castes. The 10% cap which is provided in clause (6) has no rational basis. Despite this, the Supreme Court has continued to maintain silence on this violation of its own precedents. It is important to note at this juncture that as it stands, the higher judiciary is outside the purview of reservation. Whether it is

⁴⁷¹ Bharti, Politics of Anti-Reservation Stir (n 468) 309.

⁴⁷² Yogendra Yadav, ‘Caste Census is important – whether you are for or against reservation’, (25th August 2021), The Print, < <https://theprint.in/opinion/caste-census-is-important-whether-you-are-for-or-against-reservation/721721/>> accessed 9th May 2022.

constitutionally valid or not is a debate which goes beyond the scope of this thesis. But as a consequence of reservation not being applied in the higher judiciary, it has been dominated by the upper castes and classes of citizens of India. This gives another perspective from which to interpret the above judgments restricting the quantum of reservation for the marginalised, as well as the silence over Constitutional amendments introducing a new category of forward/upper castes to avail reservation, breaking the 50% upper limit set by the Supreme Court.

3.2.3 Abolition of Untouchability

One of the most important provisions in the Indian Constitution is Article 17, which states:

“Untouchability” is abolished and its practise in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.⁴⁷³

With this Article, the Constitution not only recognises the practise of Untouchability and expressly abolishes it, but also declares the enforcement of any disability arising out of it to be a punishable offence in accordance with law. The word “Untouchability” has not been defined in the text of the Constitution or any Act which has been enacted giving effect to this Article, because “it is not capable of any precise definition.”⁴⁷⁴ It must be noted, the word Untouchability is enclosed in inverted commas, signifying that the subject matter of this Article is not untouchability in its literal or grammatical sense. Rather, it refers to the practise of Untouchability which has developed historically in India, and by extension to those who have been regarded as untouchables across history.⁴⁷⁵

It can be seen that Article 15 covers much of what falls within the purview of Article 17. Hence,

on the grounds of untouchability no person can be denied access to shops, public restaurants, hotels, places of public entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partly out of State funds, or dedicated to the use of general public...other forms of discrimination include differentiation in use of utensils and other articles kept in any public restaurant, hotel, *dharamshala* (a building for people travelling for religious purposes) etc for the use of the general public or the practise of any profession or the carrying of any occupation, trade or business or the enjoyment of any construction, acquisition or occupation of any residential premises in a locality or the observance of any social or religious custom,

⁴⁷³ Constitution of India, Article 17.

⁴⁷⁴ MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1048.

⁴⁷⁵ Singh, *VN Shukla's Constitution of India* (n 232) 124; *State of Madhya Pradesh v. Puranchand*, AIR 1958 MP 352, as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1048.

usage or ceremony or taking part in any religious procession or the use of jewellery and finery.⁴⁷⁶

It must be noted that the implementation of fundamental rights generally imposes restrictions, mainly on government activities.⁴⁷⁷ However, it is interesting to note that both Articles 17 and 15(2) protect an individual from discrimination not only from the State but also from private persons. The Supreme Court has stated:

whenever any Fundamental Right like Article 17 is violated by a private individual, it is the Constitutional obligation of the State to take necessary steps for the purpose of interdicting such violation and ensuring observance of the Fundamental Right by the private individual who is transgressing the same. The State is under a Constitutional obligation to see that there is no violation of the Fundamental Right of such person.⁴⁷⁸

For the effective enforcement of this Article, the Constitution mandates the enactment of laws specifying various acts that should be prohibited and penalised.⁴⁷⁹ To bring uniformity, Article 35 is called into play. Accordingly only Parliament has the power to make laws in cases *inter alia* prescribing punishments to those acts which are declared as offences under Part III, and the Constitution requires laws to be enacted to that effect. Article 35 is also invoked where a law is to be made for making an action which interferes with the fundamental rights punishable, i.e., Article 17 in this case. Article 35 has an overriding effect notwithstanding anything in the Constitution, including the distribution of subjects under three lists in the 7th Schedule to the Constitution.⁴⁸⁰

In 1955 the Parliament enacted the Untouchability (Offences) Act,⁴⁸¹ which was the first legislation on the subject, enacted five years after the commencement of the Constitution. This prescribed the punishment for the practise of untouchability and for the enforcement of disabilities arising therefrom. The punishments awarded under the Act were few and inadequate. It was then amended and renamed in 1976 as the Protection of Civil Rights Act 1955 (PCR Act, 1955). Significant changes were made, including treating offences as non-compoundable, to be tried summarily, with punishment up to three months; punishing civil servants as abettors when they show negligence in investigation; privately owned places of

⁴⁷⁶ Singh, *VN Shukla's Constitution of India* (n 232) 124.

⁴⁷⁷ MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1049.

⁴⁷⁸ Ibid.

⁴⁷⁹ Singh, *VN Shukla's Constitution of India* (n 232) 125.

⁴⁸⁰ Constitution of India, Article 35; also see Singh, *VN Shukla's Constitution of India* (n 232) 125, 365, 366. 6

⁴⁸¹ Act 22 of 1955; also see 'The Protection of Civil Rights Act, 1955', <<http://newapps.nic.in/acts/TheProtectionofCivilRightsAct1955.pdf>> accessed 9th May 2022.

worship were brought within the purview of the Act; preaching or justification of untouchability was made an offence; collective fines could be imposed by the State governments on the inhabitants of areas involved in or abetting the commission of offences; and a machinery was envisaged for better administration and enforcement of its provisions.⁴⁸² The Supreme Court going into the sociological angularities of untouchability noted that, “the evil (of untouchability) is not founded on *mens rea* and in appreciating the evidence the courts should adopt a psychological approach and should not be influenced by deep seated prejudices or predilections covertly found in other walks of life about this evil.”⁴⁸³

Parliament then enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST(POA) Act, 1989) to “(i) prevent the commission of offences of atrocities against the members of the SCs and the STs (ii) to provide for Special Courts and the Exclusive Special Courts for the trial of such offences and (iii) for the relief and rehabilitation of the victims of such offences.”⁴⁸⁴ The following was stated in the Statement of Objects and Reasons which accompanied the corresponding Bill:

Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons...⁴⁸⁵

It must be noted that this Act was enacted 39 years after the coming into force of the Constitution. The above statement reflects the grim picture of the prevalence of Untouchability despite the PCR Act, 1955 being in place. It mirrors the then reality of the State, law enforcement mechanisms, civil society, and judiciary. The SC/ST(POA) Act, as amended, gives an exhaustive list of the acts which are treated as offences.⁴⁸⁶ However, there remains those covert actions, such as the kind of discrimination that prevails against the Dalits in the higher education institutions, which do not come under the purview of this Act, which is why a critical analysis of this Act is made in the final chapter of this thesis.

⁴⁸² Singh, *VN Shukla's Constitution of India* (n 232) 125.

⁴⁸³ K. Ramaswamy J in *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469: AIR 1993 SC 1126, as cited in Singh, *VN Shukla's Constitution of India* (n 232) 125, 126.

⁴⁸⁴ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended in 2016, Preamble.

⁴⁸⁵ MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1048.

⁴⁸⁶ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec. 3.

3.3 Directive Principles of State Policy

Apart from the provisions in the Fundamental Rights chapter, the Constitution under Article 38(1), directs the State to strive “to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”⁴⁸⁷ This Article reaffirms the declaration in the Preamble to the Constitution, discussed in the previous chapter, i.e., the function of the State to secure, *inter alia*, social, economic, and political justice.⁴⁸⁸ The Supreme Court has explained the concept of social justice in the following manner:

The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social Justice, equality and dignity of person are cornerstones of social democracy. The concept of ‘social justice’ which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. ‘Social justice’ is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribals (sic) and deprived sections of the society...⁴⁸⁹

Article 38(2) directs the State to strive “to minimize the inequalities in income” and endeavour “to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also groups of people residing in different areas or engaged in different vocations.”⁴⁹⁰ With regard to the concept of equality under Article 38, the Supreme Court has observed:

Equality before law is a dynamic concept having many facets. One facet-the most commonly acknowledged-is that there shall be no privileged person or class and none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution (viz Directive Principles). For, equality before law can be predicated meaningfully only in an equal society, i.e., in a society contemplated by Article 38 of the Constitution.⁴⁹¹

Further Articles 39(b) and (c) lay down the concept of a distributive economic system as it deals with distribution of ownership and control of material resources of the community. Socialism aims at distribution of material resources of the community in such a way as to serve

⁴⁸⁷ Constitution of India, Article 38(1).

⁴⁸⁸ Ibid., Preamble.

⁴⁸⁹ *Air India Statutory Corporation v. United Labor Union*, AIR 1997 SC at 669, as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1475.

⁴⁹⁰ Constitution of India, Article 38(2).

⁴⁹¹ *Sri Srinivasa Theatre v. Government of Tamil Nadu*, AIR 1992 SC 999,1004, as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1476.

the common good. It is the duty of a socialist State to secure socio-economic justice for its people.⁴⁹² Socialism means distributive justice, an idea ingrained in Article 39(b).⁴⁹³

Another important provision in this regard is Article 46 which obligates the State “to 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 to protect them from social injustice and all forms of exploitation.”⁴⁹⁴ This Article supplements Articles 15(2), 15(4), 16, 17, and 29(2). Though Article 46 forms a part of the Directive Principles of State Policy which is not justiciable in courts of law, these principles are supposed to guide the State in framing laws and policies for its citizens. The Constitution in this Article recognises that these sections of society, need special care, and that they need to be protected from social injustice and exploitations of all forms. The Supreme Court has held that as specified in Article 46, the State can separately categorise SCs and STs for the purpose of adequate representation in services and this would not necessarily violate Articles 14 and 16.⁴⁹⁵ Article 335 must also be noted here. It states:

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 the members of the Scheduled Castes and the Scheduled Tribes 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 the affairs of the Union or of a State.⁴⁹⁶

The Supreme Court has held that Article 335 must be read with Article 46.⁴⁹⁷

When challenged, the Supreme Court upheld the constitutional validity of Articles 16(4-A) and 16(4-B) on the ground, *inter alia*, that these Articles have nexus with Articles 17 and 46 and that they do not obliterate equality.⁴⁹⁸ The concept of distributive justice springs from Article

⁴⁹² Constitution of India, Articles 39 (b) and (c); also see MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1478.

⁴⁹³ *Ibid.*, Articles 39 (b) and (c); also see *Ibid.*

⁴⁹⁴ *Ibid.*, Article 46.

⁴⁹⁵ *ABSK Singh (Railway) v. Union of India*, AIR 1981 SC 298 as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1493.

⁴⁹⁶ Constitution of India, Article 335.

⁴⁹⁷ *Comptroller V. Jagannathan*, AIR 1987 SC 537: (1986) 2 SCC 679, as cited in P.M Bakshi, *The Constitution of India* (13th ed., Universal Law Publishing, 2016) 331.

⁴⁹⁸ *M Nagaraj v. Union of India* (2006) 8 SCC 212 at 276, as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1493.

46. The Supreme Court noted that because of Article 46, “an Act made to protect and preserve the economic interests of persons belonging to the SCs and STs and to prevent their exploitation would not infringe Article 14.”⁴⁹⁹ Further, the Court also noted:

Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence.⁵⁰⁰

It must be noted that though these three Articles do not form a part of fundamental rights in the Constitution, they nonetheless are considered to be crucial guiding principles for the State. Failure to properly implement these Articles has led to the perpetuation of atrocities on Dalits as can be seen Chapters 5 and 6.

3.4 Institutional Mechanisms to deal with Caste-based Discrimination

Initially Article 338(1) of the Constitution provided for appointment of a Commissioner for the Scheduled Castes and Scheduled Tribes, by the President of India. His duty was to investigate all matters relating to the Constitutional safeguards provided for the SCs and STs and report them to the President from time to time. The reports were then to be laid down before the Parliament as per Article 338(2).⁵⁰¹ Over time, it was found that instead of a special officer/Commissioner, it was more effective to have a high level multi-member commission, and Article 338 was amended in 1990⁵⁰² to abolish the office of the Commissioner and establish the National Commission for Scheduled Castes and Scheduled Tribes under Article 338(1). By a subsequent amendment in 2003,⁵⁰³ it was bifurcated into the National Commission for Scheduled Castes (NCSC),⁵⁰⁴ and the National Commission for Scheduled Tribes (NCST).⁵⁰⁵

Each of these Commissions consist of a Chairperson, Vice-Chairperson, and three other members to be appointed by the President of India.⁵⁰⁶ Both Commissions are to:

- (i) investigate and monitor all matters relating to the Constitutional safeguards provided for the SCs and STs, or other safeguards under any other law for the

⁴⁹⁹ Sri Manchegowda v. State of Karnataka, AIR 1984 SC 1151, 1159 as cited in Ibid.

⁵⁰⁰ Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, AIR 1997 SC 152, 163 as cited in Ibid 1494.

⁵⁰¹ MP Jain, *MP Jain Indian Constitutional Law* (n 291)1524.

⁵⁰² Constitution (65th Amendment) Act, 1990.

⁵⁰³ Constitution (89th Amendment) Act, 2003.

⁵⁰⁴ Constitution of India, Article 338.

⁵⁰⁵ Ibid., Article 338 A.

⁵⁰⁶ Ibid., Articles 338 (2) and 338A (2).

- time being in force or under any order of the Government and evaluate the working of such safeguards;
- (ii) inquire in case of any specific complaints with regard to the deprivation of rights and safeguards;
- (iii) participate and advise on the planning process of socio-economic development of the SCs and STs and to evaluate the progress of their development under the Union and any State;
- (iv) make recommendations as to the measures that should be taken by various Governments for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of SCs and STs;
- (v) discharge such other functions in relation to the protection, welfare, development and advancement of SCs and STs as the President may, subject to the provisions of any law made by Parliament, by rule specify.⁵⁰⁷

The Union and State governments are required to consult the Commissions on all major policy matters affecting SCs and STs.⁵⁰⁸

One of the most important features of these Commissions is that they have been conferred with the power of a civil court trying a suit, particularly with respect to such matters such as the summoning and examination of witnesses, discovery, and production of documents.⁵⁰⁹ However they do not have any power to grant injunctions, either temporary or permanent.⁵¹⁰ There are State offices of the Commissions located in several States and Union Territories. The Commissions also look into the effective implementation of legislation such as the PCR Act and SC/ST(POA) Act, discussed above. They collect monthly statistics concerning the offences committed under these Acts.⁵¹¹ They also make suggestions to State governments in dealing with crimes against SCs and STs more effectively. Further they are concerned with the education of SC and ST children and make necessary recommendations for strengthening the infrastructure for this purpose.⁵¹² The Commissions also look into the economic development of the communities and hence they review the development programmes undertaken by States for SCs and STs.⁵¹³

⁵⁰⁷ Ibid., Articles 338 (5) and 338A (5).

⁵⁰⁸ Ibid., Articles 338 (9) and 338A (9).

⁵⁰⁹ Ibid., Articles 338 (8) and 338A (8).

⁵¹⁰ All India Indian Overseas Bank v. Union of India, (1996) 6 SCC 606, as cited in MP Jain, *MP Jain Indian Constitutional Law* (n 291) 1526.

⁵¹¹ National Commission for Scheduled Castes and Scheduled Tribes, Fourth Report 231-246 (1996-97) as cited in Ibid 1527.

⁵¹² Ibid at 260-264.

⁵¹³ Ibid at 82-117.

The purposes for which the Commissions are established are clear; they are institutional mechanisms put in place by the Constitution for investigating and protecting the Constitutional safeguards for SCs and STs, which are additional mechanisms apart from the judiciary. However, what is lacking is a check on the Commissions themselves. What are the consequences in cases where the Commissions fail to perform their duties? Who are they liable to? In a country as large as India, why do they not have local offices in every district, so that an aggrieved Dalit can approach them? Since the Commissions have the power of the civil court, how long do the proceedings last? How are the Commissions trying to make themselves accessible to a lay person? These questions are important as it will be seen in Chapters 5 and 6, that despite the Commissions being in place, the number of atrocities on Dalits have continued to increase with time. This can imply several things, including that the Commissions are not functioning for the purposes for which they were established, that there are vested interests in the Commissions which do not let the Commissions function effectively, and/or that there is a glaring lack of political will in the ruling dispensation, past and present, to look into the non-effectiveness of these Commissions, which otherwise should have been one of the key protectors of the rights of the Dalits.

Another Commission, though not established exclusively to deal with issues of SCs and STs, but equally important nonetheless, is the National Human Rights Commission (NHRC) established in 1993 under the Protection of Human Rights Act 1993 (PHRA).⁵¹⁴ Unlike the NCSC and NCST, which are Constitutional bodies, the NHRC is a statutory body. The Commission confers with the Paris Principles⁵¹⁵ adopted in 1991 at the first international workshop on national institutions to promote and protect human rights, which was then endorsed by the United Nations General Assembly by its resolutions 48/134 of 20 December 1993.⁵¹⁶ The PHRA defines human rights to mean “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”⁵¹⁷

⁵¹⁴ Protection of Human Rights Act, 1993 as amended in 2006, Sec. 3.

⁵¹⁵ General Assembly Resolution 48/134, ‘Principles relating to the Status of National Institutions (The Paris Principles)’, (20th December 1993) United Nations Office of High Commissioner < <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>> accessed 9th May 2022.

⁵¹⁶ National Human Rights Commission, India < <https://nhrc.nic.in/about-us/about-the-Organisation>> accessed 9th May 2022.

⁵¹⁷ Protection of Human Rights Act, 1993 as amended in 2006, Sec. 2(1)(d).

A former Chief Justice of India is the chairperson of the NHRC. The chairpersons of the National Commissions for Minorities, Women, NCSC, and NCST shall also be members.⁵¹⁸ As per the PHRA, the functions of the NHRC include inquiring *suo motu*, or on a petition presented by a victim or any person on his behalf, or on a direction or order of any court, into complaints of human rights violation or abetment thereof, or negligence by a public servant in the prevention of such violation, and to study treaties and other international instruments on human rights and make necessary recommendations for their effective implementation.⁵¹⁹ While inquiring into complaints, the Commission has all the powers of a civil court trying a suit under the Code of Civil Procedure 1908 and every procedure before it shall be deemed to be a judicial proceeding.⁵²⁰ According to PHRA, where during or upon the completion of an inquiry, NHRC finds any human rights violation or negligence in its prevention or abetment thereof by a public servant, it may recommend the concerned government or authority to take a number of actions. This includes paying damages to the complainant or victim or members of his/her family, initiating proceedings for prosecution against the concerned person/s or such other suitable action as the Commission may deem fit, and recommend such government or authority to immediately grant interim relief to the victim or members of his/her family as the Commission may consider necessary.⁵²¹ The PHRA allows State Governments to constitute a State Human Rights Commission⁵²² and accordingly many States have constituted it. To provide for the speedy trial of offences, the State Governments may, as per the procedure laid down in PHRA, specify for each district a Court of Session to be a Human Rights Court to try the offences arising out of human rights violations.⁵²³

One of the important limitations on the jurisdiction of NHRC is that it shall not enquire into any matter after the expiry of one year from the date of the alleged commission of an act which constitutes a violation of human rights.⁵²⁴ This is particularly important when it relates to crimes against Dalits. As seen in the qualitative interviews conducted for the purpose of this thesis, discussed in Chapters 5 and 6, the participants, especially manual scavengers, who face human rights abuses and violations in the most inhuman manner, were not aware of the existence of the Commissions. This being the case, keeping the limitation period of only one

⁵¹⁸ Ibid., Sec. 3.

⁵¹⁹ Ibid., Sec. 12.

⁵²⁰ Ibid., Sec. 13.

⁵²¹ Ibid., Sec. 18.

⁵²² Ibid., Sec. 21.

⁵²³ Ibid., Sec. 30.

⁵²⁴ Ibid., Sec. 36(2).

year proves to be detrimental to the interests of the victims of atrocities and human rights abuses. It must be noted that, like the other two Commissions discussed above, the NHRC has not been particularly active in protecting the rights of the Dalits, who face human rights violations on a day-to-day basis, in multiple forms, as seen throughout this thesis. This shows that the institutional mechanisms are not effective in fulfilling the purposes for which they have been established. The accountability in cases where the Commission fails to perform its duties, is absent in the Act. Hence, there are chances that the Commission could arbitrarily exercise power due to a lack of transparency and accountability.

3.5 Concluding remarks

Some of the key international human rights conventions and provisions under the Indian Constitution have been instrumental in building a framework through which discrimination can be prohibited and equality can be promoted. The Indian Constitution expressly makes caste a prohibited marker against discrimination, and the international conventions dealt with here, though not use ‘caste’ explicitly, nonetheless prohibit discrimination based on social origin, birth, and descent, as discussed in this chapter. While the provisions can be considered as a bedrock on which civilised nations form the laws and principles that govern them, when it comes to India, there is one aspect which stands out; the lack of political will to effectively implement the laws which protect the Dalits. One perspective, as seen in this chapter, is the lethargic way of drafting legislations with multiple loopholes where they can be misused, while another perspective is the deliberate destabilising of the institutions by the privileged castes who have vested interests and are at the helm of affairs in the country, in order to maintain the caste hegemony over the marginalised and oppressed communities. It appears *ex facie* that there are laws and institutions for the protection and welfare of the downtrodden. However, when they are not implemented to their letter and spirit, when the system itself is hostile, it is as good as there being no law and no mechanism. The fact that Untouchability is still prevalent in 2022 in its changing forms, as seen throughout this thesis, mirrors this reality. The next chapter deals with the empirical research methods adopted in this thesis.

Chapter 4: Empirical Research Methods

“The sensitivity of the research sharpens ethical dilemmas [and] tends to reveal the limits of existing ethical theories”⁵²⁵

This chapter discusses the empirical research methods used in data collection in relation to the two key areas of focus in this thesis, namely, manual scavenging and caste-based discrimination in higher educational institutions in India. The chapter focuses on a broad range of issues including the sensitivity of the research, the process of approval by the university Ethics Committee, recruitment of participants, principles of ethics underpinning the field work, harm and risk to participants and the researcher, the interview process, issues surrounding confidentiality, anonymity, incentives, compensation, and transcription and analysis of data. Since this chapter deals with my first-hand experience in the field, I am writing this in first person.

4.1 Nature of research, underpinning ethical principles and recruitment of participants

In order to understand the intricacies surrounding the issues of manual scavenging and caste discrimination in higher educational institutions in 21st century India, I wanted to garner the perspectives of a wide range of stakeholders – manual scavengers, Dalit students, members of faculty, office bearers of universities/institutions, civil society activists, and officers representing the State. I felt a dire need to incorporate the feelings and emotions of the participants, and give a platform for their voices, as this thesis is primarily about them. Hence, I decided to conduct in-depth qualitative interviews, which were conducted with 6 sets of people in two different contexts – manual scavenging and caste-based discrimination in higher educational institutions. In relation to manual scavenging, I interviewed 6 manual scavengers; 3 members representing civil society, including a Dalit rights activist, a human rights activist, and an activist fighting for the betterment of manual scavengers; and 1 person representing the Karnataka State Safai Karamchari Commission.⁵²⁶ To explore the issue of caste-based discrimination in higher educational institutions, I selected 5 educational institutions in my home State Karnataka including 2 regular universities, 2 premier institutions, and 1 private institution where I interviewed 5 Dalit PhD students, since they are experienced enough to

⁵²⁵ Lee and Renzetti, ‘The problems of researching sensitive topics: An overview and Introduction’ (1990) *American Behavioral Scientist*, 33, 510, 522 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 143.

⁵²⁶ See Section 5.2.4.1 of Chapter 5 at 142.

understand the way caste functions in universities, 5 members of faculty, and 4 officers representing the institutions. I also interviewed 2 members of civil society - one Dalit rights activist, and one human rights activist, to gather their opinions on caste-based discrimination in institutions of higher learning. As a first step, I travelled to India. I limited the area of my field work to my home State of Karnataka, owing to the accessibility of participants and sources of my funding to conduct the field work.

Before entering the field, I completed a detailed institutional ethics application in relation to every aspect of the proposed field work which could be foreseen at that point in time. As a result of the sensitive nature of my research, I met with Lancaster University's Ethics Committee in person to discuss the project further. The process *inter alia* also helped me to consider various issues about my thesis from different perspectives, with members of the committee giving me valuable suggestions as to how I could conduct my research in the field.

My thesis' area of investigation is categorized as sensitive for many reasons, including the involvement of human participants and the nature of the issues being researched which relates to the historical yet ongoing problem of untouchability faced by Dalits who work as manual scavengers, and by Dalit students who enter higher educational institutions in pursuit of excellence. The four yardsticks proposed by Lee and Renzetti in relation to identifying sensitive research are:

(a) where research intrudes into the private sphere or delves into some deeply personal experience; (b) where the study is concerned with deviance and social control; (c) where it impinges on the vested interests of powerful persons or the exercise of coercion and domination and (d) where it deals with things sacred to those being studied which they do not wish profaned.⁵²⁷

Reflecting on this, my research in the field echoes all the above aspects, which is why an extreme amount of caution had to be exercised at every step. Whilst there was no immediate substantial physical risk involved to the participants in this research, mainly due to the way interviews were conducted and the anonymity offered to them, the collection, holding, and dissemination of data had to be completed in an extremely cautious manner, which will be discussed later in this chapter.

⁵²⁷ Lee and Renzetti, The problems of researching sensitive topics: An overview and introduction (n 525) 512; also see Fontes, Ethics in Violence Against Women Research (n 24) 142.

When there is involvement of human participants, the main ethical concerns revolve around respect for persons, fairness and justice, beneficence, and non-maleficence.⁵²⁸ However, like everything, ethical principles do have their limitations. King and Churchill note that ethical “principles can be used appropriately or clumsily, and good decisions depend a great deal on character and appreciation of context as well as on principled reasoning.”⁵²⁹ It has also been rightly noted by Fontes:

Ethical principles do not adequately address the moral issues that arise in conducting inquiry into many sensitive areas, including cross-cultural and family violence research. Even with the best of guidelines and human subjects review boards and consultants, researchers ultimately face ethical issues alone with their consciences. Many ethical decisions will be based on the amount of overnight tossing-and-turning that a researcher can tolerate.⁵³⁰

The concept of ethics, the way the researcher must conduct herself in the field, questions on obtaining informed consent, and the application of various research methods to obtain the data, are all part of the code of conduct a researcher is bound by. However, they vary somewhat between academic jurisdictions. The added challenge is also the cultural set up one is going to work within. Hence as a first step, I set out to recruit participants.

4.1.1 Recruitment of Participants: Manual Scavengers

Though I was acquainted with the treatment meted out to manual scavengers, the issues that they face, and the human rights violations taking place on a day-to-day basis, my knowledge had always been restricted to secondary sources such as media reports and articles. Accessing participants was going to be an enormous task if I was to venture to do it on my own. Hence, I decided to take active assistance from my father Mr. Lolaksha, a former journalist, and a well-known human rights activist, who has been awarded the prestigious Dr. BR Ambedkar State Award for Social Service in the State of Karnataka, India. Understandably the involvement of my father was raised before the Ethics Committee at the University. However, after discussions with members of the committee, they were satisfied that the role of my father was only to contact people he knew, so that they could arrange for me as a researcher to visit the areas of

⁵²⁸ Council for International Organizations of Medical Sciences (CIOMS), 2002; Loue, *Textbook of research ethics: Theory and practice* (New York: Kluwer Academic/ Plenum, 1999b) as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 143.

⁵²⁹ King and Churchill, ‘Ethical Principles Guiding Research on Child and Adolescent subjects’ (2000) *Journal of Interpersonal Violence*, 17, 710; also see Fontes, *Ethics in Violence Against Women Research* (n 24) 143.

⁵³⁰ Fontes, ‘Ethics in Family Violence Research: Cross-cultural Issues’ (1998) *Family Relations*, 47, 53; also see Fontes, *Ethics in Violence Against Women Research* (n 24) 143 144.

field study. For example, the geographical area where the manual scavengers lived, thus allowing me to recruit the participants myself. Neither I, nor my father had any personal relationship with the manual scavenger participants. From the outset, I clearly told all my participants that their views would be respected, and their participation was voluntary and they could withdraw at any time during the interview.

4.1.2 Gatekeepers

Gatekeepers play a vital role in social research as they often control access to a particular community.⁵³¹ This is especially true in cases of “communities which do not trust mainstream research and are seldom heard or for research involving sensitive subjects.”⁵³² Gatekeepers often act as “guarantors of the researcher’s legitimacy within the community”⁵³³ and this can help in saving a lot of time and resources for the researcher. It is very important that gatekeepers are chosen carefully, since they are the primary point of contact between the researcher and the participants. Accordingly, my father spoke to an activist (gatekeeper) who took both of us to a place in my hometown, Mangalore, where the manual scavengers lived. The activist set up a meeting between me and the manual scavengers. I then approached the prospective participants with utmost humility and explained to them that my thesis was an attempt to bring to the fore the situation of the participants, but it would not be judgmental. I further explained to the participants that they would be anonymized in ‘outputs’, that their participation was voluntary, and that the thesis would not come out immediately after their interviews, thus protecting them from any risk of identification. I orally explained to them in Tulu, a language they knew and understood, the subject and nature of my study and the procedure to be followed in getting the information on the matter at hand, as discussed below, and affirmed that their identities would not be disclosed. I also explained that they could withdraw from the study within a period of 15 days from the date of the interview, following which the data would be destroyed. A few of them agreed to be interviewed and we decided to meet at a restaurant the following day at a

⁵³¹ De Laine, *Fieldwork, Participation and Practice: Ethics and Dilemmas in Qualitative Research* (Sage, London, 2000) as cited in Ruth McAreavey and Chaitali Das, ‘A Delicate Balancing Act: Negotiating with Gatekeepers for Ethical Research when Researching Minority Communities’, (2013) 12 (1), *International Journal of Qualitative Methods*, 113, 116.

⁵³² Eide and Allen, ‘Recruiting Transcultural Qualitative Research Participants: A Conceptual Model’, (2005) 4 (2) *International Journal of Qualitative Methods*, 44; Knight *et al.*, ‘(De)constructing (in)visible parent/guardian consent forms: Negotiating power, reflexivity, and the collective within qualitative research’ (2004) 10 (3), *Qualitative Inquiry*, 390; Yancey *et al.*, ‘Effective Recruitment and Retention of Minority Research Participants’ (2006) 27 (1), *Annual Review of Public Health*, 1 as cited in *ibid* 116.

⁵³³ Whyte, *Street Corner Society: The Social Structure of an Italian Slum* (4th ed., University of Chicago Press, 1993) and McAreavey and Das, A Delicate Balancing Act (n 526) as cited in De Laine, *Fieldwork, Participation and Practice* (n 531) 116.

time convenient to them, a process which will be discussed in detail below. One of the participants said that he and other scavengers would not have agreed to talk to me but for the gatekeeper, who convinced them that taking part in the study would be beneficial for the community and that I, the researcher was a non-judgmental person.⁵³⁴

4.1.3 Recruitment of Participants: Other Stakeholders

As I wanted to garner perspectives of other stakeholders, I decided to interview Dalit students, members of faculty, officers representing the universities/institutions/SC/ST cell officers, activists and persons representing the State for my thesis. I researched the university websites and approached members of faculty, to whom I explained my thesis and requested their participation to give their independent opinions on caste-based discrimination in higher educational institutions. At a time chosen by them, I met each of them in their respective universities/institutions. I explained the participant information sheet and obtained their consent, which will be discussed below. A similar process was followed for officers representing universities/institutions, since they were also faculty members. The only difference was that they were office bearers and as such gave the official views of the universities/institutions. All the interviews took place in English.

For the recruitment of Dalit students, I took active assistance from the faculty members who I had interviewed. This was a deliberate decision since I was not aware of any students in those universities. But the faculty members knew the castes of the students and they agreed to help me in this regard. Hence, in each university, a group of Dalit PhD students were introduced to me by the faculty members. I insisted on interviewing PhD students since they were experienced enough to understand how caste operates in universities. I explained my thesis to them and sought their willingness to take part in interviews, sharing the participant information sheet and consent form. I then interviewed those students who came forward to share their experiences. The interviews took place on university campuses at places chosen by the students, including empty classrooms, cafeterias, and under the shade of trees. Most of the interviews with students took place in Kannada and Tulu.

For the recruitment of activists, I took help from my father. He introduced me to people (gatekeepers) who knew the activists working in the relevant fields relating to my thesis. I

⁵³⁴ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

followed the similar approach of explaining my thesis, providing a participant information sheet, and obtaining their consent. The interviews took place at a time and in the places chosen by the activists and this included, home, university campus, parks, and restaurants. The interviews were in a mixture of Kannada and English.

For the recruitment of a person representing the Karnataka State Safai Karamchari Commission, I went to the Commission's office in Bangalore and introduced myself to a concerned officer. I then explained my thesis and requested an interview in his official capacity. He agreed and I obtained his consent and conducted his interview. The officer spoke a mixture of Kannada and English in his interview.

4.2 Consent: Manual Scavengers

One of the important aspects of qualitative interviews is informed consent. My research was based in a multi-cultural society thriving on graded inequality. This being the case, dealing with the sensitive issue of manual scavenging, by way of obtaining consent through written consent forms as mandated by the Research Ethics Committee would defeat the whole purpose of the research, since the scavengers, being largely illiterate, do not understand the academic obligations of ethics. They use thumb impressions⁵³⁵ where necessary instead of signatures. However, the gatekeeper highlighted that taking their signatures/thumb impressions on documents which they cannot read would naturally scare them, with the consequence that they may withdraw from interviews altogether. Hence, following deliberations with the Ethics Committee, it was agreed that I should be allowed to obtain the oral consent of my participants, where necessary. Consequently, in the case of manual scavengers, I explained to them the contents of the consent form and participant information sheet in Tulu and obtained their oral consent which was audio recorded.

4.2.1 Consent: Other Stakeholders

For all other participants including Dalit students, members of faculty, activists, and person representing Karnataka State Safai Karamchari Commission, I adopted the traditional method of gaining consent through written consent forms, as they were able to read and understand its contents. As such I explained the participant information sheet and obtained their signature in the consent forms for the interviews.

⁵³⁵ Fingerprint of the thumb.

4.2.2 Power relations

Another important factor to consider in the field is the way power relations play out. Scholars have stressed the need for exercising critical judgement or *phronesis*⁵³⁶ to contribute to ethical research. “Phronesis requires interaction between the general and the concrete; it requires consideration, judgment, and choice. More than anything else, phronesis requires experience.”⁵³⁷ This involves “situational ethics”⁵³⁸ which considers the social and historical contexts, the gains and losses from particular phenomena and the way in which they manifest. It is also important to note the fluid nature of power.⁵³⁹ I was questioned by the university’s Ethics Committee about any ethical constraints I anticipated in relation to power imbalances in the field. The only possible power imbalance I anticipated was with manual scavengers; I was formally educated, and the manual scavengers were largely illiterate. However, I have always believed that education which does not bring humility in an individual is of no avail. I answered their question saying that I was mindful of the power imbalances, but that I was going into the field as an independent researcher exploring the reality of the lives of my participants. I was not going to be judgmental. I was firm that I would ask them only as much as my research demanded. Most research encounters the issue of power, and it is particularly visible when the subject revolves around sensitive areas. However, they can be addressed through “consideration of ethics that includes respect, beneficence, and justice.”⁵⁴⁰ Accordingly, I approached all my participants with utmost humility and informed them that the intention of my research was to understand their situation, highlight their problems in their own words, and give a platform for their voices. I took particular care in phrasing questions in a way which was not embarrassing for them to answer and made sure they were comfortable in sharing their experiences in a way chosen by them.

This also links to concerns that often arise in research involving human participants particularly that of vulnerable and marginalized sections within society. Questions such as why a researcher is conducting a study of this particular manner, who the researcher is, and why they should communicate with her about their personal experiences are important. These questions are fundamental in building trust and must be answered with caution to not jeopardize the research,

⁵³⁶ Practical wisdom to reason well; see Michael J Sandel, *The Tyranny of Merit: What’s Become of the Common Good?* (Allen Lane, 2020) 28.

⁵³⁷ Flyvbjerg, *Making Social Science Matter: Why Social inquiry fails and how it can succeed again* (Cambridge University Press, 2001) 57 as cited in McAreavey and Das, A Delicate Balancing Act (n 531) 114.

⁵³⁸ Ibid 130.

⁵³⁹ McAreavey and Das, A Delicate Balancing Act (n 531) 114.

⁵⁴⁰ US Department of Health and Human Services, 1979, as cited in Ibid 114, 115.

as there are chances that too much or too little disclosure of personal information by the researcher might lead to participants acting on their own biases.⁵⁴¹ Within a research encounter, the participants, like researchers, also bring their own expectations, life experiences and knowledge, which may or may not be conflicting with that of the researcher.⁵⁴² For example, if I were to disclose, I belong to a particular caste 'X', the participant will immediately identify himself/herself as either belonging to 'X' or a caste higher or lower to 'X'. His/her attitude will change accordingly. This is one aspect of caste which is very unique. Unlike race, caste is not evident on the face of it. However, the attitude of a person changes upon disclosure of caste identity of another.⁵⁴³ It is for this reason I was very cautious and chose to selectively disclose information about my identity.

As for my stand on the human rights abuses they face, this is something that I was questioned about by some participants. I was open about my opinion and thoughts on the issue. This acted as a reassurance of my support to them and their cause. Building trust enables participants to have more confidence in sharing their personal sensitive information, knowing that it will not be divulged or misused because my care and concern for them extends beyond my research.⁵⁴⁴ After conducting the interview, a Professor asked me "if I were to ask you the same questions and if you were to reply, what would your response be?"⁵⁴⁵ I had to tread carefully, so as to not disclose too much about my own personal stories of my university days, as I feared that disclosing my experiences of caste discrimination, or lack of it, might result in a change of response from the participant. It is crucial to have this selectivity, of knowing when and how much to reveal, as too much disclosure of personal information could undermine my effectiveness as a researcher.⁵⁴⁶ Hence taking time to understand the situation I was in was important for me to judge how to respond to my participants and this is where my critical judgment was put to test in the field. Additionally, the participants were able to trust me with their sensitive personal information because of gatekeepers supporting my access to the participants. These were the activists that the participants trusted, and they helped to convince participants, that my research was purely academic in nature, and that the anonymized data

⁵⁴¹ Ibid 118; also see Fontes, *Ethics in Violence Against Women Research* (n 24) 159.

⁵⁴² Debate & Analysis, 'The safety of Researchers and Participants in Primary Care Qualitative Research', <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3964461/pdf/bjgpr2014-64-621-198.pdf>> accessed 10th May 2022.

⁵⁴³ Ambedkar, *Annihilation of Caste* (n 8) 15-17.

⁵⁴⁴ McAreavey and Das, *A Delicate Balancing Act* (n 531) 118.

⁵⁴⁵ Interview with F-1, Faculty Member at U-9 (Mangalore, 19th April 2019).

⁵⁴⁶ McAreavey and Das, *A Delicate Balancing Act* (n 531) 118.

would be stored in a very secure manner. Hence, it can be said that the trust relationship between the researcher and gatekeeper often becomes a critical factor.⁵⁴⁷

4.3 Harm

Another important question that arises in conducting research on sensitive issues is the existence of discomfort, harm, and risk, to both participants and the researcher. Principles and guidelines of ethics often assist researchers in anticipating and minimizing potential harms; this includes the way in which data is collected, processed, and stored, confidentiality and informed consent. The measures which I was going to adopt in the field were formalized by my university's Ethics Committee. I decided that the identity of my participants would remain confidential. I have ensured that information collected is kept anonymous and identifying information is not shared with anyone outside of the interview. Though the institutional ethics review boards and the codes of ethics might insist on certain protections for subjects, all the ethical and moral decisions for the researchers cannot be made by them.⁵⁴⁸ It is the researcher who needs to balance her obligations to the participants, the pursuit of knowledge, her profession, her university, and the public at large, which more often than not will be conflicting.⁵⁴⁹ In the process of conducting this research, there was significant harm caused to me in terms of my emotional well-being. I have discussed this in the section on Transcription.

4.3.1 Harm to Participants: Manual Scavengers and Dalit students

It must be noted that in western democracies, the concept of mental health is well-known and well cared for. Such is not the case in India. As someone who has worked on issues facing the marginalized sections of society for several years, I have had many occasions to witness this for myself. I was very conscious therefore that my participants, especially the manual scavengers and Dalit students, were going to narrate personal experiences which could be traumatic. However, referring them to psychologists or mental health counselors was not an option for two important reasons. Firstly, because mental health is still seen as a stigma in Indian society, and secondly, my participants put their trust in me and agreed to share experiences which were deeply personal to them. As every other profession is colored by caste

⁵⁴⁷ Ibid 116.

⁵⁴⁸ Webster *et al.*, 'Ethical Considerations in Qualitative Research' in J. Ritchie *et al* (eds.) *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (2nd ed., Sage, London) as cited in Steven Taylor, Robert Bogdan and Marjorie Devault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (4th ed., John Wiley & Sons, Incorporated, 2015) 99.

⁵⁴⁹ Ibid.

in India, so is the medical field. Referring them to counsellors or psychologists is just like referring them to doctors from the dominant castes who would not relate to their suffering, and this presented a dilemma. My training to become an advocate (barrister) helped me immensely in this regard. The interviews were semi-structured in nature, and I was able to pose realistic questions to my participants and listen to them with utmost empathy. Though I could not relate to many aspects of their lives, I could relate to a few, and I hoped this put them at ease and they were comfortable in disclosing more information.

Some of the manual scavengers and Dalit students narrated traumatic experiences from their lives. My emphasis was on the participants personal aspects of sufferings. Some of these stories were tailored with bleak isolation and lingering bitterness, while some others spoke of seemingly traumatic instances as a matter of normality. Some scholars have noted there is no empirical support for the notion that research participants get psychologically harmed by discussing sensitive topics.⁵⁵⁰ It has also been suggested that there is a distinction between “the distress that emanates from re-calling a traumatic event and the intense fear, helplessness, or horror that comes from direct experience, implying that although trauma research may be distressing, it is not traumatic *per se*.”⁵⁵¹ There are different perspectives to look at this issue. While interviewing survivors of traumatic life experiences, the potential for re-traumatization looms large. Some scholars have suggested that research that delves into sensitive areas may itself be traumatic as it reawakens bitter memories of prior traumas.⁵⁵² In her study Bergen noted that “several women reported experiencing flashbacks, loss of sleep and increased tension as a result of the interview.”⁵⁵³ I believe trauma has a way of reappearing depending on the intensity of the experiences. It is possible that the researcher would not recognize the possible long-term harm her questioning might cause to the participant, which is why very careful perusal of interview questions needs to be conducted before entering the field. Fontes puts in a word of caution that must be exercised in overgeneralizing the issue of re-traumatization, as it has not been sufficiently investigated. I agree with the scholars, who while discussing violence against women believed that “the degree to which openness is achieved

⁵⁵⁰ Straus, ‘Protecting Human Subjects in Observation Research: The case of Family Violence’ in Filsinger & Lewis (eds.), *Assessing Marriage: New Behavioural Approaches* (Sage, Beverley Hills, 1981); Newman *et al.*, ‘Does the Study of Victimization Revictimize the Victims?’, (1997) 19, *General Hospital Psychiatry*, 403 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 165.

⁵⁵¹ Ibid 166.

⁵⁵² Ibid.

⁵⁵³ RK Bergen, ‘Interviewing Survivors of Marital Rape’, in Renzetti & Lee (eds.) *Researching Sensitive Topics* (Sage, Newbury Park, 1993) 198 as cited in *ibid* 165.

depends partly on study-design issues, such as whether questions are clearly worded and easy to understand, and how many times during the interview a woman is asked about violence.”⁵⁵⁴ This holds equally true in other areas of sensitive research.

A person’s ability to recall information stored in his/her mind constitutes memory. And it “is a complex and notoriously fallible process.”⁵⁵⁵ Traumatic experiences often leave negative memory. As a researcher, to interpret trauma narratives I needed to consider the larger socio-cultural context and the experiences of participants. Incorporating individual, intersubjective, and collective facets which play a role in shaping memories is an important task.⁵⁵⁶ Sharing traumatic incidents is not merely a personal recollection. It also exists through what has been shared with others. Each person’s memories are unique. But as a researcher I needed to unpack, identify, and re-interpret. This helped in revealing the interplay between social and individual suffering.⁵⁵⁷ Being fully acquainted with the practicalities of caste discrimination, I was prepared to comfort my participants by pausing the interviews for the duration they wanted and giving them space and water if necessary. I conducted the interviews at a pace set by the participants without rushing and allowing them to take their time in answering. While venturing into sensitive areas, I would pause and ask if they were comfortable to continue with the line of questioning. Only upon their affirmative answer I would continue with the interviews. Accordingly, it must be noted that none of my participants appeared outwardly distressed. If that were to happen, I would have consulted my father and the gatekeeper about the steps that we could take to help them, also by taking care not to breach their confidentiality. Instead, at the end of the interviews, most of which ran for about 50 minutes to 1 hour, participants stated that they felt “relieved”⁵⁵⁸, “light”⁵⁵⁹, “as if a burden is lifted off their shoulders”⁵⁶⁰ because of sharing their experiences with someone who was willing to listen and was non-judgmental.

4.3.2 Harm to Participants: Other Stakeholders

While the above was the case with Dalit students and manual scavengers who narrated personal experiences, I did not anticipate any harm in the nature of needing mental health counselling

⁵⁵⁴ Ellsberg, Peña, Agurto and Winkvist, ‘Researching Domestic Violence Against Women: Methodological and Ethical Considerations’ (2001) 32, *Studies in Family Planning*, 1, 2 as cited in *ibid* 166.

⁵⁵⁵ Jan Coetzee and Asta Rau, ‘Narrating Trauma and Suffering: Towards Understanding Intersubjectively Constituted Memory’, (2009) 10 (2), *FORUM: Qualitative Social Research*, 1, 1.

⁵⁵⁶ *Ibid* 16.

⁵⁵⁷ *Ibid* 17.

⁵⁵⁸ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

⁵⁵⁹ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁵⁶⁰ Interview with MS-6, Manual Scavenger (Mangalore, 7th May 2019).

to my other participants. Officers representing universities and person representing the Safai Karamchari Commission, were giving official versions of the universities and the Commission. Activists and faculty members were observing the situation and finding solutions to the issues in question and contextualising the issues in a larger framework of how caste operates in India and as such none of them appeared outwardly distressed during the interviews.

4.4 Risk to Participants: Manual Scavengers

For the interviews with manual scavengers, as explained above, I approached the participants through an activist. Participants could choose the time and place for the interviews, keeping probable risk factors in mind, like getting identified by the people in their colonies.⁵⁶¹ Accordingly, I suggested that we meet at a restaurant the following day, since it was a neutral public space, where people would not recognize them and they would be more comfortable to talk about their experiences, than in their colonies, where it would become a matter of curiosity to everyone. Since there is no permanent employer for manual scavengers, I did not anticipate any risk from ‘employers’. The manual scavengers appreciated my suggestion to meet at the restaurant and said that they can dress up well if the interview takes place in a restaurant, rather than at their workplace or colony where they generally will be covered in “filth”, and it would be more difficult to talk about their experiences.⁵⁶²

4.4.1 Risk to Participants: Other Stakeholders

With regard to Dalit students, there was so much anger among the students against the system that they did not mind being named. However, I was cautious and ensured full anonymity to them, as will be discussed later. At no point in time, are they identifiable. For the faculty members, a probable risk would be administrative action against them from their respective universities for sharing their honest opinions. However, all the faculty members I interviewed were working on a permanent basis and to the best of my knowledge their jobs were not threatened because of their involvement in this project. They were willing to give their honest opinions on the issue of caste discrimination in their universities. A professor remarked “it is time someone researched on this important issue. This has been going on for far too long!”⁵⁶³

⁵⁶¹ A group of Dalit households together is called a Dalit colony in common parlance.

⁵⁶² Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁵⁶³ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019).

I also approached the officers including that of SC/ST Cells⁵⁶⁴ to gather the official versions of the institutions on caste discrimination. There was considerably less risk to them as they represented and gave out the official views of the universities. I have also interviewed activists who willingly participated in the interviews as they thought it was delving into very sensitive issues which do not form a part of mainstream legal research. They did not anticipate any risk to themselves by participating in the study. The interviews took place at locations of participants' choice as mentioned above and according to them, there were no foreseeable risks involved in any of these places. In each interview, the place was chosen by the participant, except the manual scavengers which was my suggestion.

4.4.2 Risk to the Researcher

Owing to the sensitivity of the subject, I have taken utmost care in conducting interviews. As approved by my university Ethics Committee, I was always accompanied by my father when conducting interviews. This was for my safety as a female researcher working in a socio-culturally sensitive country like India. My father was able to see the interviews being conducted at all times, but he was always out of earshot to ensure privacy for participants. I did not foresee any risk to myself from Dalit students and manual scavenger participants, since they themselves were victims of discrimination and were willing to share their personal experiences. When it came to interviewing officials representing the State and the institutions of higher learning, I approached them as a researcher working for my thesis. However, my educational background, being a gold medalist from India's premier law institution, my studies abroad, my work on the marginalized sections of society, and status as an Advocate (Barrister) of the High Court of Karnataka meant that they treated me with respect. They were willing to talk to me and to give the official version of the institutions they represented, which otherwise might have proven to be difficult given the way Indian institutions function. It must be noted that my father accompanied me to these interviews as well. However, he remained outside since the interviews took place in their chambers/rooms. Apart from this, I did not foresee any risk to myself especially because I was looking into structural changes, for example, how laws could be implemented in a better manner to serve the actual purpose for which they were enacted, rather than pinpointing blame on a particular individual during my field work.

⁵⁶⁴ See Section 6.4.1 of Chapter 6 at 221.

4.5 Benefit to Participants

The reprimand expressed by the Helsinki Protocol is that “research should be carried out only if the potential benefits of a study outweigh any potential harms” and “the well-being of study participants takes precedence over the interests of ‘science and society.’”⁵⁶⁵ Though it does not fall under a strict sense of ethical obligation, responsible research should note that benefits and burdens of research be distributed fairly.⁵⁶⁶ It is important that participants benefit from the research in exchange for their participation. One such important benefit is already discussed above in the form of burden-sharing by participants in this study who felt that weight was lifted off their shoulders. Many manual scavengers and Dalit students also felt “grateful”,⁵⁶⁷ “happy”⁵⁶⁸ and “thankful”⁵⁶⁹ that they were able to take part in an in-depth study of vital issues on the lives of marginalized communities. They were keen that sharing their personal stories would highlight the issues they face and lead to social and political change and raise awareness around these issues. All the other stakeholders were pleased to have taken part in the interviews. They were glad to have been considered to take part in the study, with one of the participants, a human rights activist and a Professor remarking that “this is going to be one of the first and most important studies on this issue and I’m very glad to have contributed to this.”⁵⁷⁰ Another Professor remarked “though I’m in academia, there are considerably few studies on these issues conducted by legal researchers. You are the first one I came across and I’m happy you have considered me to share my views on caste discrimination in higher educational institutions.”⁵⁷¹ Another important benefit is in the form of incentives and compensation, to which a separate section is dedicated below.

The other is the larger benefit for the whole class or category of people involved in the said research, on whose experiences the research is focused, for example manual scavengers. The principle of *distributive justice*⁵⁷² underlines bearing equitable benefits and burdens. The

⁵⁶⁵ Loue, *Textbook of research ethics: Theory and practice* (New York: Kluwer Academic/ Plenum, 1999b) 87 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 143.

⁵⁶⁶ UK (Government’s Science & Society Team Department for Innovation, Universities & Skills) <<https://www.gov.uk/government/organisations/department-for-innovation-universities-and-skills>> accessed 10th May 2022; also see ‘Departmental Report 2009’, Department for Innovation, Universities and Skills (July 2009)<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238617/7596.pdf> accessed 10th May 2022.

⁵⁶⁷ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁵⁶⁸ Interview with MS-4, Manual Scavenger (Mangalore, 7th May 2019).

⁵⁶⁹ Interview with Student-1 of U-7 (Mangalore, 7th April 2019).

⁵⁷⁰ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

⁵⁷¹ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

⁵⁷² ‘Distributive Justice’, *Stanford Encyclopaedia of Philosophy*, (22nd September 1996) <<https://plato.stanford.edu/entries/justice-distributive/>> accessed 10th May 2022.

International Guidelines for Ethical Review of Epidemiological Studies outlines this principle as follows:

Studies should be designed to obtain knowledge that benefits the class of persons of which the subjects are representative: the class of persons bearing the burden should receive an appropriate benefit, and the class primarily intended to benefit should bear a fair proportion of the risks and burdens of the study.⁵⁷³

Further “research that is truly just will illuminate relevant issues of social justice.”⁵⁷⁴ Fontes argues that a researcher must be able to:

distinguish between cultural issues like beliefs and practices and oppression issues like cultural insensitivity and discrimination. Otherwise, there is a risk of practices that are in fact derived from societal inequalities appearing as cultural and therefore immutable to change.⁵⁷⁵

Though her take on the issue is with respect to researching violence against women, the same holds true for research in sensitive areas dealing with untouchability. Though my long-term interest, passion, and commitment to the issues experienced by marginalized communities in India made me take this up as my research, the driving force has always been social justice.

Research on issues such as these are used in shaping public policies, though, the challenge will always be about how best findings can be disseminated to produce the desired change.⁵⁷⁶ The usual places where the research findings are discussed include academic journals and conferences. However, rethinking of dissemination of research findings is needed to serve the larger interest of the participants or category of people on whom the research is made. Fontes suggests the following:

Disseminating findings through television, radio, and the Internet, using varying levels of complexity depending on the intended audience; developing practical workshops for professionals (e.g., therapists, shelter workers) or lay people based on the findings; developing relevant brochures to be distributed to a variety of audiences through community organizations; making presentations to organizations of survivors or victims; writing for survivor or victim publications; and serving as consultants to public service organizations on the topic of their research. Research results can be

⁵⁷³ Council for International Organizations of Medical Sciences (CIOMS) (1991), *International Guidelines for Ethical Review of Epidemiological Studies* (Geneva, Switzerland) 11 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 160.

⁵⁷⁴ Fontes, *Ethics in Violence Against Women Research* (n 24) 161.

⁵⁷⁵ *Ibid* 162.

⁵⁷⁶ *Ibid*.

disseminated through articles, comic books, soap operas, videos, songs, murals, handouts, theatre (sic), dance, and a variety of other means.⁵⁷⁷

These forms of dissemination reach out to a larger audience and can possibly result in policy amendments to that effect.

4.6 Incentives and Compensation

Often researchers are known to provide incentives or compensation to participants in exchange for their involvement in research. This may take the form of money, small gifts such as pens, books etc.⁵⁷⁸ Scholars have conflicting views on this issue. Some hold the view that it is a form of coercion to offer incentives to participants, whilst others hold it as being exploitative of the participants if they are not offered.⁵⁷⁹ While some have also suggested that “to improve response rates and minimize attrition in studies, researchers should use a combination of tangible incentives (e.g. money) and intangible incentives (e.g. expressed appreciation for participation).”⁵⁸⁰ Compensation is a demonstration that the researcher values the contributions made by participants. Fontes argues that the researcher must make it clear to participants from the outset that they will receive the compensation regardless of the content of their answers and them choosing to answer or decline any of the questions posed to them.⁵⁸¹ I agree that providing incentives and compensation is an apparent form of appreciation for the contributions of the participants. However, care must be taken so that it does not harm the content of the answers given by the participants, thereby minimizing the questions of unethical practices of inducement or coercion posed in relation to the research. This is especially vital when it involves sensitive groups like the manual scavengers who are involved in such an occupation for many reasons, one of which is poverty.

I adopted a method of providing honorariums to the activists who helped me to facilitate the research as well as the manual scavengers. It is to be noted that the activists are not paid by their organizations. They accept honorariums if anyone pays them for their services, but there is never a demand for this. However, as a researcher I felt that I should pay a monetary sum for

⁵⁷⁷ Fontes, ‘Conducting Ethical Cross-Cultural Research on Family Violence’ in Kantor & Jasinski (eds.), *Out of the Darkness: Contemporary Perspectives on Family Violence* (Sage, Thousand Oaks, 1997) 310 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 163.

⁵⁷⁸ Fontes, *Ethics in Violence Against Women Research* (n 24) 148.

⁵⁷⁹ Fontes, *Conducting Ethical Cross-Cultural Research on Family Violence* (n 577) as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 148.

⁵⁸⁰ Wineman and Durand, ‘Incentives and Rewards to Subjects in Nursing Research’ (1992) 4, *Western Journal of Nursing Research*, 526 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 148, 149.

⁵⁸¹ *Ibid.*

their valuable time and the services they rendered for the study. Therefore, I paid them Rs. 1500 (15 GBP approx.). Similar is the case with manual scavengers, whose lives and livelihoods are an integral part of my research. It was a moral obligation for me to pay honorariums to them for their valuable time and the insights they provided in understanding the issue of manual scavenging. Hence, I paid Rs.1000 (10 GBP approx.) to each of them. Different to Fontes' suggestion, is the fact that none of my participants were aware that they would be paid honorariums prior to participation in the interviews. This eliminated the question of inducement and coercion altogether. It was only on completion of the interviews that I offered to pay them an honorarium as a matter of gratitude and acknowledgment of their valuable time and contribution to my research. It was a matter of great surprise to my participants. Many of the manual scavenger participants were very hesitant in accepting the honorariums and told me that they did not participate in the interview with a hope of any monetary reward and that they genuinely wanted to help since I was doing research on their lives and livelihoods, which generally do not form a part of the mainstream discourse and are not explored in much detail. I explained to them that the honorariums were a small token of gratitude from me for their time and contribution for the research and they accepted them with appreciation.

Whilst I offered honorariums to all the other interview participants, all apart from those in the two categories mentioned above, refused to accept honorariums. The Dalit students and the faculty members said "they were more than happy to have participated in this important study, which will shed light on caste discrimination in universities."⁵⁸² They also said that "they were very glad that someone is doing research on this neglected but vital issue."⁵⁸³ The person representing Karnataka State Safai Karamchari Commission also denied accepting an honorarium stating "I was just doing my job, giving you information about what our Commission has been doing."⁵⁸⁴ Two activists interviewed for the study on caste discrimination in universities also refused honorariums stating that it is their duty to explain the realities to as many as possible and that they were not doing it for money.⁵⁸⁵ I explained to them that I was very grateful to all of them for their precious time and contribution to my research and that without their help, my research would not have reached its desired end.

⁵⁸² Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁵⁸³ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019).

⁵⁸⁴ Interview with Officer, KSSKC (Bangalore, 8th June 2019).

⁵⁸⁵ Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019).

4.7 Nature of interviews

The interviews were semi-structured in nature.⁵⁸⁶ “The hallmark of in-depth qualitative interviewing is learning how people construct their realities - how they view, define, and experience the world.”⁵⁸⁷ As this was my first empirical study, I was nervous when I first entered the field, not knowing how the participants would perceive me. Eventually, with every interview, I learnt the most appropriate way of getting my participants to answer my questions. Before I started the interviews, I explained to participants about my thesis, the participant information sheet, consent form and how I would store their data. With their permission, I audio-recorded all the interviews. To put the participants at ease, I started off the interviews with basic questions such as where they live, how they commute to work, the number of people in their families etc. I took a similar approach towards all my participants with minor changes in questioning where necessary like instead of work, I asked about studies for Dalit students. Though these questions may have appeared to not be significant, these questions certainly do have a bearing on my research. These basic questions are key to setting the tone of the relationship between the researcher and the participant. As guided by my supervisors, I did not collect any data which was not necessary for my thesis.

It was important that I maintained a state of curiosity and genuine interest in the lives of my participants right from the beginning and make them aware that I was willing to learn from their experiences. Coles eloquently described this frame of reference thus:

My job...is to bring alive to the extent I possibly can a number of lives...entrusted to a person like me, an outsider, a stranger, a listener, an observer, a doctor, a curious...fellow who one mountaineer described as “always coming back and not seeming to know exactly what he wants to hear or know.”⁵⁸⁸

Once I felt the participants were comfortable with the line of questioning, I asked them more open-ended questions like “can you describe your experience with xyz?” This enabled participants to speak at length. Consequently, I established a way in which I could get my participants to share their experiences and perspectives without overly structuring the dialogue. Kvale rightly pointed out that “the interviewer leads the subject toward certain themes, but not to certain opinions about these themes.”⁵⁸⁹ Accordingly, whenever the participant would pause, I would prompt a “why” question like “why do you think this happened with you?” or

⁵⁸⁶ Samples of participant information sheet, consent form and interview questions are annexed to this thesis.

⁵⁸⁷ Taylor *et al.*, *Introduction to Qualitative Research Methods* (n 548) 115.

⁵⁸⁸ Coles, *Migrants, Sharecroppers, Mountaineers* (MA: Little, Brown, Boston, 1971) 39 as cited in *ibid* 116.

⁵⁸⁹ Kvale, *Interviews: An Introduction to Qualitative Research Interviewing* (Sage, Thousand Oaks, 1996) 35 as cited in Taylor *et al.*, *Introduction to Qualitative Research Methods* (n 548) 116.

“why do you think they treated you this way?” making the participant think and contextualize their experiences in a wider social, political, and economic setting. It is important to recognize that some sections of society are marginalized and vulnerable at multiple levels and that their experiences need articulating.⁵⁹⁰ This exercise of posing questions with “why” made participants investigate those aspects of their lives which they had not always seen or had taken for granted. For example, a manual scavenger would say that he started working as a manual scavenger because he was poor. But the fact remains that not all poor people engage in manual scavenging. The question of why only he took up this particular task would inevitably link to the fact that he being a Dalit was *made* to take up manual scavenging. It goes much beyond poverty. Similar is the case with Dalit students who have been victimized due to the castes they belong to. As Ambedkar points out:

Caste system will not allow Hindus to take to occupations where they are wanted if they do not belong to them by heredity. If a Hindu is seen to starve rather than take to new occupations not assigned to his caste, the reason is to be found in the caste system. By not permitting readjustment of occupations, caste becomes a direct cause of much of the unemployment we see in the country.⁵⁹¹

Even though the above observation is from the time of a pre-independent pre-Constitution India, the problem of caste and the disabilities it creates still exist, as discussed throughout this thesis. The “why” question helped the activists and academics contextualize their experiences and that of others and theorize them, thereby giving a framework to the issues we discussed. I ended each interview with an open-ended question like “apart from the things you have shared, is there anything you wish to add?”. This was the opportunity for participants to disclose anything that I had not touched upon during the interview. Many of them spoke a lot about their experiences and shared suggestions about how to go about the research which were helpful. In every interview, the length and duration were set by the participants. I let them speak for as long as they wished for, without interrupting them.

4.8 Confidentiality and Anonymity

People who have been victims of oppression like manual scavengers and Dalit students have reasons to fear further victimization and as such their participation in research may put them at

⁵⁹⁰ Glen Jankowski, ‘Reflecting on Qualitative Research, Feminist Methodologies and Feminist Psychology: In Conversation with Virginia Braun and Victoria Clarke, (2017) 19 (1) Psychology of Women Section Review, 1, 7.

⁵⁹¹ Ambedkar, *Annihilation of Caste* (n 8) 15.

risk if their anonymity were to be violated.⁵⁹² On many occasions I was questioned by my participants as to who else I had contacted or interviewed already. It was very important not to pass any information howsoever incidental, from one participant to another. As a researcher, I am bound by the ethical conduct of maintaining confidentiality and anonymity I had promised to my participants. When faced with such questions I politely declined them stating that I would not disclose any information about them to anyone else in a similar manner. This was a reassurance of my commitment to confidentiality to participants who then were more comfortable with sharing their personal experiences.

For manual scavengers and Dalit students, anonymity was ensured. For activists, anonymity was offered. A few of them wanted to be named in the research ‘output’. However, as agreed by my university Ethics Committee, I did not guarantee this to them. One official representing a State Commission was interviewed to garner the official version of the Commission. I told him that I would be using the name of the Commission he represented since he was giving the official version, but his name would not be used. He accepted this. Similarly, for the student welfare officers or the SC/ST cell officers, since they were giving the official version of the institution with respect to treatment of lowered caste students, it was not possible to make it anonymous. If they consented, the position they hold would be revealed. For the members of faculty who gave their independent opinion on the issue of caste-based discrimination in their universities, anonymity was offered, which they accepted. The physical copies of documents like signed consent forms were kept in my office at Lancaster University. Other documents with identifiable information were scanned and the actual papers destroyed thereafter. A copy of the scanned documents and audio files were encrypted and uploaded to the cloud, as per the standard procedure of the University. Similarly, the interviews were translated to English and transcribed, where all the identifying information was removed and stored in encrypted files.

I have given code numbers to my participants. For example, I have numbered Manual scavengers as MS-1, MS-2 etc., instead of using their real names. Similarly, I have numbered the universities as U-1, U-2 etc., for civil society activists CS HEI (civil society Higher educational institutions) and CS MS (civil society manual scavenging) are used. For faculty members F-1 at U-1 etc., and for officers representing the institutions, U-1 officer, U-2 officer etc., have been used.

⁵⁹² Fontes, *Ethics in Violence Against Women Research* (n 24) 153.

4.9 Transcription

An inseparable part of qualitative interviews is transcription, which requires cautious engagement with qualitative data.⁵⁹³ While this is a strenuous task in itself, interviews on sensitive areas pose an added challenge. Since my field work took place in India, apart from conducting interviews in English, I had also conducted a few of them in Kannada and Tulu which are the local languages in the areas of my field of study. Transcribing these interviews was challenging for multiple reasons. Initially I had to translate the interviews to English and then transcribe them, which was very time-consuming. Another enormous hurdle which I faced was in relation to listening to the sensitive stories while transcribing them.

While it can be traumatic for a researcher to listen to sensitive stories for a duration of one hour or so, it can be even more disturbing when the interviews are transcribed, since every word and detail must be heard, translated, and written down. This process lasted for several days for me, with just one interview. I had conducted a total of 28 interviews, some of which narrated very distressing stories. This repetition had a lasting emotional impact on me. Often, I felt helpless listening to the narratives of caste discrimination faced by participants. “Researchers participate in research along with participants, and therefore, their well-being is also a legitimate ethical concern.”⁵⁹⁴ Scholars who have worked on sensitive areas have often reported “emotional distress, tearfulness, nightmares, headaches, difficulty concentrating, paranoia, hypervigilance about safety, anger, forgetfulness, depressed mood, feelings of burnout, self-doubt, anxiety, insomnia, isolation, “virtual paranoia” and despair.”⁵⁹⁵

“Secondary traumatic stress has been defined as being a ‘natural consequence’ of empathy between two individuals where one individual had been initially traumatized, and the other is affected by hearing about those experiences. Similarly, vicarious traumatization is experienced through the process of empathically engaging with other individuals’ trauma narratives,”⁵⁹⁶

⁵⁹³ Nikki Kiyimba and Michelle O’Reilly, ‘The Risk of Secondary Traumatic Stress in the Qualitative Transcription Process: A Research Note’, (2016) 16 (4), *Qualitative Research*, 468, 486.

⁵⁹⁴ Fontes, *Ethics in Violence Against Women Research* (n 24) 168.

⁵⁹⁵ Urquiza, Wyatt and Goodlin-Jones, ‘Clinical Interviewing with Trauma Victims: Managing Interviewer Risk’, (1997) 12, *Journal of Interpersonal Violence*, 403 as cited in Fontes, *Ethics in Violence Against Women Research* (n 24) 169.

⁵⁹⁶ Devilly, Wright and Varker, *Vicarious Trauma, Secondary Traumatic Stress or Simply Burnout? Effect of Trauma Therapy on Mental Health Professionals*, (2009) 43 (4) *Australasian Psychiatry* 373; Pearlman and Saakvitne *Trauma and the Therapist: Counter-transference and Vicarious Traumatization in Psychotherapy with Incest Survivors* (Norton, London, 1995) as cited in Kiyimba and O’Reilly, *The Risk of Secondary Traumatic Stress* (n 593) 471.

both of which were present in my case. Fontes therefore recommends having ongoing support available to researchers, which I agree with completely. This should include “regular meetings to process both methodological and affective issues and a mechanism by which researchers can debrief immediately after difficult interviews, including having a clinical supervisor or project director available during all interview times.”⁵⁹⁷ Since I was in India and my PhD supervisors were in the UK, there was no daily de-briefing, but I had email contact with them every week. I structured my day in such a way that on the days where I took interviews, I did not engage in any other academic activities. Spending time with my family helped me destress after conducting interviews.

There were occasions when I found myself getting adversely affected by the stories of my participants, especially when I was translating the interviews due to listening to them repeatedly. I felt listening to them during transcription process was more emotionally taxing than listening to them during the interviews. It was overwhelming and emotionally exhausting. These incidents are not happenings of the past. They take place in our society day-to-day, which made it even more upsetting. There were times when frustration ran high, and I had to take long breaks. I felt lonely and isolated. As a first-time researcher, I was new to this process. It was surprising that my institutional Ethics Committee did not raise in any significant detail the issue of my emotional wellbeing as a researcher during my ethics approval process. Added to this was that I transcribed the interviews during lockdown, amidst the COVID-19 global pandemic. Alongside the process of transcription draining me, the pandemic saw many deaths worldwide and in my own family and friends’ circle. I tested positive for the virus as well. I was clinically diagnosed with depression. It was extremely challenging to cope with the changing circumstances and be level-headed with my thesis. My supervisors were very patient and extremely helpful and gave me much-needed time and space and did not rush the process of transcription.

Each researcher’s disciplinary background, psychological characteristics, professional and personal experiences help in determining the ways to go about ensuring emotional wellbeing.⁵⁹⁸ It was important that I learned to distance myself from the transcription to protect my

⁵⁹⁷ Fontes, *Ethics in Violence Against Women Research* (n 24) 170.

⁵⁹⁸ Debate & Analysis, ‘The safety of Researchers and Participants in Primary Care Qualitative Research’, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3964461/pdf/bjgpapr2014-64-621-198.pdf>> accessed 10th May 2022.

mental well-being. Eventually, I dedicated some fixed hours of my work every day to translating and transcribing of interviews and the rest were dedicated to working on the parts of the thesis dealing with law and policies. I felt mixing them in such a manner was vital so that I did not get overwhelmingly distressed. Taking regular breaks was also very important. Going out for a walk, talking to a friend, journaling, watching less traumatic incidents on television, avoiding reading about such events in newspapers, and generally trying to switch off from the stories were also very helpful.⁵⁹⁹

4.10 Data Analysis

I used thematic analysis to analyze the interview transcripts. Clarke and Braun describe thematic analysis as “a method for identifying, analyzing, and interpreting patterns of meaning (‘themes’) within qualitative data.”⁶⁰⁰ It is vital to identify and search common threads across the interviews in thematic analysis.⁶⁰¹ When conducted rightly in a rigorous manner, it can produce trustworthy and insightful findings.⁶⁰² As an early career researcher conducting field study for the first time, I found this approach flexible and as something that could be modified to fit my study. I was able to note the perspectives of my participants, examine the similarities and differences in their answers, interpret and draw conclusions.

Once I transcribed the interviews, I read and re-read them several times. I then gave pseudonyms to my participants and the universities and started coding. “Qualitative coding is a process of reflection and a way of interacting with and thinking about data.”⁶⁰³ This helped me in simplifying and focusing on particular characteristics of the data. I manually conducted this process using MS word, during which, I identified important areas of the texts and attached labels to index them wherever I found a recurring issue, which may possibly relate to a theme. There were some accounts by my participants which deviated from the dominant theme that

⁵⁹⁹ Also see Fontes, *Ethics in Violence Against Women Research* (n 24) 170.

⁶⁰⁰ Victoria Clarke and Virginia Braun, ‘Thematic Analysis’, (2017) 12 (3), *The Journal of Positive Psychology*, 297, 297.

⁶⁰¹ DeSantis and Noel Ugarriza, ‘The Concept of Theme as Used in Qualitative Nursing Research’ (2000) 22, *West J. Nurs. Res.*, 351, as cited in Mojtaba Vaismoradi, Hannele Turunen and Terese Bondas, ‘Content Analysis and Thematic Analysis: Implications for conducting a Qualitative Descriptive Study’ (2013) 15, *Nursing and Health Sciences*, 398, 400.

⁶⁰² Braun and Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3, *Qualitative Research in Psychology* as cited in Lorelli Nowell, Jill Norris, Deborah White and Nancy Moules, ‘Thematic Analysis: Striving to Meet the Trustworthiness Criteria’, (2017) 16, *International Journal of Qualitative Methods*, 1, 2.

⁶⁰³ Savage, ‘One Voice, Different Tunes: Issues raised by dual analysis of a segment of qualitative data’, (2000) 31, *Journal of Advanced Nursing*, 1493 as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 5.

emerged, I did not ignore them, but rather coded them separately as suggested by Braun and Clarke.⁶⁰⁴

Once the process of coding was completed, as King suggested in searching for themes I started with a few predefined codes.⁶⁰⁵ “A theme is an abstract entity that brings meaning and identity to a recurrent experience and its variant manifestations. As such, a theme captures and unifies the nature or basis of the experience into a meaningful whole.”⁶⁰⁶ Ideas which are meaningless when viewed alone might find meaning when viewed together as part of a theme.⁶⁰⁷ “A theme is not necessarily dependent on quantifiable measures but rather on whether it captures something important in relation to the overall research question.”⁶⁰⁸ “A theme may be initially generated inductively from raw data or generated deductively from theory and prior research.”⁶⁰⁹ Thus there are two modalities of approaches in thematic analysis, inductive and deductive. An inductive approach is used where previous studies have not been conducted on an issue and hence the coded categories are derived directly from the data.⁶¹⁰ The researcher’s analytic preconceptions do not find a place in this approach; it is data-driven.⁶¹¹ A deductive approach is used to analyze a previous theory in a different situation or to compare categories at different periods of time.⁶¹² In this approach, the researcher’s theoretical or analytical interest may provide a detailed analysis of some aspects of the data.⁶¹³ I have used a mixture of both these approaches but tilting more towards the deductive approach in my analysis of the data. It is true that previous studies have been conducted on the issue of manual scavenging and caste-based discrimination in higher educational institutions in India. However, such studies have

⁶⁰⁴ Braun and Clarke, ‘Using Thematic Analysis in Psychology’ (n 602) as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 6.

⁶⁰⁵ King, ‘Using Templates in the Thematic Analysis of Text’ in Cassell and Symon (Eds.), *Essential Guide to Qualitative Methods in Organizational Research* (Sage, London 2004) as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

⁶⁰⁶ DeSantis and Ugarriza, *The Concept of Theme as Used in Qualitative Nursing Research* (n 596) 362.

⁶⁰⁷ Aronson, ‘A pragmatic View of Thematic Analysis’, (1994) *The Qualitative Report*, 1 as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

⁶⁰⁸ Braun and Clarke, ‘Using Thematic Analysis in Psychology’ (n 602) as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

⁶⁰⁹ Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (Sage, thousand Oaks, 1998) as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

⁶¹⁰ Hsieh and Shannon, ‘Three Approaches to Qualitative Content Analysis’ (2005) 15, *Qual, Health Res.*, 1277, as cited in Vaismoradi *et al.*, *Content Analysis and Thematic Analysis* (n 601) 401.

⁶¹¹ Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

⁶¹² Hsieh and Shannon, *Three Approaches to Qualitative Content Analysis* (n 605); Elo and Kyngäs, ‘The Qualitative Content Analysis Process’ (2008) 62, *J. Adv. Nurs*, 107 as cited in Vaismoradi *et al.*, *Content Analysis and Thematic Analysis* (n 601) 401.

⁶¹³ Braun and Clarke, ‘Using Thematic Analysis in Psychology’ (n 597) as cited in Nowell *et al.*, *Striving to Meet the Trustworthiness Criteria* (n 602) 8.

not been conducted with a legal angle using a human rights law lens to it. I leaned more towards a deductive approach because there is a comparison between two distinct categories of issues, and it helped in deducing the hypothesis of this dissertation that untouchability operates on a distinctly different plane in modern India.

While drawing out the themes, I found that the deductive codes often formed the main themes. There were other codes which did not fit these themes and hence I created a “miscellaneous” theme for those which did not belong elsewhere. I used an inductive approach in forming sub-themes without trying to fit them into pre-existing theories and codes. I then proceeded to check whether the themes accurately reflected the meanings that emerged out of the data. During this phase, I found that some themes did not have enough data to support them, some were too diverse, while some merged into each other, and others needed to be broken down into separate themes.⁶¹⁴ Selected themes were then named and incorporated into this thesis, which are used in Chapters 5 and 6 as various sub-headings. While naming the themes, I tried to follow Braun and Clarke’s suggestions and accordingly looked for theme names that were punchy and would immediately give the reader a sense of what the theme was about.⁶¹⁵ I then wrote a detailed analysis of each theme and saw how it fit into the overall narrative of the thesis, which is described in the following two chapters. As King suggested I’ve used quotes from my participants throughout the chapters as they precisely describe their experiences.⁶¹⁶ Further, one of the main objectives of conducting this field work was to make the voices of my participants heard and I felt I did justice to this by incorporating their stories directly into this dissertation. Analyzing data was vital in critically engaging with literature and the laws, since the qualitative data acted as a reality check to the latter. This was crucial in assessing how best the laws are implemented on the ground. This facilitated the policy recommendations and amendments to the legislation which this thesis incorporates in Chapter 7.

4.11 Concluding Remarks

This chapter discussed the fundamentals of the empirical research conducted for this thesis. There were areas where I had to deviate from the traditional approaches in the field like taking informed consent of manual scavengers orally. But at all times key ethical principles guided

⁶¹⁴ Ibid 9.

⁶¹⁵ Ibid 10.

⁶¹⁶ King, Using Templates in the Thematic Analysis of Text (n 605) as cited in Nowell *et al.*, Striving to Meet the Trustworthiness Criteria (n 602) 9.

my decisions on and off the field. With the well-being of the participants, the well-being of the researcher is also crucial. There were times where it was emotionally challenging for me to transcribe but I discovered ways to cope and successfully completed the task at hand. I recommend that University Ethics Committees take adequate measures to assess the emotional harm and trauma that sensitive research can cause to researchers and take measures to better help researchers throughout the process. I recommend including questions like “is this the first time you are conducting research on a sensitive area?” in the ethics application form. During the ethics approval, these issues must be discussed further, especially the possible emotional harm to the researcher, both during and after the interviews, and prepare the researcher for the task ahead. The Ethics Committee must also arrange for ongoing support for researchers where they conduct research on sensitive areas. The key reason to conduct these interviews was to make the participants’ voices heard, for which I have used thematic analysis and incorporated the interview quotes directly into the narrative of this thesis, thereby I feel I have done justice to my participants and my subject area of research. The next chapter discusses the first of the two important issues focused in this thesis, manual scavenging.

Chapter 5: Manual Scavenging: A Livelihood with No Life

“They are killing us! Not just us, our families, our kids, they are killing all of us! Their sole intention is that we should be this way forever, struggling and suffering!”⁶¹⁷

One of the worst and the most visible and surviving symbols of Untouchability in the twenty first century is manual scavenging.⁶¹⁸ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 defines a manual scavenger as:

a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or local authority or an agency or a contractor, for manually cleaning, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed.⁶¹⁹

The scavengers often collect human excreta with bare hands with the help of conventional brooms and tin plates, fill them into a bucket, and keep the bucket on top of their heads to carry it to a different location, away from the scavenged toilets.⁶²⁰ This inhuman practice is a hereditary caste-based occupation in India.⁶²¹ The task of manual scavenging has been traditionally, historically, and permanently assigned to Dalits.⁶²² They have been engaged in this practice for centuries, often without a choice of any other occupation and out of force by the dominant castes. No one other than Dalits are compelled to engage in this practice. Nowhere else in the world does a system such as this exists, where a person employs another to clean his night soil. It is an occupation that no person wants to be employed in. But still, it is prevalent in India.

Hence, this chapter critically examines the nexus between caste and manual scavenging. This is followed by an in-depth analysis of various attempts by the government to abolish the practice, starting with various schemes, culminating with the enactment of two pieces of legislation, and the establishment of institutional mechanisms like the National Commission

⁶¹⁷ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁶¹⁸ ‘Beginning of the End’, (2010) 45 (47), Economic and Political Weekly, 9, 9.

⁶¹⁹ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 2(1)(g).

⁶²⁰ Aparajita Baruah, ‘The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013: A Review’ (2014) 1 (3) Space and Culture, India, 9, 10.

⁶²¹ Shaileshkumar Darokar, ‘Manual Scavengers: A Blind Spot in Urban Development Discourse’ (2018) 53 (22), Economic and Political Weekly, 1, 1.

⁶²² Joshi and Ferron, A Life of Dignity? (n 18) 24.

for Safai Karamcharis. It further deals with rehabilitation programmes for the manual scavengers; followed by the issue of child manual scavenging. The final part relates the history to modern times and how manual scavenging, a practice of untouchability is still prevalent. For the purposes of this chapter, the main focus is on manual scavengers who work in sewers and septic tanks. I have chosen this for two reasons: first, there is considerable literature about Dalit women who clean dry latrines but there is a dearth of legal literature on Dalit men who clean sewers and septic tanks; and second, during field work I was mainly able to talk to manual scavengers who worked in cleaning sewers and septic tanks.

5.1 Manual Scavenging and Caste

In Indian society faeces imply impurity and pollution.⁶²³ Manual scavenging cannot be seen merely as an occupation. The nexus between this occupation and the caste system is undeniable. As seen in Chapter 2, historically Dalits were forced to work in degrading conditions which denied them even the basic right to life with dignity. Traditional occupations of Dalits included cleaning human excreta out of dry latrines, sweeping streets, disposing of animal carcasses, and cleaning sewers.⁶²⁴ The people engaged in cleaning society came to be called the ones engaged in doing the ‘dirty job’, and hence came to be treated as polluted and Untouchable.⁶²⁵ The Hindu caste hierarchy, religion, and culture thrives on the concepts of purity and pollution.⁶²⁶ Accordingly it requires that the human excreta be removed as far as possible from the household and imposed this task on the caste group considered to be most polluted; the Dalits.⁶²⁷ The forced association of Dalits with the ‘polluting’ task excluded them physically, socially, and morally from the larger village commune.⁶²⁸ Almost 99% of those engaged in manual scavenging are Dalits, and 95% among them are women.⁶²⁹ “In 70% of the Indian villages, people belonging to dominant castes refrain from eating or drinking with Dalits to avoid the sheer possibility of accidentally touching a Dalit.”⁶³⁰ In case of a physical contact between a Dalit and a privileged caste person, a cleansing bath has to be taken by the higher

⁶²³ Ibid.

⁶²⁴ Thomas M Leonard, *Encyclopedia of the Developing world* 253 (2006) as cited in Aery, *Born into Bondage* (n 9) 722.

⁶²⁵ Ibid 722; also see ‘Pillay applauds Indian movement to eradicate ‘Manual Scavenging’’, United Nations Office of the High Commissioner, < <https://www.ohchr.org/en/press-releases/2013/01/pillay-applauds-indian-movement-eradicate-manual-scavenging> > accessed 16th May 2022.

⁶²⁶ Ambedkar, *Riddles in Hinduism* (n 117) 172.

⁶²⁷ Joshi and Ferron, *A Life of Dignity?* (n 18) 24.

⁶²⁸ Ibid.

⁶²⁹ *Beginning of the End* (n 618) 9.

⁶³⁰ Aery, *Born into Bondage* (n 9) 722, 723.

caste person. Even the sight of a Dalit is considered to be impure by the Brahmins which requires purification by looking at the sun, moon, or stars and rinsing the mouth with water.⁶³¹

As discussed in Chapter 2, the Hindu caste system is one of hierarchy, which exists among all castes, including the Dalits. Manual scavengers often belong to the lowest of the low; they are the lowest among the Dalits. They are known by different names in different regions of India, among them are the Bhangis, Methars, Pulayas, Parayas, and Valmikis.⁶³² The people who are engaged in this practice are socially ostracized, humiliated, and discriminated against. A few decades ago in one of the Indian States, like Dalits who are engaged in other occupations, the manual scavengers were only allowed to walk on the streets with an identifying mark. For example, tying a broom to their waist to sweep the dust they trod on, and hanging an earthen pot around their necks so that their spit would not pollute the ground.⁶³³ The manual scavengers face physical isolation, social, and moral abuse at the hands of ‘civil’ society. Moreover since the Hindu religious texts mandate that people belonging to the lowered castes not to accumulate wealth and property,⁶³⁴ historically the manual scavengers have lived in abject poverty and there is a visible economic disparity between them and the rest of society.⁶³⁵ Their age span is shortened due to the dangerous diseases they are exposed to, and caused by their work, like diarrhoea, cholera, dysentery, typhoid, infectious hepatitis, and many other deadly diseases.⁶³⁶ When interviewed, a manual scavenger remarked:

Now only I cannot see properly, eyesight has grown weaker. Do the authorities give anything for all this? Nothing.⁶³⁷

The obnoxious smell and toxic gases have claimed the lives of hundreds of manual scavengers inside the dark gutters, an issue which is often ignored by the State, media, and civil society.⁶³⁸ The nexus between caste and manual scavenging is undeniable and so is the nexus between manual scavenging and poverty. During his interview, one manual scavenger reflected:

First, I felt very sad. Lonely. Dirty. But to fill our stomachs we must work. We are not stealing. We are working and filling our stomachs. Good or bad job we can’t see, we

⁶³¹ Joshi and Ferron, *A Life of Dignity?* (n 18) 24.

⁶³² *Ibid* 24, 25.

⁶³³ *Ibid* 25. Also see Section 2.3 of Chapter 2 at 44.

⁶³⁴ See page 41 of Chapter 2.

⁶³⁵ Joshi and Ferron, *A Life of Dignity?* (n 18) 25.

⁶³⁶ Baruah, 2013 Act: A Review (n 620) 10.

⁶³⁷ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁶³⁸ Rajeev Kumar Singh and Ziyauddin, ‘Manual Scavenging as Social Exclusion: A Case Study’, (2009) 44 (26 & 27), *Economic and Political Weekly*, 521, 521, 522.

must work. Hence, I joined this. Seeing it for so long, now it doesn't even come to our minds that it is dirty, no matter how dirty it is.⁶³⁹

The Socio Economic Caste Census of India conducted in 2011 discloses that more than 180,657 households are engaged in manual scavenging for their livelihood.⁶⁴⁰ The 2011 Census of India shows 794,000 cases of manual scavenging in India.⁶⁴¹ However, this number does not include septic tanks, sewers, and railway tracks which are also cleaned by manual scavengers. There are 2,600,000 dry latrines, 770,000 people cleaning sewers and 36,176 railway cleaners as of May 2022, according to the NGO Safai Karamchari Andolan.⁶⁴² The 2011 India Census reveals that there are 1,314,652 toilets where human excreta is flushed in open drains and that in 794,390 dry latrines human excreta is cleaned manually. 73% of these are in rural areas while 27% are in urban areas.⁶⁴³ In today's era of technological and industrial advancement, manual scavengers are forced to clean human excreta with bare hands. Compelling people to live in this way denies them their fundamental dignity as human beings. On mechanisation of sewer cleaning, a manual scavenger remarked:

The government does not have the will to bring machines. We work for less wages. Why will they spend tons of money for machines? We get very less salary.⁶⁴⁴

While it is a clear violation of human rights of the manual scavengers by those employing them, as discussed in the upcoming sections, the attitude of civil society towards them is equally appalling. A manual scavenger reflected:

Seeing us they cover their noses, as if there is a dead dog. People insult us, no one does good. Our caste is also like that, Dalits we are, people treat us with contempt. Then we work in this field, even more contempt. In future, it will be worse, I don't think the condition of our community will improve.⁶⁴⁵

Another manual scavenger remarked:

⁶³⁹ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁶⁴⁰ 'How many Manual Scavengers are there in India? Official Data is Self-Contradictory', News 18, < <https://www.news18.com/news/buzz/how-many-manual-scavengers-are-there-in-india-official-data-is-self-contradictory-1880197.html> > accessed 16th May 2022; also see Press Information Bureau, 'Manual Scavenging', Ministry of Social Justice and Empowerment, Government of India, < <https://pib.gov.in/newsite/PrintRelease.aspx?relid=133286> > accessed 16th May 2022.

⁶⁴¹ Ibid.

⁶⁴² 'What is Manual Scavenging?', Safai Karamchari Andolan, < <https://www.safaikarmachariandolan.org> > accessed 16th May 2022.

⁶⁴³ Breaking Free: Rehabilitating Manual Scavengers, United Nations in India < <https://in.one.un.org/page/breaking-free-rehabilitating-manual-scavengers/> > accessed 16th May 2022.

⁶⁴⁴ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁶⁴⁵ Ibid.

When I started working, if I asked for water, people would hesitate saying “for these people?”. They stayed away. When they see us, many change their expressions as if we are dirty. We work for them, for their convenience, so they can use the roads etc., but they will not think about it, they make us feel dirty. They cover their noses when we are around.⁶⁴⁶

Despite the Constitution, the practice of untouchability in its traditional form can also be seen, as one manual scavenger stated:

A few years ago, caste Hindus were not allowing us to enter the temple. Now they do. In our village, there is a famous temple, we were not allowed inside. We had to stand out and offer our prayers. Caste Hindus offered us tea in coconut shells and not glasses. Now things are changing slowly.⁶⁴⁷

The differential treatment is not limited to the manual scavengers. It extends to their family members as well. As reflected by a manual scavenger:

My son finished his school and he refused to continue thereafter. He wants to go to a different college. He said, the headmistress is rude to him. Before us, she behaves normally, but when only children are present, she speaks rashly.⁶⁴⁸

The Ministry of Social Justice and Empowerment, Government of India revealed that between 2016 and November 2019, 282 sanitation workers died while cleaning sewers and septic tanks. The Ministry maintained that the figure was based on the number of First Information Reports (FIR)⁶⁴⁹ filed by the police in various States.⁶⁵⁰ However NGOs like Safai Karamchari Andolan maintain that the actual number of deaths could be much higher than reported. Since it has

⁶⁴⁶ Interview with MS-3, Manual Scavenger (Mangalore, 7th May 2019).

⁶⁴⁷ Ibid.

⁶⁴⁸ Ibid.

⁶⁴⁹ The Code of Criminal Procedure, 1973, Sec. 154: Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

⁶⁵⁰ Dhaval Desai, ‘282 deaths in last 4 years: How Swachh Bharath Mission failed India’s Manual Scavengers’, 27th January 2020, the Print < https://theprint.in/india/282-deaths-in-last-4-years-how-swachh-bharat-mission-failed-indias-manual-scavengers/354116/?fbclid=IwAR1fHdUisKyQBvHnuvPtTsAfpcO_aHnmWR4gv1SmHFnGcKOz_IMXxJxZ3PQ > accessed 17th May 2022.

started to record nationwide figures in 2000, the death count in manholes shows a total of 1760 as of January 2020.⁶⁵¹ As will be discussed in this chapter, the employment of manual scavengers was first banned in 1993 which made the non-compliance of the provisions of the 1993 Act a cognizable offence. However it must be noted that the National Crime Records Bureau⁶⁵² has not recorded a single crime under this Act.⁶⁵³

5.2 Manual Scavenging and initiatives to abolish it

One of the key issues with regard to manual scavenging is the prevalence of dry latrines. Government initiatives before 1980 were focused only on improving the living and working conditions of manual scavengers and not converting the dry latrines to sanitary latrines (pour flush latrines). This section deals with various governmental schemes, programmes and institutional mechanisms aimed at abolishing manual scavenging after the 1980s.

5.2.1 Governmental Schemes and Programmes

It was in 1980-81 that the Ministry of Home Affairs, Government of India, took up the Centrally Sponsored Scheme for Liberation of Scavengers by way of conversion of dry latrines into low cost flush operated latrines. This move meant that the manual scavengers would be left with no jobs. Hence, the Ministry also took initiative to provide alternative employment to the unemployed manual scavengers and financial assistance to them in certain selected towns. In 1989, a task force, which was constituted by the Planning Commission, suggested that a separate scheme be made for the liberation and rehabilitation of manual scavengers.⁶⁵⁴ In 1992, the scheme of ‘Liberation of Scavengers’ was divided into two. An Integrated Low Cost Sanitation (ILCS) Scheme and the National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents (NSLRS) was started.⁶⁵⁵

The government saw the ILCS as an important solution for the practice of carrying nightsoil. The main objective of the scheme was “to convert dry latrines into low cost sanitation units of two pit pour flush latrines and to construct low cost sanitation units to EWS (Economic Weaker

⁶⁵¹ Ibid.

⁶⁵² It is an Indian government agency responsible for collecting and analyzing crime data as defined by the Indian Penal Code, special and local legislations.

⁶⁵³ Desai, How Swachh Bharath Mission failed India’s Manual Scavengers (n 650).

⁶⁵⁴ Freedom from Manual Scavenging, Press Information Bureau, Ministry of Social Justice and Empowerment, Government of India < <https://pib.gov.in/newsite/mbErel.aspx?relid=126057> > accessed 17th May 2022.

⁶⁵⁵ Ibid.

Sections) households who have no latrines in the urban areas of the country.”⁶⁵⁶ The focus of this scheme was towns in India and limited to EWS households. Initially started under the Ministry of Home Affairs in 1980-81, this scheme was later carried through the Ministry of Welfare. From 1989-90 it was operated through the Ministry of Urban Development and the Ministry of Housing and Urban Poverty Alleviation, which implements it directly.⁶⁵⁷ Under this scheme, the State Government has the liberty to select reputed NGOs in the field and involve them in IEC (Information Education and Communication) activities. For this purpose, the NGOs will be funded to a maximum of 15% over and above the total project cost which the Centre and the State bear based on the ratio of 5:1 at different stages of implementation.⁶⁵⁸

An evaluation of the scheme was done by the Agricultural Finance Corporation Limited, New Delhi in October 2007. There were some constraints found in the report for the effective implementation of the scheme, like the absence of subsidies for superstructure portion,⁶⁵⁹ non-availability of sufficient space in the completed areas for construction of twin pits, poor loan recovery from individuals, etc.⁶⁶⁰ A revised scheme was then proposed and approved by the union cabinet in 2008. However, no targets have been fixed with regard to the construction of new toilets to EWS households under the revised scheme and neither are there provisions for community toilets under this scheme.⁶⁶¹

NSLRS on the other hand, was implemented by the Ministry of Welfare, presently called the Ministry of Social Justice and Empowerment.⁶⁶² The main objective of this scheme was to provide alternative employment to the liberated manual scavengers and their dependants.⁶⁶³ Under this scheme, the scavengers and their dependants were trained in the trade of their choice and aptitude which can provide them alternate employment. The trainees got a stipend of Rs. 500 (5 GBP approx.) per month and a tool kit allowance of up to Rs. 2000 (20 GBP approx.) during the course of training. For rehabilitation under this scheme there were prescribed

⁶⁵⁶ ‘Prototype Interactive Public Questions & Answers’, ILCS Section, Ministry of Housing and Urban Poverty Alleviation, Government of India, < <https://mohua.gov.in/upload/uploadfiles/files/4ilcs.pdf> > accessed 17th May 2022.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Upward extension of an existing structure above the ground or a baseline.

⁶⁶⁰ Prototype Interactive Public Questions & Answers, ILCS Section (n 656).

⁶⁶¹ Ibid.

⁶⁶² ‘Annual Report 2005-2006, 2006-2007 combined’, National Commission for Safai Karamcharis, Government of India < <https://ncsk.nic.in/sites/default/files/Binder4.pdf> > accessed 17th May 2022.

⁶⁶³ Freedom from Manual Scavenging (n 654).

financial packages for different trades and financial assistance up to Rs. 50,000 (500 GBP approx.) could be provided. The Union government had also formulated and issued guidelines to all States, and their Special Central Assistance (SCAs) to form groups of 5 to 25 scavengers and start a production-cum-trading service centre for large scale conversion of dry latrines through sanitary marts,⁶⁶⁴ in which the loan would be provided by the National Safai Karamcharis Finance and Development Corporation (NSKFDC).⁶⁶⁵

However, the National Commission for Safai Karamcharis⁶⁶⁶ noted that both of the above schemes have “lost their momentum and focus to address the basic problem of eradication of manual scavenging and the link between the liberation and rehabilitation was somehow never created.”⁶⁶⁷ The Central Rural Sanitation Programme (CRSP) was also launched by the union government in 1986 under the Ministry of Rural Development. Emphasis was laid on sanitation which was seen as the crux of the problem and the scheme also indirectly tried to address the question of eradication of manual scavenging since it provided large amounts as subsidy for the construction of sanitary latrines for Below Poverty Line households and for community toilets.⁶⁶⁸

It must be noted that all the above governmental schemes look at the issue of manual scavenging primarily as an issue relating to health and sanitation rather than an issue of untouchability, caste, and human rights abuse. This is why Article 17⁶⁶⁹ of the Indian Constitution which speaks of abolition of untouchability is not mentioned in any of these schemes. Imposing strict penal actions against persons indulging in constructing dry latrines and employing manual scavengers to clean them, and also against officials who do not implement the rehabilitation schemes meant for the manual scavengers to their letter and spirit, could help to eradicate this centuries old practice, which denies a person even the basic right to life with dignity guaranteed under the Indian Constitution.

⁶⁶⁴ Shopping destination for sanitation and hygiene related things. See ‘Sanitary Mart Scheme’, National Safai Karamchari Finance and Development Corporation, < <https://nskfdc.nic.in/en/content/home/sanitary-marts-scheme> > accessed 17th May 2022.

⁶⁶⁵ ‘Welfare and Rehabilitation of Manual Scavengers in India’, < https://shodhganga.inflibnet.ac.in/bitstream/10603/48068/8/08_chapter%204.pdf > accessed 17th May 2022.

⁶⁶⁶ See Section 5.2.4.1 of this Chapter at 142.

⁶⁶⁷ Annual Report 2005-2006, 2006-2007 combined (n 662).

⁶⁶⁸ Ibid.

⁶⁶⁹ See Section 3.2.3 of Chapter 3 at 89.

During an interview, when asked if he is aware of the above programmes, a manual scavenger said:

nobody has ever told us about all these schemes. For safety we have gloves, mask and shoes that's all. Apart from that we don't have anything else.⁶⁷⁰

Karnataka was the pioneering State in recognising the need to eradicate manual scavenging. A Committee was constituted to study the living and working conditions of sweepers and scavengers in the State in 1972. The final report was submitted in 1976. However, a circular was issued by the State government, based on the interim recommendations. It sought to ban the practice of “carrying nightsoil as head load or manual handling thereof in any manner”, and that such practices be eradicated by 15.08.1973. But the directions were not implemented seriously.⁶⁷¹

5.2.2 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 (1993 Act)

The Union government took note of the seriousness of the problem of manual scavenging and due to requests from State Governments, the first legislation, Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, was enacted by Parliament in 1993. This legislation is largely ineffective for many reasons.⁶⁷² The legislation applies to all Union Territories but only 6 States. The only way this Act could have been applied to other States is by them adopting a resolution to that effect under Article 252(1) of the Constitution of India.⁶⁷³ This means that even though dry latrines have been constructed and manual scavenging exists in the remaining States, there is no law to curb it, unless States enact State legislation. According to the Act, the State government *may* issue a notification to introduce schemes to eradicate dry latrines.⁶⁷⁴ The use of the word ‘may’ in the Act, weakens its authoritative nature. This leaves the discretion in the hands of State governments and it comes down to the political will of the ruling party to implement the law, rather than the law itself being stringent enough, forcing the State to take action. It is also important to note that whilst dealing with the prohibition of manual scavenging, the Act gives discretion to the State

⁶⁷⁰ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

⁶⁷¹ Siddharth KJ, ‘Manual Scavenging in Karnataka: A Situation Assessment’, Safai karamchari Kavalu Samithi, Karnataka (January 2020) < <http://www.thamate.org/wp-content/uploads/2020/02/Manual-Scavenging-in-Karnataka-A-Situation-Assessment.pdf> > accessed 17th May 2022.

⁶⁷² Aery, *Born into Bondage* (n 9) 732.

⁶⁷³ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Sec. 1(2).

⁶⁷⁴ *Ibid.*, Sec. 6(1).

government to do so,⁶⁷⁵ rather than a blanket prohibition on manual scavenging. As per the Preamble to this legislation, it is enacted *inter alia* for the prohibition of employment of manual scavengers and construction or continuance of dry latrines, and that fraternity assuring the dignity of the individual is enshrined in the Constitution.⁶⁷⁶ This being the case, the Act gives the power to State governments to exempt any area, category of buildings, or class of persons from the application of this Act.⁶⁷⁷ There is clearly a lack of political will in drafting strong legislation aimed at the eradication of manual scavenging, as the vision enshrined in the Preamble is not reflected in the provisions of the Act.

Failure to comply with, or contravention of, the provisions of the Act is punishable with imprisonment for a term which may extend up to one year, or with a fine which may extend to two thousand rupees, or both.⁶⁷⁸ This is very minimal punishment considering the gravity of the offences that are being committed, which are cognizable in nature. Furthermore, the Act carves out very broad exceptions. For example, if a person proves that “the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence”⁶⁷⁹ then he is not liable for any punishment. The Court can take cognizance of any offence under this Act only upon a complaint made by a person generally or specially authorised by the Executive authority⁶⁸⁰ and cannot *suo motu*⁶⁸¹ take cognizance. Moreover, complaint with regard to the offence has to be made within three months from the date that the alleged commission of the offence came to the knowledge of the complainant.⁶⁸² Due to these loopholes, in 20 years no conviction has taken place under this law.⁶⁸³ The Comptroller and Auditor-General of India⁶⁸⁴ in its 2003 report on the evaluation of NSLRS noted that “the 1993 Act has failed to achieve its objectives even after 10 years of implementation involving investment of more than Rs. 600 crores.”⁶⁸⁵ The Act is still in force.

⁶⁷⁵ Ibid., Sec. 3 (2).

⁶⁷⁶ Ibid., Preamble.

⁶⁷⁷ Ibid., Sec. 4.

⁶⁷⁸ Ibid., Sec. 14.

⁶⁷⁹ Ibid., Sec. 15(1) Proviso.

⁶⁸⁰ Ibid., Sec. 17(3).

⁶⁸¹ A legal term meaning “on its own”

⁶⁸² The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Sec. 18.

⁶⁸³ ‘Get Serious’, The Hindu, 13th September 2013 < <https://www.thehindu.com/opinion/editorial/article59783587.ece> > accessed 17th May 2022; also see Aery, Born into Bondage (n 9) 732.

⁶⁸⁴ Constitution of India, Article 148.

⁶⁸⁵ 6000 million approx. Indian rupees; Pragya Akhilesh, ‘Banning Manual Scavenging in India: A Long Complex Passage’ Down to Earth, 18th September 2020, < <https://www.downtoearth.org.in/blog/rural-water-and-sanitation/banning-manual-scavenging-in-india-a-long-complex-passage-73441> > accessed 17th May 2022.

5.2.3 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (2013 Act)

In 2013, the Indian Parliament enacted the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act. Its Preamble draws from the Preamble to the Indian Constitution and other provisions and stresses the importance of fraternity, right to life with dignity, and the role of the State in protecting weaker sections of society, particularly SCs and STs from all kinds of exploitation and social injustice. It further notes that the practice of manual scavenging is a result of the “continuing existence of insanitary latrines and a highly iniquitous caste system”⁶⁸⁶ and is still prevalent in various parts of the country and that existing laws have not been effective to eliminate the same. It also points out the necessity to correct the historical injustice and indignity suffered by manual scavengers and the need to rehabilitate them into a life of dignity.⁶⁸⁷

Unlike the 1993 Act, the 2013 Act extends to the whole of India.⁶⁸⁸ While the 1993 Act defines a manual scavenger as a person engaged in or employed for manually carrying human excreta,⁶⁸⁹ the 2013 Act *prima facie* seems to give a broader definition of manual scavenger as mentioned in the beginning of this chapter. However on careful analysis, it can be seen that the 2013 Act narrows down the definition of a manual scavenger, as it carves out exceptions. The explanation to Sec. 2(1)(g) clearly states “a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a manual scavenger.”⁶⁹⁰ Notably it also provides exceptions for latrines on railway cars, when it says that water flush latrines in the railway coach, even though cleaned by an employee using protective gear and devices, shall not be deemed as insanitary latrines.⁶⁹¹ Since the definition of manual scavenger clearly mentions *inter alia* manually cleaning human excreta from ‘insanitary latrines’, Sec. 2(1)(e) acts as an exception. This is particularly important since the Indian railways are considered to be a major employer of manual scavengers.⁶⁹² It is important to note that the stigma of discrimination is not as much attached to the lack of tools as it is to the part of cleaning human waste and the

⁶⁸⁶ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Preamble.

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid., Sec. 1 (2). After repealing Art. 370 it is applicable to Jammu and Kashmir.

⁶⁸⁹ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Sec. 2(j).

⁶⁹⁰ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 2 (1)(g) explanation (b).

⁶⁹¹ Ibid., Sec. 2(1)(e) proviso.

⁶⁹² Aery, Born into Bondage (n 9) 733.

status of one being an untouchable by birth and, by caste, thereby making him/her bound by the caste hierarchy and the occupation which comes attached with it.⁶⁹³ The 2013 Act seems to ignore this and shields employers by providing for broad exceptions.

As mentioned above, one of the key goals of this Act is to eliminate insanitary latrines. The Act mandates that:

no person, local authority or any agency shall construct an insanitary latrine or engage or employ either directly or indirectly, a manual scavenger and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging.⁶⁹⁴

It further states that every insanitary latrine existing on the commencement date of this Act shall be either demolished or converted into a sanitary latrine, and it also states the mode by which this can be achieved.⁶⁹⁵ Where an occupier fails to do this within a set period of time then the local authority, having jurisdiction over the area, shall give notice to the occupier and either convert such latrine into a sanitary latrine or demolish it and the cost shall be recovered from the occupier.⁶⁹⁶ Whoever contravenes this provision shall be punished with imprisonment which may extend to one year, or with a fine which may extend to fifty thousand rupees or both, for the first contravention. For any subsequent contravention, they will be punishable with imprisonment which may extend to two years, or with a fine which may extend to one lakh rupees, or both.⁶⁹⁷ The Act fails to note how the local authority should be held accountable in case it fails to perform its duty mentioned above.

The Act also states that “any contract, agreement or other instrument entered into or executed before the commencement of this Act, engaging or employing a person for the purpose of manual scavenging shall, on the date of commencement of this Act, be terminated...and shall be void and inoperative.”⁶⁹⁸ The punishment for violation of this section is the same as Sec.5.⁶⁹⁹ Though the aim of this section is to try to bring the manual scavengers out of contracts, it fails to mention the mechanism to check if the contracts are ongoing after the enactment of this legislation. Consequently, a large number of manual scavengers are still employed on a contractual basis to clean *inter alia* sewers and drainages. This was reflected in interviews

⁶⁹³ Ibid.

⁶⁹⁴ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 5(1)(a)(b).

⁶⁹⁵ Ibid., Sec. 5(2).

⁶⁹⁶ Ibid., Sec. 5(3).

⁶⁹⁷ Ibid., Sec. 8.

⁶⁹⁸ Ibid., Sec. 6(1).

⁶⁹⁹ Ibid., Sec. 8.

conducted with manual scavengers for this thesis, with one participant explaining: “I have been working in this field since 1990-91 and I still do this for my living.”⁷⁰⁰ Another participant remarked:

The State Safai Karamchari Commission asked if we have any records that we worked under the City Corporation. There were no records because we joined on contractual basis. They didn’t receive the complaint from us, because there was no record to show we were working for daily wages. In the end commissioner came over and searched but no evidence was found.⁷⁰¹

This also reflects the lack of security for manual scavengers when they work on contractual basis.

Another important provision is the prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks. The Act states:

no person, local authority or any agency shall, from such date as the State government may notify, which shall not be later than one year from the date of commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.⁷⁰²

Contravention for the:

first time is punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both and for subsequent contravention shall be punishable with imprisonment which may extend to five years or with fine which may extend to five lakh rupees or with both.⁷⁰³

Every offence under this Act is cognizable and non-bailable, notwithstanding anything contained in the Code of Criminal Procedure 1973.⁷⁰⁴ There is an attempt *prima facie* to make the legislation look stringent, but the Act places limitations on prosecution when it states that “no court shall take cognizance of any offence punishable under this Act except upon a complaint thereof is made by a person in this behalf within three months from the date of the occurrence of the alleged commission of the offence.”⁷⁰⁵ As the case with the 1993 Act, no court can *suo motu* take cognizance of any offence under the 2013 Act and a complaint needs to be made in order to move the court.

⁷⁰⁰ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁰¹ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁰² The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 7.

⁷⁰³ Ibid., Sec. 9.

⁷⁰⁴ Ibid., Sec. 22.

⁷⁰⁵ Ibid., Sec. 10.

It must be noted that manual scavengers are placed at the bottom of the caste hierarchy. They belong to the most exploited and vulnerable sections of society. The majority of them are illiterate, unaware of any of the rules, regulations, and legislations for their protection and betterment. There are a number of laws, policies, and programs which have been enacted by successive governments but these are largely ineffective since the targeted people, the manual scavengers, are unable to engage with the law. There are barriers in place at every level; extreme poverty and caste system being prominent among them. They do this task for the sake of their livelihood, often without a choice. Consequently, many of them continue to work on a contractual basis to clean sewers and septic tanks as reflected by the manual scavengers in the interviews.⁷⁰⁶ And on several occasions, they have entered the sewers and have never come out alive. Compensation has been paid to their families in certain cases where they have lost their lives inside the sewers.⁷⁰⁷ There have been few or no convictions in cases where manual scavengers have been sent down the sewers and septic tanks in clear violation of the laws.

When asked if he is aware of his rights under the legislation and the Constitution, a manual scavenger remarked:

I don't know properly. I have heard people say we have rights. They only say, I have not seen anyone giving those rights to us.⁷⁰⁸

An activist working for the betterment of manual scavengers shared a story of horror:

Manhole deaths are happening in areas where well-educated people live. They make manual scavengers clean their manholes and septic tanks. They are not Dalits. They are not migrant workers. They are literate. They have killed our people! Two years ago in former Vice-President of India Mr. BD Jatti's daughter's home, she killed our friend. She made a man clean a STP (Sewage Treatment Plant). He was a technician. He didn't know what STP was. He went because it was some labour. He went inside and suffocated to death. I can give you hundreds of examples where doctors, engineers, teachers, professors, well-educated people have killed our people.⁷⁰⁹

In another incident in Delhi in February 2020, a 24-year old sanitation worker died allegedly by inhaling toxic fumes while cleaning a manhole. Another person who went to rescue him became critically ill. They were hired by a private contractor who promised to pay Rs. 350 (3.50 GBP approx.) per day for their job. The said contractor allegedly did not supply them

⁷⁰⁶ Interview with MS-1 – MS-4, Manual Scavengers (Mangalore, 7th May 2019).

⁷⁰⁷ Interview with Officer, Karnataka State Safai Karamchari Commission (Bangalore, 8th June 2019).

⁷⁰⁸ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁰⁹ Interview with Activist-2, Activist on Manual Scavenging (Bangalore, 28th April 2019).

with safety equipment when asked to do so and absconded before the police arrived at the scene.⁷¹⁰ In some parts of the country, when women tried to give up manual scavenging, particularly cleaning of dry latrines, members of the dominant castes threatened to beat them and their husbands, thereby forcing them to continue the task of manual scavenging against their will.⁷¹¹

During his interview when asked if he is willing to quit manual scavenging, a participant responded:

This is enough. I have worked for so many years. I have small kids. With a good job and good salary, I can give them good education. With this salary I cannot do anything. For bus, groceries, home everything gets spent. Can't keep any savings for my children's education. If there is any good employment, which gives good salary, makes us permanent, then I will leave this job. I have suffered a lot in this all these years, it's enough. Now we want to be like everyone else in the society. For that permanent job is main thing. In our generation we have suffered enough and gone through hell, next no one should go through this.⁷¹²

Another manual scavenger remarked:

my only wish and hope are I have done this job in hell, but I want to give a good future to my children, they shouldn't suffer like me.⁷¹³

Taking note of the serious situation prevailing in the country, the Supreme Court of India in September 2019 questioned the Central Government on the growing number of deaths of manual scavengers in the sewers and septic tanks. It remarked that "*in no country, people are sent to gas chambers to die*. Every month four to five persons are losing their lives in manual scavenging."⁷¹⁴ It took the government to task for not providing equal facilities to manual scavengers, noting that all human beings are equal. Justice Mishra questioned:

⁷¹⁰ Express News Service, 'Delhi: Sanitation Worker Dies Cleaning Sewer in Shahdara, another Critical', (3rd February 2020), The Indian Express, < https://indianexpress.com/article/cities/delhi/delhi-sanitation-worker-dies-cleaning-sewer-in-shahdara-another-critical-6247937/?fbclid=IwAR2FBBQ5HdRe0lzcSMzCNpsZF732m_dTWHTRNM-wRIpWZjI2BH8URoK6oo > accessed 17th May 2022.

⁷¹¹ Meena Menon, 'If you don't send your women to clean our toilets, we will beat them up', (25th August 2014), The Hindu < <https://www.thehindu.com/news/national/article60362549.ece> > accessed 17th May 2022.

⁷¹² Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

⁷¹³ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁷¹⁴ Emphasis supplied. Express Web Desk, 'SC raps Centre on Manual Scavenging: No Country sends its people to Gas Chambers to Die', (18th September 2019), the Indian Express < https://indianexpress.com/article/india/sc-raps-centre-on-manual-scavenging-no-country-sends-its-people-to-gas-chambers-to-die-6005797/?fbclid=IwAR3Yn0-b4uI9rxUIyDn4IgM_PQf0tl4YA58qe4muDpBkkCUmuxzP9xtRmD4 > accessed 17th May 2022.

despite the Constitution abolishing untouchability in the country, do you shake hands with them? The answer is no. That is the way we are going on. The condition must improve. We have moved 70 years since independence, but these things are still happening.⁷¹⁵

The Court further noted that it is “most inhuman to treat human beings like this.”⁷¹⁶ Further, the Supreme Court in *Delhi Jal Board v. National Campaign etc and Others*⁷¹⁷ observed:

The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who will not be affected by poisonous gases in the manholes. The state and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs.⁷¹⁸

While there have been two central legislation on prohibition of manual scavenging, during his interview, a manual scavenger remarked:

I have been working in this field for 20 years. I feel very sad. But seeing the difficulty at home and that I cannot do other work since I am used to doing this work, I do this. I have to engage in some occupation for livelihood, hence this. I get Rs. 550 (5.50 GBP approx..) per day and after deduction of ESI⁷¹⁹ and PF⁷²⁰ Rs. 484 comes in hand. In that we must cover all our expenditure, bus, tea, lunch, taking home groceries. Meets the ends but nothing remains.⁷²¹

Another manual scavenger reflected:

For this job, they have to pay us thrice the amount of salary, because it is that dirty work. We have to clean the excreta of people who are ill, from children to old people. When that is the case, if they give thrice the salary, even that is less. We do work of those people with deadly diseases, we clean their excreta. And this government gives us some meagre salary. The system is very corrupt, they use low quality pipes and they burst out very soon. They use all governmental money. Corruption goes from top to bottom.⁷²²

The above excerpts also shed light on the low wages the manual scavengers are paid for doing such dangerous tasks of cleaning sewers and septic tanks.

⁷¹⁵ Ibid.

⁷¹⁶ Ibid.

⁷¹⁷ Civil Appeal No. 5322 of 2011, Supreme Court of India < <https://indiankanoon.org/doc/379785/> > accessed 17th May 2022.

⁷¹⁸ Ibid; also see Darokar, A Blind Spot in Urban Development Discourse (n 621) 8.

⁷¹⁹ Employees' State Insurance.

⁷²⁰ Employees' Provident Fund.

⁷²¹ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

⁷²² Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

5.2.4 Institutional Arrangements

The 2013 Act clearly states that the responsibility of eliminating insanitary latrines lies in the hands of local authorities notwithstanding anything contained in any other law for the time being in force.⁷²³ Where there is a contravention, action will be taken against the occupier under Sec.5(3) as discussed above. The key issue to be noted here is this section sees the issue of manual scavenging as an issue relating to health and environment. It fails to see it as a violation of human rights and thus there is a lack of stringent punishment for its contravention. The Act lacks authoritative nature when it states:

the appropriate government *may* confer such powers and impose such duties on local authorities and District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out, and a local authority and the District Magistrate *may*, specify the subordinate officers, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed, and the local limits within which such powers or duties shall be carried out by the officer or officers so specified.⁷²⁴

The District Magistrate and authorised officers shall ensure that:

no person is engaged or employed as manual scavenger within their jurisdiction; no one constructs, maintains, uses or makes available for use, an insanitary latrine; manual scavengers who are identified are rehabilitated as per the sections of the Act; persons contravening the provisions of the Act are investigated and prosecuted under the provisions of the Act and that all provisions of the Act applicable within the jurisdiction are duly complied with.⁷²⁵

Despite the existence of these provisions, there have there been a number of contraventions and a number of deaths of manual scavengers. One possible explanation could be the fact that while the Act lists the duties of the authorities, it fails to mention anything about consequences if the authorities fail to perform their duties. Though the Act acknowledges the prevalence of a highly iniquitous caste system in its Preamble, this fails to resonate in its provisions. The Act fails to take into consideration the very fact that the caste system is a reality, and the possibility of authorities being prejudicial against manual scavengers due to them belonging to Scheduled Castes. This being the case, there should be specific provisions to keep the authorities in check when they fail to perform their duties under the Act and a clear process to hold them accountable. This could help to ensure the law is adhered to and implemented properly.

⁷²³ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 17(i).

⁷²⁴ Ibid., Sec. 18.

⁷²⁵ Ibid., Sec. 19.

The Act also mandates the constitution of a Vigilance Committee by every State Government for each district and Sub-Division⁷²⁶ which shall meet at least once every three months.⁷²⁷ The functions of the committee include:

advising the District Magistrate (chairperson, *ex officio*) or the Sub-Divisional Magistrate (member, *ex officio*) as the case may be, on the action that needs to be taken for the implementation of the Act or rule made thereunder; to oversee the economic and social rehabilitation of manual scavengers; to co-ordinate the functions of all concerned agencies with a view to channelizing adequate credit for the rehabilitation of manual scavengers; and to monitor the registration of offences under the Act and their investigation and prosecution.⁷²⁸

The Act further mandates State Governments to constitute a State Monitoring Committee which shall meet at least once every six months with the Chief Minister of the State, or a Minister nominated by him as the *ex officio* Chairperson.⁷²⁹ The functions of this committee include “monitoring and advising the State Government and local authorities for effective implementation of the Act; co-ordinating the functions of all the concerned agencies and looking into any other matter incidental thereto or connected therewith for implementation of the Act.”⁷³⁰ It shall be the duty of States and Union Territories to send periodic reports about progress of implementation of the Act to the Union Government.⁷³¹ There shall be a Central Monitoring Committee constituted by the Union government, with the Union Minister for Social Justice and Empowerment as the *ex officio* Chairperson. The committee shall meet at least once every six months,⁷³² with functions similar to the State Monitoring Committee but both at the Central and State levels.⁷³³

5.2.4.1 National Commission for Safai Karamcharis

The National Commission for Safai Karamcharis (NCSK) was constituted under the National Commission for Safai Karamcharis Act 1993. Safai Karamchari under this Act “means a person engaged in, or employed for, manually carrying human excreta or any sanitation work.”⁷³⁴ The functions of this Commission include:

monitoring the implementation of the Act; enquiring into complaints regarding contravention of the provisions of the Act and conveying its findings to the concerned

⁷²⁶ Ibid., Sec. 24(1).

⁷²⁷ Ibid., Sec. 24(4).

⁷²⁸ Ibid., Sec. 25.

⁷²⁹ Ibid., Sec. 26.

⁷³⁰ Ibid., Sec. 27.

⁷³¹ Ibid., Sec. 28 – ambiguous wording with ‘may’ and ‘shall’

⁷³² Ibid., Sec. 29.

⁷³³ Ibid., Sec. 30.

⁷³⁴ The National Commission for Safai Karamcharis Act, 1993, Sec. 2(e).

authorities with recommendations requiring further action; advising the Central and State Governments for effective implementation of the provisions of the Act and taking *suo motu* notice of matters relating to non-implementation of the Act.⁷³⁵

While discharging its functions, the Commission also has the power to call for information with respect to any matter specified above, from any Government or local or other authority.⁷³⁶ The Commission shall be consulted by the Union government on all major policy matters affecting the manual scavengers.⁷³⁷ The Commission shall also prepare an annual report for each financial year giving a full account of its activities in the previous financial year and a copy of this shall be forwarded to the Union Government.⁷³⁸ The report shall then be laid before both Houses of the Parliament, along with the “memorandum explaining the action taken or proposed to be taken on the recommendations contained therein in so far as they relate to the Central government and the reasons for non-acceptance, if any, of any such recommendations.”⁷³⁹ If the said report or any part thereof relates to any matters involving State Governments, it shall be forwarded to the Governor of the State who shall cause it to be laid before the State Legislature with a similar kind of memorandum explaining the action taken as mentioned above.⁷⁴⁰ The State Government has the power to designate:

a State Commission for Safai Karamcharis or State Commission for the Scheduled Castes or such other statutory or other authority as it deems fit, to perform with the State, *mutatis mutandis*, the functions specified for the National Commission for Safai Karamcharis. Such an authority shall within the State, have *mutatis mutandis*, the powers of the National Commission for Safai Karamcharis.⁷⁴¹

However, the NCSK noted that it has not been given its due place and that while formulating the schemes, no link and co-ordination was ever created by the Ministry for seeking advice or views from the Commission. It further noted that reports sent by the Commission from time to time were not even read.⁷⁴² The Commission also noted that even though the Government of India became pro-active on the issue of manual scavenging in the 1990s, the implementation of the schemes so initiated or modified by them was inadequate meaning that the results at the

⁷³⁵ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 31(1); also see The National Commission for Safai Karamcharis Act, 1993, Sec. 8.

⁷³⁶ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 31(2).

⁷³⁷ The National Commission for Safai Karamcharis Act, 1993, Sec. 10.

⁷³⁸ Ibid., Sec. 11.

⁷³⁹ Ibid., Sec. 12(1).

⁷⁴⁰ Ibid., Sec. 12(2).

⁷⁴¹ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 32.

⁷⁴² Annual Report 2005-2006, 2006-2007 combined (n 662) 22.

ground level were disappointing and hence did not achieve the objectives.⁷⁴³ When asked if he is aware of the various legislation and institutional mechanisms for their betterment, a manual scavenger remarked:

our society has put us in a confinement, like a bird in a cage. We don't know anything.⁷⁴⁴

5.3 Failure to abolish manual scavenging

As seen above, there are various committees and commissions constituted under two prohibition Acts of 1993 and 2013 and the National Commission for Safai Karamcharis Act 1993, from the sub-divisional and district level to the Central level, for the effective implementation of the Acts and Rules therein. These committees and commissions are mandated to perform a wide range of functions by the Acts which *inter alia* aim to prohibit employment as manual scavengers. The Safai Karamchari Commission, both at the central and state levels, have the authority to *suo motu* take notice of matters relating to the non-implementation of the Act.

It is also very important to note that, the 2013 Act on the one hand clearly states that:

it shall be the duty of every local authority and other agency to use appropriate technological appliances for cleaning of sewers, septic tanks and other spaces within their control with a view to eliminating the need for the manual handling of excreta in the process of their cleaning. It shall be the duty of the appropriate government to promote, through financial assistance, incentives and otherwise, the use of modern technology.⁷⁴⁵

On the other hand, the Rules made under the 2013 Act state that:

no person shall be allowed to clean a sewer manually, with the protective gear⁷⁴⁶ and safety devices under these rules *except* (a) for the removal of concrete or Fibre Reinforced Plastic or damaged manhole door where mechanical equipment cannot be put into operation; (b) for inter-linking the newly laid sewer main with the existing sewer main, in case of sewer of size of more than 300 mm diameter; (c) for removal of submersible pump sets fixed at the bottom of the suction wells; (d) for the reconstruction of the manhole or rectification of the sewer main; (e) any circumstance, when it is absolutely necessary to have manual sewage cleaning, after the CEO of the local authority has permitted to do so after recording in writing the specific valid

⁷⁴³ Ibid 23.

⁷⁴⁴ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁴⁵ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, 33.

⁷⁴⁶ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules 2013, Rule 2(g).

reasons for allowing such cleaning. For the purposes of clauses (c) (d) and (e), before allowing entry of a person in the sewer, sewer shall be totally emptied.⁷⁴⁷

It can be seen that the exceptions carved out for a person to enter into a sewer to manually clean it are very broad, particularly Rule 3(1)(e), which leaves it to the discretion of the CEO of the local authority to decide if it is absolutely necessary to clean the sewer manually or not. The Rules further mandate that any person engaged to clean a sewer or a septic tank must be provided protective gear and safety devices by his employer, including but not limited to 44 items, such as a face mask, gas monitor, breathing mask, safety helmet, safety torch, safety belt, safety body clothing etc.⁷⁴⁸ It shall also be the duty of the local authority to ensure that persons engaged in cleaning sewers or septic tanks use certain cleaning devices, including but not limited to the 14 mentioned in the Rules, which include jetting machines, sewer line cleaning bucketing machines, and suction machines.⁷⁴⁹

It is the duty of the employer to check all protective gear and safety devices every six months and to do any necessary repair work or to provide replacements. The employers are also bound to provide comfortable body suits to workers who enter the sewers or septic tanks.⁷⁵⁰ Further the employer shall ensure that certain safety precautions are in place before a person is engaged in the cleaning of a sewer or a septic tank,⁷⁵¹ including testing the atmosphere within the confined space for oxygen deficiency and toxic and combustible gases such as, Hydrogen Sulphide, Carbon Monoxide, Methane, and gasoline vapours through various detection tests.⁷⁵² “The cleaning of a sewer or a septic tank shall be done only in day-light and for a duration not exceeding 90 minutes, at a stretch. There shall be a mandatory interval of 30 minutes between two stretches.”⁷⁵³ It must be noted that the Act fails to mention the consequences that employers will face if they do not adhere to the provisions. Consequently non-compliance cannot be dealt with stringently. Given that manual labour is cheap, employers resort to making manual scavengers clean their sewers or septic tanks, rather than use machines which are expensive. In the process, they flout the norms as shown below. Hence there is a need to have clear

⁷⁴⁷ Ibid., Rule 3.

⁷⁴⁸ Ibid., Rule 4.

⁷⁴⁹ Ibid., Rule 5.

⁷⁵⁰ Ibid., Rule 6.

⁷⁵¹ Ibid.

⁷⁵² Ibid., Rule 6(3)(b).

⁷⁵³ Ibid., Rule 6(k).

mechanisms to deal with non-compliance of the provisions of the Act and Rules by the employers, which *inter alia* make them liable with penal sanctions.

An officer working at the Karnataka State Safai Karamchari Commission was interviewed for this thesis and questioned about the protective and safety equipment. He stated:⁷⁵⁴

P⁷⁵⁵: Safety equipment are there. BWSSB⁷⁵⁶, BBMP⁷⁵⁷ when they clean, it is compulsory to give safety equipment. Like gloves, boots, masks, helmet all these must be worn while working. Government has sent instructions and circulars making it mandatory.

I⁷⁵⁸: The Act and Rules give a list of safety equipment to be used. In that list of 44, if the government has given only 3, what does this Commission do in those cases?

P: We visit all districts. We conduct meetings there, calling all officers and telling them that they must give all 44 equipment compulsorily and made use by the workers. District level officers should give awareness to them. We are conducting workshops through the commission. For this purpose we have released grants to districts, Rs. 1 lakh⁷⁵⁹ each.

I: Manual scavengers I have spoken to, said they have only been given gloves and masks. What is the commission doing to stop it completely because it is illegal? Are there any instances of you taking up cases on a *suo motu* basis?

P: We are doing meetings and awareness programs. But still knowingly and unknowingly some instances take place. That time from the commission, we will also visit the spot. After post-mortem of the dead body, if someone is really at fault, we inform the police and FIR will be registered and it will go to court. In many cases arrests have been made. To their families, immediately Rs. 10 lakhs (One million Indian Rupees) will be given as a compensation through the Commission. Before the establishment of the Commission many people did not get the compensation. Compensation money used to be in the office without being used. But since our Commission is established, we have given compensation to all cases since 1993.

While the above was what the officer stated, a manual scavenger however stated otherwise:

if there is a death during work, for the family of the deceased one penny will not be allotted. Be it the person who has taken the tender/contract, or Corporation, even though we work in their jurisdiction, there is no compensation. We have been working from 20 years. From our work the contractor has grown rich but in case one among us dies during work, no compensation will be awarded.⁷⁶⁰

⁷⁵⁴ Interview with Officer, Karnataka State Safai Karamchari Commission (Bangalore, 8th June 2019).

⁷⁵⁵ Participant.

⁷⁵⁶ Bangalore Water Supply and Sewage Board.

⁷⁵⁷ Bruhat Bengaluru Mahanagara Palike (Bangalore City Corporation).

⁷⁵⁸ Interviewer.

⁷⁵⁹ One Hundred Thousand Indian Rupees.

⁷⁶⁰ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

On providing safety equipment, a manual scavenger remarked:

absolutely nothing. All lies. It has not been useful. They have not been helpful at all. They take advantage of us that's all. We don't have any advantage from them.⁷⁶¹

Another manual scavenger said:

We work on roads. There is no safety. If there is a vehicle passing close by, there is no one to protect us. We asked for badges, barricades, but nothing is given. We do not have any safety at all.⁷⁶²

As can be seen from the above statements, the reality on the ground is very different. The manual scavengers are often not provided with any of the safety equipment mentioned in the Rules. Due to the fight and protest of a few Dalit organisations, some manual scavengers are given gloves, masks, and uniforms now.⁷⁶³ But they are not provided with other safety equipment and protective gear. They are forced to get inside the sewers and septic tanks without taking safety precautions like testing for poisonous gases. Consequently, there have been a number of deaths of manual scavengers inside the sewers and septic tanks, where they have inhaled toxic gases and were unable to escape in time.⁷⁶⁴ According to the Rules the duration of cleaning shall not extend 90 minutes at a stretch. However in practice, the manual scavengers are made to work morning till evening, often with very few breaks. When asked about his routine at work, a manual scavenger explained:

We have breakfast in the morning at home and come to work. If I tell what time we have lunch anyone might get worried. At times we don't have lunch at all, there will be no time. At times there will be no proper water facilities to clean ourselves after work. And we ourselves feel bad to go to restaurants. Everyone goes there with hunger, how can we go in this condition with all dirt and everything. We don't feel like going. Many days we skip lunch and stay hungry.⁷⁶⁵

In September 2021, a division Bench of the High Court of Karnataka hearing two separate Public Interest Litigations (PIL) made it clear to the State government that henceforth scavenging across the State should be conducted only with the aid and assistance of the safety equipment mentioned in the Rules. The Court also sought information from the State government about the safety equipment with the local authorities and the reasons for non-

⁷⁶¹ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁶² Interview with MS-3, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁶³ Interview with MS-4, Manual Scavenger (Mangalore, 7th May 2019).

⁷⁶⁴ Saurabh Sharma, '5 killed While Cleaning Septic Tanks in Sultanpur', (2nd November 2019), News Click, < https://www.newsclick.in/5-killed-while-cleaning-septic-tank-sultanpur?fbclid=IwAR31u5mJJES-BCSXUk10hPZpmKGol60zf_9bJSYCXT1603ljN89VkkqHqsk > accessed 18th May 2022.

⁷⁶⁵ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

availability as per the Rules. It further stated “it is made clear that henceforth, there will be no more manual scavenging in the State ignoring the statutory provisions of the Act and Rules of 2013.”⁷⁶⁶

The 2013 Act gives protection of actions which are taken in good faith, when it states “no suit, prosecution or other legal proceeding shall lie against an appropriate Government or any officer of the appropriate Government or any member of the Committee for anything which is in good faith done or intended to be done under the Act.”⁷⁶⁷ So if an officer is involved in sending a manual scavenger inside a sewer or a septic tank⁷⁶⁸ and he dies inside, if the officer is able to show that he had indeed sent the manual scavenger in good faith, he will not be liable to be prosecuted. The very nature of this provision highlights the hidden bias of the law makers against the Dalits, particularly manual scavengers.

Three important things need to be noted here. First, manual scavenging involves an extremely dangerous task of getting inside a sewer or a septic tank. Instead of a total ban, the laws are trying to regulate the occupation. This being the case, it is important that the people engaged in this occupation be provided with all the protective equipment mentioned in the Act and the Rules. But in reality, as seen above, they are hardly provided with any and an action against the officers responsible for not giving them the required equipment cannot be taken, since there are no provisions under this Act which can be called into action. Secondly, manual scavengers are typically poor and illiterate with no knowledge about the laws.⁷⁶⁹ They have been doing this task as it has been historically passed down as a result of a hierarchical caste system. Chances are few that they will approach the court against the government or any local authority which holds the position of power. And thirdly, even though manual scavengers may approach the court, with the help of Dalit organisations or NGOs fighting for their cause, then this particular provision in question gives protection to the officers as long as they show a *bona fide* intention, not to the victims.

⁷⁶⁶ Special Correspondent, Bengaluru, ‘Sewer Cleaning should be done only using specified equipment, HC tells State Govt.’, (1st September 2021), The Hindu (Mangalore Edn., 4).

⁷⁶⁷ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 34.

⁷⁶⁸ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules 2013, Rule 3(1)(e).

⁷⁶⁹ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

In the interests of justice and equity, I believe it would have been better if a provision similar to Sec. 12 of the Protection of Civil Rights Act 1955⁷⁷⁰ was to be present, where the court shall presume, unless the contrary is proved, that an offence under this Act was committed on the grounds of untouchability. Contrary to the general principles of criminal law, where an accused is innocent until proved guilty, this provision shifts the burden of proof onto the accused, and he needs to prove his innocence. This provision is drafted in such a manner keeping in mind the social structure of Indian society and the impact it has on all sections of people, including the officers enforcing the law. For example, ‘A’ a Dalit man has been sent inside the sewer to clean it, without the required protective and safety equipment as per the Rules, and in the course of him cleaning the sewer, he dies. Then according to this provision, the charges will be made against the persons who have sent ‘A’ inside the sewer without fulfilling the requirements under the Act. The court in such cases, instead of presuming the accused to be innocent like in any other crime under the Indian Penal Code, presumes the accused to be guilty of the offences so mentioned in the FIR. Contrary to the general principles of criminal law, in this case, the onus of proof thus lies on the accused to prove his innocence, who in these cases will generally be in a position of power when compared to the manual scavenger who has lost his life or his family.

5.4 Rehabilitation

Unlike the 1993 Act, the 2013 Act provides for the rehabilitation of manual scavengers. Rehabilitation in this context refers to returning someone to a healthy or usual condition or way of living.⁷⁷¹ As explained above, the main aim of the 1993 Act was the prohibition of employment of manual scavengers.⁷⁷² However, the 2013 Act clearly states in its Preamble that it is an Act for prohibition of employment as manual scavengers and rehabilitation of manual scavengers and their families.⁷⁷³ There are three major ways through which rehabilitation of manual scavengers takes place under this Act:

First, one-time cash assistance scheme, where one member of a manual scavengers’ household is given Rs. 40,000 one time, after which the government considers the household rehabilitated. Second, the manual scavengers are given occupational training in the interest of rehabilitation, for which they receive Rs. 3,000 per month

⁷⁷⁰ See pages 90 of Chapter 3 and 239 of Chapter 7.

⁷⁷¹ “To return someone to a healthy or usual condition or way of living or to return something to a good condition” as per Cambridge Dictionary, < <https://dictionary.cambridge.org/dictionary/english/rehabilitate> > accessed 18th May 2022.

⁷⁷² The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Preamble.

⁷⁷³ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Preamble.

alongside two years of skill development training. Third, subsidies are provided on loans up to a predetermined fixed amount for manual scavengers.⁷⁷⁴

According to the 2013 Act, a survey will be conducted by the Chief Executive Officer of a municipality if he/she has reason to believe that there are persons engaged or employed in manual scavenging within its jurisdiction.⁷⁷⁵ After following the due process once the final list of manual scavengers is published, “the persons included in the said list shall, subject to the provisions of the sub-section (2) of Section 6, stand discharged from any obligation to work as manual scavengers.”⁷⁷⁶ Any person working as a manual scavenger may apply in such a manner as may be prescribed to the Chief Executive Officer of the Municipality or to any officer so authorised by him, to be identified as a manual scavenger, during the survey or at any time thereafter.⁷⁷⁷ Any persons identified as manual scavengers under Sec. 11 or Sec. 12 of the Act shall be rehabilitated in the following manner:

- (a) He shall be given, within one month, - (i) a photo identity card, containing, *inter alia*, details of all members of his family dependent on him, and (ii) such initial, one time, cash assistance, as may be prescribed;
- (b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;
- (c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;
- (d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;
- (e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;

⁷⁷⁴ Dheeraj Mishra, ‘Modi Govt has not released a single Rupee for Rehabilitation of Manual Scavengers’, (31st August 2018), the Wire, < <https://thewire.in/government/modi-govt-manual-scavengers-rehabilitation> > accessed 18th May 2022.

⁷⁷⁵ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 11(1).

⁷⁷⁶ Ibid., Sec. 11(7).

⁷⁷⁷ Ibid., Sec. 12(1).

(f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.⁷⁷⁸

The responsibility of rehabilitating each manual scavenger in accordance with the above provision shall lie with the District Magistrate of the concerned districts.⁷⁷⁹ While this is the procedure to be followed in urban areas, in the rural milieu,

if a panchayat⁷⁸⁰ has reason to believe that some persons are engaged in manual scavenging within its jurisdiction, the Chief Executive Officer of such Panchayat shall cause a survey of such manual scavengers be undertaken, *mutatis mutandis*, in accordance with the provisions of section 11 and section 12, to identify such person.⁷⁸¹ Any person working as a manual scavenger in a rural area can apply in such manner as may be prescribed to the Chief Executive Officer of the Panchayat or any other officer authorised by him in this behalf, during the survey or any time thereafter, to be identified as a manual scavenger.⁷⁸² Once the due process is followed and the final list of manual scavengers is published in pursuance of section 14 or section 15(2), they shall be rehabilitated, *mutatis mutandis*, in the manner laid down for urban manual scavengers as mentioned above.⁷⁸³ The Rules prescribe that a provisional list be published by the concerned local authority in the local newspapers and displayed in its own office and at such other places as deemed appropriate.⁷⁸⁴ The local authority shall then call upon the members of the public to file claims and objections vis-à-vis the list within a period not less than 15 days from the date of notification of the said list.⁷⁸⁵ Once the final list is approved by the District Level Survey Committee, it shall then be published at the notice boards of concerned offices and also be uploaded on the website of the district administration and the State government.⁷⁸⁶ Manual scavengers so identified, one from each family shall be eligible to receive an immediate cash assistance of Rs. 40,000. The beneficiary will be allowed to withdraw the amount in monthly instalments of Rs. 7,000.⁷⁸⁷ It

⁷⁷⁸ Ibid., Sec. 13(1).

⁷⁷⁹ Ibid., Sec. 13(2).

⁷⁸⁰ Constitution of India, Article 243(d): a Panchayat means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas.

Constitution of India, Article 243 B: Constitution of Panchayats

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs

⁷⁸¹ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, Sec. 14.

⁷⁸² Ibid., Sec. 15(1).

⁷⁸³ Ibid., Sec. 16.

⁷⁸⁴ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules 2013, Rule 11(24).

⁷⁸⁵ Ibid., Rule 11(26).

⁷⁸⁶ Ibid., Rule 11(27).

⁷⁸⁷ Ibid., Rule 12.

is very important to note how the law prescribes such a list to be published publicly. This can be considered as a form of humiliation of the manual scavengers deliberately put in place by law makers.

5.5 Voices from the Ground

When asked about the implementation of the Rehabilitation Scheme, an officer working at the Karnataka State Safai Karamchari Commission said:

In 2018, Karnataka State Safai Karamchari Development Corporation is established. They are formulating schemes for the economic upliftment of manual scavenger families. In 2018, they have conducted some self-employment programs, giving vehicles and training in different trades.”⁷⁸⁸

When questioned further about what kind of training and which trades, he said “it comes under a separate development corporation. In 2019, also they have conducted new programs.”⁷⁸⁹

A human rights activist also commented on the rehabilitation scheme:

It is very basic. They will be given one-time cash assistance of some Rs. 40,000, what will happen? At least Rs. 40,000 for them it is good money. Second, their children will get scholarship. So that at least children will continue to study. Third, in case if they want, alternative job, there is a provision for providing loan, in case if they are too old and cannot do anything, a child, boy or a girl can actually undertake self-employment. And the training will be given with stipend. And a house or in case if they don't have house, house site or constructed house. It is very basic, nothing beyond that. It is basically keeping you intact so that they can extract work from you. It is again exploitation. Manual scavengers are all neglected. If you ask them to actually give up they cannot. The reality is when they clean the system they drink and clean. Otherwise they cannot withstand the smell. It is our own shit. And they clean it. Its only under intoxication. We believe problem will not be solved, that caste-based discrimination still continues. That is evident. But if the children get good education, they get different opportunities. So alternatives will be there. Without education there are no alternatives.”⁷⁹⁰

A manual scavenger commented on the consumption of alcohol:

Before while making someone get down the manhole, they used to make people consume alcohol, because they wanted their work to be done. These people are such that to get their task completed, they are ready to kill someone. Now there is a rule that we should not drink at work.”⁷⁹¹

⁷⁸⁸ Interview with Officer, Karnataka State Safai Karamchari Commission (Bangalore, 8th June 2019).

⁷⁸⁹ Ibid.

⁷⁹⁰ Interview with Activist-1, Human Rights Activist (Bangalore, 27th April 2019).

⁷⁹¹ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

An activist working for the betterment of Manual Scavengers, reflected on the rehabilitation scheme:

From 1993 onwards, lot of programmes have been coming, but they are not getting implemented. The implementor, the government bureaucrats who are they? Majority of them belong to dominant communities. They are not willing to implement. They are not willing to provide a proper rehabilitation and to change the manual scavengers from this occupation to another dignified occupation. Lot of manual scavengers rehabilitation schemes are in place with crores⁷⁹² of money. But the rehabilitation percent is very less. In my calculation, some 2-3% only. As per the rehabilitation scheme, officials should take the measures and involve to rehabilitate them. Around 3000 manual scavengers have been identified. As per the Act they are supposed to provide immediate rehabilitation. After 6 years also, they are still fighting with the government. Why? That is the thing.⁷⁹³

The founder of the NGO Safai Karamchari Andolan Bezwada Wilson was of the opinion that the scheme designed by the government for rehabilitation is nowhere close to adequate:

there is no comprehensive thought regarding rehabilitation. The government wants to get rid of manual scavengers. The scheme does not count female sanitation workers. The government hands out loans according to the scheme, but people are afraid of taking loans for fear of not being able to pay them back. The government says do business, but how can they do business after society has kept them under its heels for so long? Doing business requires basic access to know-how. Handing out loans does not translate to business; for that training is required.⁷⁹⁴

With regard to the implementation of the rehabilitation scheme, information obtained under the Right to Information (RTI)⁷⁹⁵ filed by *The Wire*, an Indian news website, in August 2018 revealed that the present union government has not released any money for the rehabilitation of manual scavengers.⁷⁹⁶ This information was made available by the NSKFDC which works under the aegis of the Ministry of Social Justice and Empowerment, Government of India. It revealed that during the previous government, Rs. 55 Crores (550 million Indian Rupees) were released in 2013-14. However since then, no money has been released on this account until 22nd September 2017. It must be noted that the rehabilitation is carried out under the Ministry of Social Justice and Empowerment's 'Self Employment for Rehabilitation of Manual Scavengers (SRMS)' scheme.⁷⁹⁷

⁷⁹² One Crore is Ten Million.

⁷⁹³ Interview with Activist-2, Activist on Manual Scavenging (Bangalore, 28th April 2019).

⁷⁹⁴ Mishra, Modi Govt has not released a single Rupee for Rehabilitation (n 774).

⁷⁹⁵ Filed under the Right to Information Act, 2005.

⁷⁹⁶ Mishra, Modi Govt has not released a single Rupee for Rehabilitation (n 774).

⁷⁹⁷ Ibid.

The RTI also revealed that a total of Rs. 226 crores (2260 million) have been released by the government under the said scheme since 2006-07. Since 2014, no further funds have been released.⁷⁹⁸ However the RTI information reveals that cash assistance of Rs. 40,000 was given to 8,627 people in 2015-16, 1,567 people in 2016-17 and 890 people in 2017-18 and as of August 2018, 365 people have received it.⁷⁹⁹ During the period from 2006-07 to 2017-18, the Ministry has released the funds only five times under this scheme. Of Rs. 56 crores (560 million) released during the year 2006-07, only Rs. 10 crores (100 million) were spent, leaving the balance of over Rs. 45 crores (450 million) for the year. Rs. 36 crores were not spent in 2007-08 and Rs. 63 crores (630 million) remained in 2014-15. Similarly, Rs. 36 crores (360 million) were left unused in 2015-16 and Rs. 24 crores (240 million) were left in the balance in 2017-18.⁸⁰⁰ It can be clearly seen that the funds are left unused, while the manual scavengers are failing to receive the rehabilitation packages. It must be noted that the data is hard to come by and some of the data as can be seen here, may conflict with each other.

To identify insanitary latrines and manual scavengers working therein, a mobile app was launched in December 2020. The Ministry of Social Justice and Empowerment told the Upper House of the Parliament that though there are 6000 cases uploaded in the app, it could not confirm the existence of insanitary latrines. It thus concluded that manual scavenging does not exist in India anymore. It contradicts the 2011 Census that 26 lakhs insanitary latrines existed in the country.⁸⁰¹ The ministry maintained its stand that there are no reports of people currently engaged in manual scavenging, also reported before the Lower House, the death of 340 manual scavengers in sewers and septic tanks in the five years before 2020. Further, the government informed the Lower House that as of November 2021, there were two surveys conducted, in 2013 and 2018 identifying 58,098 eligible manual scavengers for rehabilitation. It must be noted that the figure is highly understated as the 2018 survey left out data from 11 States.⁸⁰² This shows the conflicting nature of reports presented by the Government before the Parliament.

⁷⁹⁸ Ibid.

⁷⁹⁹ Ibid.

⁸⁰⁰ Ibid.

⁸⁰¹ Jawed Alam Khan and Rahat Tasneem, '15 Years Later, Govt. Scheme to Rehabilitate Manual Scavengers has made Little Progress', (7th March 2022), The Wire, < <https://thewire.in/caste/manual-scavengers-rehabilitation-scheme-progress-report> > accessed 18th May 2022.

⁸⁰² Ibid.

Furthermore, the qualitative interviews conducted with manual scavengers for this thesis reveal that they are not aware of any of the rehabilitation schemes under the Act, even though authorities claim that they have been raising awareness. When asked about the rehabilitation scheme, a Manual Scavenger⁸⁰³ reflected:

I: Are you aware of the rights/protection/facilities/rehabilitation scheme being provided to manual scavengers?

MS2: neither do we know about them nor have anyone given us those facilities. ESI and PF are given after so much of struggle. Earlier they used to give salary weekly, like daily wage laborers. Now it is monthly. But when it comes to city corporation, we are not considered at all. We are on contractual basis. They only want the work done. In corporation, they must give first importance to drainage cleaning because it is not good for our health and there is always a risk of death. When we work on the road, in case a vehicle comes and hits, there is a death on the spot. If we fall inside, we may die inhaling toxic gases. We are not permanent employees. These people only don't allow us to be permanently employed. The officers and contractors, ministers all have benefit. They must give us facilities, the government. Instead, if it is on contract, they don't have to give all the facilities. All they have to do is raise monthly invoice for the contractor. *They are killing us. Not only us, our families, our kids, they are killing all of us. Their intention is that we should be like this only suffering and struggling. If they increase the salary, we will be able to lead a good life, then they will not have people to work for them. Instead, if they keep less salary, in future we might bring our children also to this job, that's why they keep less salary. The government is fully responsible for our condition.*

If the people to whom the schemes are targeted are not aware of them, they cannot engage with them. It must also be noted that there have been many corporations, commissions, departments, and agencies created to address the issue of manual scavenging. As can be seen from the interviews, it has become convenient for officers to evade responsibilities and more difficult for the manual scavengers and activists to pursue their claims, since they often will be left wandering from one department to another to get their work done, resulting in unnecessary delay and confusion. It can also be clearly seen from the above comments of the activists and the data that although there are various rehabilitation schemes put in place by the Act, they are not being implemented in their letter and spirit, which is also a reflection of the prejudiced mindsets of people at the helms of affairs in the government against the manual scavengers who are Dalits.

⁸⁰³ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019) Emphasis supplied.

As explained at the beginning of this chapter, manual scavengers are disadvantaged on multiple levels. They face enormous discrimination in society by virtue of them belonging to lowered castes. They are also disadvantaged because they are the people who clean human excreta. Hence, the issue is vital and urgent, especially that of rehabilitation which requires a comprehensive approach that moves beyond granting loans, and focuses on several aspects which are crucial to securing the future of the next generation of liberated manual scavengers.⁸⁰⁴ The United Nations in India suggests a few measures in this regard which include:

ensuring discrimination-free, secure and alternate livelihood. This can be achieved by providing skill development and livelihood training to women, linking them to government employment schemes and entitlements and also ensuring their land rights. For young people, training in different vocations which are linked to employment. Support manual scavengers who are liberated in building alternate livelihoods. It is also important to create a favourable environment by means of community awareness and sensitization of local administration and build the capacity of the community to promote rehabilitation efforts and self-reliance and also build leadership in the community particularly focusing on Dalit women.⁸⁰⁵

As mentioned earlier in this thesis, the issue of Untouchability is social, political, economic, legal, and cultural in measure and a holistic approach is thus needed to tackle this issue. The problem with poor implementation of the laws relating to manual scavenging is an example of there being a lack of clarity in handling such an issue where the issue of caste should have been the primary focus since manual scavenging is basically a caste-based occupation. The Supreme Court in *Safai Karamchari Andolan v. Union of India*⁸⁰⁶ directed the government to completely abolish the practice of manual scavenging and provide rehabilitation to the people released from manual scavenging.⁸⁰⁷ Despite this, there has not been effective implementation of the laws as there is a clear lack of will from the Executive, as well as civil society which is silent on this issue of gross violation of the human rights of fellow Indian citizens.

In a write-up provided by the Union Ministry of Social Justice and Empowerment, on the eve of Independence Day in 2015, it admitted that the States and Union Territories are slow in

⁸⁰⁴ 'Breaking Free: Rehabilitating Manual Scavengers', United Nations in India < <https://in.one.un.org/page/breaking-free-rehabilitating-manual-scavengers/> > accessed 18th May 2022.

⁸⁰⁵ Ibid.

⁸⁰⁶ (2011) 15 SCC 611.

⁸⁰⁷ Swapnil Tripathi, 'Right to Dignity, not for Manual Scavengers: The Neglected State of Rights of Scavengers in India', (4th December 2017), LSE, < <https://blogs.lse.ac.uk/humanrights/2017/12/04/right-to-dignity-not-for-manual-scavengers-the-neglected-state-of-rights-of-scavengers-in-india/> > accessed 18th May 2022.

identifying insanitary latrines and manual scavengers as per the Act since there is no time-bound plan for identification of this.⁸⁰⁸ It further noted that in a case filed in the Supreme Court of India, many States and Union Territories have filed affidavits stating that there are no insanitary latrines in their jurisdiction. According to the Ministry, the States have done so due to the fear of being in contempt of the Court if they report the existence of insanitary latrines in their jurisdiction.⁸⁰⁹ Whilst the Ministry acknowledges this fact, it has not done anything in its power to bring it to the notice of the Supreme Court of India. With regard to the rehabilitation scheme, the said Ministry stated that it is slow and in many cases not adequate due to several problems including that the manual scavengers are largely illiterate and do not have exposure to any other work than those related to sanitation; many of them are old and hence lack confidence in running self-employment projects; many of them are not willing to avail any skills development training. Banks are also very hesitant to provide loans to manual scavengers, due to low rates of recovery from Safai Karamcharis.⁸¹⁰ In 2016-17, the Union Government allocated Rs. 9,000 crores (90 billion) for Swachh Bharat Abhiyan (Clean India Campaign).⁸¹¹ But this, as with the rest of the numerous budgetary allocations have not yielded the desired results. It is important to note that this campaign does not seek to address the issue of caste which is the root cause of manual scavenging, rather it focuses only on cleanliness. “It is a fact that without addressing the issue of caste it is impossible to deal with the question of cleanliness in our country.”⁸¹²

5.6 Child Manual Scavengers

Many manual scavengers start their job in this field as children. This violates many provisions of the Indian Constitution and various laws, and also the Convention of the Rights of the Child (CRC) to which India is a State Party. This Convention *inter alia* states that the State Parties recognise that every child has the inherent right to life and that they shall ensure the survival and development of the child to the maximum extent possible.⁸¹³ It also states that it is the duty of the State Parties to take:

all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or

⁸⁰⁸ Press Information Bureau, ‘Freedom from Manual Scavenging’, Ministry of Social Justice and Empowerment, Government of India, < <https://pib.gov.in/newsite/mbErel.aspx?relid=126057> > accessed 18th May 2022.

⁸⁰⁹ Ibid.

⁸¹⁰ Ibid.

⁸¹¹ Garima Singh, ‘The Caste of Sanitation’, (2nd November 2017), Democracy News Live < <https://democracynewslive.com/asia/the-caste-of-sanitation-438130> > accessed 18th May 2022.

⁸¹² Ibid; *also see* Darokar, A Blind Spot in Urban Development Discourse (n 621) 9.

⁸¹³ Convention on the Rights of the Child, 1989, Article 6.

negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian (s) or any other person who has the care of the child.⁸¹⁴

The State Parties also undertake to recognise the right to benefit from social security, including social insurance, for every child, and shall take appropriate measures to achieve the full realisation of this right in accordance with domestic laws.⁸¹⁵ They also recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.⁸¹⁶ Further they recognize the right to education for a child, and in order to achieve this right progressively and on the basis of equal opportunity, they shall *inter alia* make primary education free and compulsory to all.⁸¹⁷ More importantly the State Parties also recognize:

the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁸¹⁸

To ensure the effective implementation of this, legislative, administrative, social and educational measures shall be undertaken by the State Parties. To achieve this, the State Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.⁸¹⁹

The State Parties also undertake to “protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.”⁸²⁰ It is the duty of the State Parties to ensure that no child be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁸²¹ They also have to take:

all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse; torture or other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.

⁸¹⁴ Ibid., Article 19(1).

⁸¹⁵ Ibid., Article 26(1).

⁸¹⁶ Ibid., Article 27(1).

⁸¹⁷ Ibid., Article 28(1)(a).

⁸¹⁸ Ibid., Article 32(1).

⁸¹⁹ Ibid., Article 32(2).

⁸²⁰ Ibid., Article 36.

⁸²¹ Ibid., Article 37.

Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.⁸²²

India has made a declaration to the CRC as follows:

While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party.⁸²³

However, the reality on the ground is different. The discussions so far in this chapter are equally applicable to child manual scavengers and as such, most of the above mentioned provisions of the CRC are not implemented effectively in India. During the interviews, with manual scavengers for this thesis, MS-1 revealed that he had studied only until 7th standard in school,⁸²⁴ that he did not have the means to continue his studies further, and that after leaving school he stayed at home for a while. Seeing the pathetic condition at home, he then decided to take up the job of cleaning drainages. He was only 14-15 years old.⁸²⁵ Manual scavenger MS-2 recalled that his family was so poor that they could not afford one square meal a day. But he was able to attend school until 7th standard, after which he decided to stay at home and look for work. He initially took up small jobs like working in the fields. One day his uncle told him that there was a job to clean drainages and he agreed to work. Looking back now, he realises that it is a crime as per the law but at the time, he neither had other work, nor the capacity to earn or choose his livelihood. He was only 12-13 years old. Initially he started basics of cleaning

⁸²² Ibid., Article 39.

⁸²³ 'Declarations and Reservations', United Nations Treaty Collection, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en#EndDec> accessed 18th May 2022.

⁸²⁴ 1st standard to 7th standard are considered to comprise of primary schooling in Karnataka, the home State of the interviewed manual scavengers.

⁸²⁵ Interview with MS-1, Manual Scavenger (Mangalore, 7th May 2019).

drainages like clearing blocks, supporting people who are already working by bringing wires etc., and so he studied it fully and in 2-3 years he started to remove blocked drainages himself. As of June 2019, he continued to work in that role.⁸²⁶ Manual scavenger MS-3, said that he had attended school until 4th standard and that he does not know to read and write. He could not recall the exact age he started manual scavenging, but said it was very early on his life.⁸²⁷ Manual scavenger MS-4 revealed that he attended school until 5th standard and had to drop out due to difficulties at home, having lost both his parents at the age of 8 and being responsible for two younger siblings. Someone he knew told him that there was a drainage cleaning job and he started at the age of 16.⁸²⁸ He recalled it to be difficult at the time and that as time passed by he got used to it. He said:

I felt lonely to get inside it, because it is a dirty job. But somehow life has to go on, for the sake of livelihood I did it. I didn't get any other job.⁸²⁹

The issue of children working as manual scavengers continues and indeed in January 2020, a 17 year old boy died of asphyxiation in Bangalore, where he was made to enter the sewage chamber. He was promised a wage of Rs. 600 (6 GBP approx.) for the job by a contractor. Another man who went to rescue him also fell critical ill.⁸³⁰

The continued apathy by the State, media and civil society towards the manual scavengers point to the undeniable fact that India is very much a caste-feudal society which believes in the supremacy of caste hierarchy, of which the practice of untouchability is a by-product. It is worth revisiting the Gandhi-Ambedkar debate on caste and manual scavenging at this point. This is important as it sheds light to the two conflicting views on manual scavenging, one supporting it, seeing it as a undeniable part of the society and another opposing it seeing it as a caste occupation and inhuman abuse of human rights; a conflict of opinion still prevalent in the society.

⁸²⁶ Interview with MS-2, Manual Scavenger (Mangalore, 7th May 2019).

⁸²⁷ Interview with MS-3, Manual Scavenger (Mangalore, 7th May 2019).

⁸²⁸ Interview with MS-4, Manual Scavenger (Mangalore, 7th May 2019).

⁸²⁹ Ibid.

⁸³⁰ Theja Ram, '17 year old dead after being made to clean sewage chamber in Bengaluru', (25th January 2020), the News Minute < <https://www.thenewsminute.com/article/17-yr-old-dead-after-being-made-clean-sewage-chamber-bengaluru-116809> > accessed 18th May 2022.

5.7 Gandhi-Ambedkar debate on Caste and Manual Scavenging

As seen in Chapter 2, Ambedkar claimed himself to be an authentic leader of the untouchables, himself hailing from the community and going through all the hardships of an untouchable. Gandhi, being a Vaishya, declaring himself to be a ‘Sanatani Hindu’ (a person believing in the Hindu religious texts like the Vedas, Upanishads and Bhagavadgita), however denied separate interests of the untouchables from that of the Hindus. He never spoke of Hinduism as it was, but what it might be.⁸³¹ Ambedkar was suspicious of the social content of the Indian freedom struggle and believed that Gandhi was not adequately sensitive to this. Ambedkar firmly believed that untouchability was an expression of caste system. The untouchables also supported the anti-colonial struggle against British imperialism. But political liberation was not sufficient for them unless India was able to establish social democracy, which guarantees constitutional safeguards to the untouchables and was not run by the privileged caste Hindus in the legislature, executive and judiciary.⁸³²

The question of caste however, did not occupy a place of urgency in Gandhi’s thought. For Gandhi an ideal society would be based on Varna with no enmity among independent units. Gandhi’s politics was to include the untouchables in the Hindu fold to form a Hindu majority. He firmly believed that the untouchability problem was exclusively a Hindu affair and not a national problem.⁸³³ Ambedkar however, saw Varna as a hierarchical structure with no sufficient momentum to break the entrenched system of oppression.⁸³⁴ Ambedkar believed that inter-dining and inter-marriage were essential for eradication of the varna system or its present form, the caste system. He argued that where bonds based on affection are lacking, as in the case of Hindus and untouchables, inter-dining and inter-marriage are absolutely essential to dissolve the notions of untouchability. He further argued that through intermarriages the feeling of ‘being kith and kin’ will be generated across the castes 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.”⁸³⁵ Gandhi however, did not think these practices were essential for the cultivation of democratic spirit. He did not consider these practices to be integral for the eradication of untouchability. He concluded that the caste system cannot be considered bad

⁸³¹ Mani, *Debrahmanising History* (n 15) 46.

⁸³² Suhas Palshikar, ‘Gandhi-Ambedkar Interface: ...when shall the twain meet?’, (24th March 2014) *Economic and Political Weekly*, 2070, 2070, 2071; Ankur Barua, ‘Revisiting the Gandhi-Ambedkar Debates over ‘Caste’: The Multiple Resonances of *Varna*’, 25 (1), *Journal of Human Values*, Sage, 25, 29.

⁸³³ Mani, *Debrahmanising History* (n 15) 341.

⁸³⁴ Barua, *Revisiting the Gandhi-Ambedkar Debates over ‘Caste’* (n 832) 25.

⁸³⁵ *Ibid.*, 28.

because it did not allow inter-dining and inter-marriage between different castes.⁸³⁶ Gandhi never approved of the autonomous activities of the oppressed masses. According to him, they had to be always guided by the notables from the privileged castes. Gandhi was popular among the elite intelligentsia and the secret behind this was his defence of caste and Brahmanism under the cover of spiritual-cultural nationalism.⁸³⁷

Ambedkar was firm in his opinion that the privileged caste Hindus did not consider the Untouchables part of a unified organic solidarity. He argued:

To tell the Untouchables that they must not act against the Hindus, because they will be acting against their kith and kin, may be understood. But to assume that the Hindus regard the Untouchables as their kith and kin is to set up an illusion.⁸³⁸

He emphasised that the caste Hindus did not allow the untouchables to drink water from common wells, own lands, keep cattle and so on. During a meeting with Gandhi in 1931 he put across this point even more poignantly:

You say I have got a homeland, but still I repeat that I am without it. How can I call this land my own homeland and this religion my own wherein we are treated worse than cats and dogs, wherein we cannot get water to drink? No self-respecting Untouchable worth the name will be proud of this land.⁸³⁹

While Gandhi distinguished between his ideal system of four mutually cooperating varnas and regarded the numerous distinctions of caste and untouchability as later growth, Ambedkar consistently refused to draw such distinction. For him the basic root of inequality lies in the varna system which is the genesis of caste system and the very foundation of untouchability as discussed in Chapter 2. Mani, who authored one of the first subaltern histories said:

Gandhi, behind the veil of self-denial and moralising mysticism, had actively supported caste, Brahmanism, and trusteeship, taking the side of the exploited classes, and sidestepping in most sinister ways the question of workers, peasants and the Dalits... He could trust only upper-caste notables to spearhead his movement, and dreaded the prospect of mass awakening and mass militancy... He disapproved of peasant agitations for rent-reduction or non-payment of interest as well as workers' strike for better payment, arguing 'faithful servants serve their masters even without pay.'⁸⁴⁰

⁸³⁶ Ibid., 26, 28.

⁸³⁷ Mani, *Debrahmanising History* (n 15) 47, 48.

⁸³⁸ BR Ambedkar, *What Congress and Gandhi have done to the Untouchables*, 37 (2009 [1945]) Gautam Book Centre, New Delhi, as cited in Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 27.

⁸³⁹ BR Ambedkar, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol. 17, part 1 p. 53 (1979-2003) Government of Maharashtra, as cited in Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 27.

⁸⁴⁰ Mani, *Debrahmanising History* (n 15) 343.

Gandhi totally refused to see the problem of untouchability as a socio-economic issue, arguing that it is 'predominantly moral and religious.'⁸⁴¹ Mani noted:

Besides temple entry, Gandhi's Harijan (Gandhi renamed untouchables as children of God) campaign consisted of a series of symbolic actions which centred on upper-caste reformers working among untouchables to inculcate in them temperance and discipline, and reforming their unhygienic ways, meat-eating and alcoholism, which were seen as main reasons for their degradation. Gandhi made it clear that he did not have any agenda of civil rights, political power or economic opportunity for them. His approach was the 'change of heart' and the creation of an 'ideal bhangi' (scavenger), who would continue to clean the excreta of others with the status of a brahmin.⁸⁴²

In response to Ambedkar's 'Annihilation of caste' (the key points of which are discussed throughout this thesis) Gandhi wrote:

The law of varna teaches us that we have each one of us to earn our bread by following the ancestral calling... it also follows that there is no calling too low and none too high... the callings of a Brahmin-spiritual teacher-and a scavenger are equal, and their due performance carries equal merit before God...⁸⁴³

Ambedkar found Gandhi's thesis of all castes being equal and 'a scavenger has the same status as a brahmin', as 'an outrage and a cruel joke on the helpless classes.'⁸⁴⁴ Gandhi was against the idea of untouchables giving up their traditional degrading occupations like cleaning latrines, tanning leather etc. He insisted that once born a scavenger, he must earn his livelihood by being a scavenger. He was also against the sweepers going on strike demanding better working conditions and wages.⁸⁴⁵ Gandhi even asked a Christian missionary to pray for the Harijans (untouchables) but try not to convert them as "they did not have the mind and intelligence to understand what you talked... Would you preach the Gospel to a cow?"⁸⁴⁶ Gandhi opposed those who advocated social democracy and wanted to do away with hereditary occupation by asserting:

To destroy the caste system and adopt the western European social system means that Hindus must give up the principle of hereditary occupation which is the soul of the caste system. Hereditary principle is an eternal principle. To change it is to create disorder. I have no use for a Brahman if I cannot call him a Brahman for my life. It will

⁸⁴¹ Ibid., 364.

⁸⁴² Ibid., 364, 365.

⁸⁴³ Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 30.

⁸⁴⁴ Mani, *Debrahmanising History* (n 15) 366.

⁸⁴⁵ Ibid.,

⁸⁴⁶ MK Gandhi, 'Harijan', (19th December 1936) as cited in Ibid., 367.

be a chaos if everyday a Brahman is to be changed into a Shudra and a Shudra is to be changed into a Brahman.⁸⁴⁷

Gandhi also occasionally opposed the education of the masses, fearing it might ignite their minds about the wretched conditions they lived in:

What do you propose to do by giving literacy to the children of the peasants? What comfort are you going to add to their life by educating them? Do you want to ignite discontent in his mind for his thatched hut and pathetic condition?... We are going to do excess when some preach for imparting education for all, without considering its pros and cons.⁸⁴⁸

When asked whether the untouchables can regard Gandhi as their friend, Ambedkar responded:

How can they? It may be that Mr. Gandhi honestly believes that the problem of the Untouchables is a social problem. But how can they believe him to be their friend when he wishes to retain caste (i.e., varna) and abolish untouchability it being quite clear that untouchability is only an extended form of caste and that therefore without abolition of caste there is no hope of abolition of untouchability?⁸⁴⁹

Ambedkar noted that the life of an 'ordinary uneducated Hindu' is based on three prohibitions: against inter-dining, against intermarriage and against touching certain groups of people. The first two of course are broader caste notions, the third however specifically forms untouchability. The idea therefore of hoping to remove untouchability without destroying the caste system is an utter futility.⁸⁵⁰ Ambedkar concluded that "if the idea of caste is a pernicious idea it is entirely because of the viciousness of the idea of varna. Both are evil ideas and it matters very little whether one believes in varna or in caste."⁸⁵¹

Gandhi believed that if individuals do not follow the law of varna and do not remain content with their hereditary means of livelihood, it will result in social anarchy. In a letter to Gandhi Ambedkar noted "the outcaste is a bye-product of the caste system. There will be outcastes as long as there are castes. Nothing can emancipate the outcaste except the destruction of the caste system."⁸⁵² Gandhi being a lover of the rural societies wanted to reform Hinduism by abolishing untouchability and setting up self-governing villages. Ambedkar however, saw

⁸⁴⁷ BR Ambedkar, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol. 9, p. 275-276, Government of Maharashtra, as cited in *Ibid.*, 369.

⁸⁴⁸ Gandhi as cited in Swapan K Biswas, *Gods, False Gods and the Untouchables*, 267 (1998) Orion, Delhi; also see *Ibid.*, 370.

⁸⁴⁹ Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 28.

⁸⁵⁰ *Ibid.*

⁸⁵¹ Ambedkar, *What Congress and Gandhi have done to the Untouchables* (n 838) 278 as cited in Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 28.

⁸⁵² Barua, *Revisiting the Gandhi-Ambedkar Debates over 'Caste'* (n 832) 30.

villages as ‘dens of inequity’. He admired urban spaces structured by technology. Gandhi was generally suspicious of the State, while Ambedkar was a steadfast Constitutionalist who sought solutions to social problems through the intervention of the State.⁸⁵³

Ambedkar continually emphasised that caste and occupations like manual scavenging go hand in hand. Unless or until there is annihilation of caste, manual scavenging cannot be eradicated or perceptions in society towards Dalits cannot be changed.⁸⁵⁴ However, Gandhi believed that there would be a behavioural change in the society which would happen at some point in time though it might take its course. Gandhi said:

I call scavenging one of the most honourable among the occupations to which mankind is called. I do not consider it an unclean occupation by any means. That in performing the cleaning operation you have to handle dirt is true. But, that every mother has to do, every doctor does. But, nobody says that a mother’s occupation when she cleans her children, or a doctor’s occupation when he cleans his patients, is an unclean occupation.⁸⁵⁵

But, Ambedkar firmly stated:

Under Hinduism scavenging was not a matter of choice, it was a matter of force. What does Gandhism do? It seeks to perpetuate this system by praising scavenging as the noblest service to society! ... What is the use of telling the scavenger that even a Brahmin is prepared to do scavenging when it is clear that according to Hindu Shastras⁸⁵⁶ and Hindu notions even if a Brahmin did scavenging he would never be subject to the disabilities of one who is a born scavenger? For in India a man is not a scavenger because of his work. He is a scavenger because of his birth irrespective of the question whether he does scavenging or not.⁸⁵⁷

It is notable that it took 43 years after the adoption of the Constitution of independent India to enact a law prohibiting manual scavenging. Even though the Untouchability Offences Act was enacted in 1955, there was a system running parallel, that of manual scavenging, which denied even the basic right to life with dignity. The fact that the issue of manual scavenging was first

⁸⁵³ Ibid., 36.

⁸⁵⁴ Ambedkar, *Annihilation of Caste* (n 8) 15, 16, 24, 35, 36; also see ‘What BR Ambedkar had to say about Caste & the Caste System’, (14th April 2017), The Logical Indian, < <https://thelogicalindian.com/story-feed/awareness/b-r-ambedkar/> > accessed 18th May 2022.

⁸⁵⁵ Speech at Thandakarancheri, in *The Collected Works of Mahatma Gandhi* (Electronic Book), Vol. 63 (Publications Division, Government of India, New Delhi 1999) 104, < <https://www.gandhiashramsevagram.org/gandhi-literature/mahatma-gandhi-collected-works-volume-63.pdf> > accessed 18th May 2022.

⁸⁵⁶ Holy books

⁸⁵⁷ BR Ambedkar, *What Congress and Gandhi have done to the Untouchables* (Original 1st Edn, 1945, Samyak Prakashan, 2012), 354; also see B Ravichandran, ‘Scavenging Profession: Between Class and Caste?’(2011) 46 (13), Economic and Political Weekly, 21, 23.

discussed in an elaborate manner in 1993, reflects upon the lack of concern the government had for the human dignity and rights of the oppressed. Even when the Indian Railways were violating the provisions of the Constitution, especially Article 21 which guarantees right to life with dignity, by employing manual scavengers to clean the toilets and tracks for over four decades, the government was silent. The Indian Railways is an undertaking of the Government of India, therefore an arm of the State under Article 12⁸⁵⁸ of the Constitution. It is a classic example where the State itself is a perpetrator. Yet no action was taken. In 1992, when the 9-member Constitutional bench of the Supreme Court of India was discussing the important *Mandal Commission* case,⁸⁵⁹ one of the aspects discussed was that of social backwardness. Though it was confined to the OBCs, reference was made to promotions of the SCs and STs in the judgment. Even when this was being discussed at the highest level of the judiciary, the Indian State, both Union and State governments, did not bother to discuss the issue of the lives and livelihoods of manual scavengers. This mirrors the reality of the lives of the most marginalised sections of Indian society, who have a livelihood but no life with dignity.

5.8 Concluding Remarks

This chapter analysed various schemes, policies and legislation enacted to eradicate manual scavenging. However, from the qualitative interviews conducted for this thesis, extracts of which were incorporated in this chapter, it is clear that the laws and schemes have been totally ineffective as far as the targeted population is concerned. The manual scavengers have been unable to engage with the law as shown in this chapter. When finally the legislation was enacted, it proved to be ineffective and not a single conviction took place under the 1993 Act. The perpetrators who are engaged in sending scavengers down the manhole causing their deaths, roam free. Twenty years later when the new Act was passed in 2013, it *ex facie* looked stringent but has many loopholes. The reality to this day remains that manual scavenging exists and many who have entered the poisonous manholes have not seen the light of day. Rehabilitation schemes have been totally ineffective with the sanctioned amount not being released to the scavengers and their families. Children are still being recruited to work as manual scavengers in violation of domestic and international legal instruments. The State, media and civil society are mute spectators to this gross deprivation of human rights of a section

⁸⁵⁸ Constitution of India, Article 12: Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

⁸⁵⁹ AIR 1993 SC 477; 1992 Supp (3) SCC 217; also see pages 85 of Chapter 3 and 181 of Chapter 6.

of the most marginalised silent masses. There has not been a behavioural change in the Indian society as Gandhi suggested, even after 70 years of democracy, hundreds of developmental programmes and projects, and tremendous scientific advancement. What Ambedkar said in 1945 still stands true in 2022, where a man is not a scavenger because of his work, he is a scavenger because of his birth.

Chapter 6: Higher Educational Institutions and

Caste-based Discrimination

“Rohit Vemula’s suicide, comes as the highest form of expression of discrimination in higher education.”⁸⁶⁰

I always wanted to be a writer. A writer of science, like Carl Sagan... The value of a man was reduced to his immediate identity and nearest possibility. To a vote. To a number. To a thing. Never was a man treated as mind. As a glorious thing made up of star dust. In every field, in studies, in streets, in politics, and in dying and living... I was rushing. Desperate to start a life. All the while, some people, for them, life itself is curse. My birth is my fatal accident... I am not hurt at this moment. I am not sad. I am just empty. Unconcerned about myself. That’s pathetic. And that’s why I am doing this... if you, who is reading this letter can do anything for me, I have to get 7 months of my fellowship, one lakh and seventy five thousand rupees. Please see to it that my family is paid that... Do not shed tears for me. Know that I am happy dead than being alive... “From shadows to the stars.”⁸⁶¹

This is an excerpt from the suicide note written by Rohith Vemula, a Dalit PhD research scholar, who hanged himself in his friend’s room in January 2016 at Hyderabad Central University. This unsettling note mirrors a gruesome face of untouchability which often stays hidden in plain sight: the treatment of Dalit students in higher educational institutions in India. The previous chapters have discussed how historically the untouchables have been subjected to segregation, marginalisation, and humiliation of the cruellest forms, including the denial of the fundamental right to life with dignity. This chapter deals with the plight of the Dalit students in a post-independent, democratic India. The chapter discusses formal or direct discrimination, where discrimination is in the nature of laws and rules framed and interpreted for the purpose of the welfare of the Dalit students.⁸⁶² The key focus however, will be on informal or indirect discrimination, where there is discrimination in the treatment of Dalit students in institutions of higher learning. References to caste-based discrimination in higher educational institutions

⁸⁶⁰ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

⁸⁶¹ The Wire Staff, ‘My Birth is my Fatal Accident: Rohith Vemula’s Searing Letter is an Indictment of Social Prejudices’, (17th January 2019), The Wire <<https://thewire.in/caste/rohith-vemula-letter-a-powerful-indictment-of-social-prejudices>> accessed 19th May 2022.

⁸⁶² This has also been addressed in earlier chapters. See pages 25 of Theoretical Framework and 67 of Chapter 3.

is limited only to the treatment of members belonging to Scheduled Castes and Scheduled Tribes, particularly students. This chapter also uses excerpts from qualitative interviews, conducted as part of the thesis.

6.1 Status of Higher Education in India

Unlike primary education in India, which is a fundamental right mandated by the Constitution, being free and compulsory between the age of 6 to 14,⁸⁶³ higher education is not. It is neither a fundamental right which is justiciable in courts of law, nor a Constitutional right *per se*. No person has a *right* to become a lawyer, an engineer, a doctor or a highly educated person in any other field, though every person has a right to aspire to be one and have a fair and equal consideration in admissions as per procedure established by law.⁸⁶⁴ Furthermore, “by its very nature, higher education is a selective field - its elitism is an integral part of its nature, not necessarily or only the perversion of this nature.”⁸⁶⁵ Thus, higher education is not a “universalizable” resource. It will remain selective and to a large extent elite, inherently exclusive, and with modes of exclusion built within its fundamental structure as a matter of principle. There will always be more students who would want to gain access to higher educational institutions than will be accommodated due to several factors: a limited number of seats being one of them. Hence “discrimination in the sense of principled exclusion is a defining feature of higher education.”⁸⁶⁶ This puts the emphasis on the critical elements of specific procedures for selection and rejection. How this is perceived by various stake holders becomes vital, both in theory and in practice. The consequences of such perception, be it based on facts or prejudices, are key to understanding the way caste operates as a tool for discrimination in institutions of higher learning. In most contexts and societies, the institutional mechanisms put in place to regulate admissions to higher educational institutions are based on some form of “scholastic *examination* and in principle on some notion of *merit*. The idea of merit is particularly important as it bears the heavy ideological burden of legitimising a system explicitly based on exclusion by discrimination.”⁸⁶⁷

⁸⁶³ Constitution of India, Article 21 A.

⁸⁶⁴ Satish Deshpande, ‘Exclusive Inequalities: Merit, Caste and Discrimination in Indian Higher Education Today’, (2006) 41 (24), Economic and Political Weekly, 2438, 2440.

⁸⁶⁵ Ibid.

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid.

Historically, the untouchables have been denied education. The Constitution of free India mandated the introduction of affirmative action (called “reservation” in the Indian context), to set right the historical injustices and reduce caste-based inequalities meted out to certain communities, particularly the Scheduled Castes(SCs), Scheduled Tribes(STs), and Other Backward Classes(OBCs). A detailed discussion on the Constitutional provisions and affirmative action policies was made in chapter 3.⁸⁶⁸ Accordingly, the State reserved seats for individuals from SCs, STs, and OBCs in admissions to state universities in India. A quite straightforward system of admissions and reservation applies in most Indian universities. To gain admission, each applicant takes a standardised exam. Admission is based on the applicant’s exam score and caste group, with a given threshold for each group and only those who have scored above that, are admitted.⁸⁶⁹ It must be noted that not all courses and institutions have an entrance examination. The likelihood of there being an examination is higher in those institutions and those courses which are more sought after and competitive. As discussed below, caste-based discrimination in higher educational institutions mainly takes place at two stages. First, there is discrimination by denying opportunity to enter into institutions as students or members of faculty and second, there is discrimination after entering into institutions.

Before we analyse the admission process further, it is essential to have a basic understanding of the social composition of India. The government has released multiple figures on this. As per the government-run National Sample Survey Organisation (NSSO) conducted in 2004-05,

- The OBC population in India stood at 40.94%
- The SC population at 19.59%
- The ST population at 8.63%
- The rest of the population at 30.80%⁸⁷⁰

⁸⁶⁸ See Section 3.2 of Chapter 3 at 80.

⁸⁶⁹ Marianne Bertrand, Rema Hanna and Sendhil Mullainathan, ‘Affirmative Action in Education: Evidence from Engineering College Admissions in India’, (2010) 94, *Journal of Public Economics*, 16, 17.

⁸⁷⁰ ‘OBCs form 41% of Population: Survey’, (1st September 2007), *The Times of India* <<https://timesofindia.indiatimes.com/india/OBCs-form-41-of-population-Survey/articleshow/2328117.cms>> accessed 19th May 2022.

Another report shows that the Hindu upper castes constitute 22.28% of the population.⁸⁷¹ The Mandal Commission⁸⁷² in 1980, estimated that the OBCs constituted 52% after extrapolating the figures from the 1931 census.⁸⁷³

As per the data collected in Census 2011, which is largely taken as an accurate number,

- The SC population in India stood at 16.6%
- The ST at 8.6%⁸⁷⁴

The census does not reveal the caste data for the rest of the population. There is no accurate up-to-date data which shows the exact percentage of OBCs and the rest of the population. The next census was due to take place in 2021, but as of May 2022, it had not happened.

Considering this data, we can derive that the population of SCs, STs (from 2011 census), and OBCs (from 2004-05 NSSO) together is 66.14%, implying that the rest of the population is 33.86%. This is important because when it comes to representation within higher educational institutions, as per the All India Survey on Higher Education (AISHE) 2018-19, at an All-India level,

- Teachers belonging to the general category (dominated by Hindu upper castes) constitute more than half of the total number of teachers in India, i.e., 56.7%.
- Teachers belonging to OBC are 32.1%
- Teachers belonging to SC are 8.8%
- Teachers belonging to ST are 2.36%.⁸⁷⁵

It can clearly be seen that the institutions of higher education are largely dominated by Hindu upper castes.⁸⁷⁶ In terms of representation with regard to gender distribution, there are 73 female teachers per 100 male teachers at an All-India level. 57 female teachers per 100 male teachers in SC category, and 68 female teachers per 100 male teachers in both ST and OBC

⁸⁷¹ 'Upper Caste Hindus own 41 per cent of India's total wealth: Study', (14th February 2019), BusinessToday.in <<https://www.businesstoday.in/latest/economy-politics/story/upper-caste-hindus-own-41-per-cent-india-total-wealth-study-170486-2019-02-14>> accessed 19th May 2022.

⁸⁷² Also known as the Socially and Educationally Backward Classes Commission, established in 1979 with a mandate to identify the socially or educationally backward classes (OBCs) of India.

⁸⁷³ Tejas Harad, 'There's no accurate Data on Other Backward Classes. 2021 Census should start counting', (22nd May 2018) The Print, <<https://theprint.in/opinion/theres-no-accurate-data-on-other-backward-classes-2021-census-should-start-counting/61299/>> accessed 19th May 2022.

⁸⁷⁴ 'SCs, STs form 25% of population, says Census 2011 Data', (1st May 2013), The Indian Express <<http://archive.indianexpress.com/news/scs-sts-form-25--of-population-says-census-2011-data/1109988/>> accessed 19th May 2022.

⁸⁷⁵ 'All India Survey on Higher Education 2018-19', Department of Higher Education, Ministry of Human Resource Development, Government of India, 2019, 20.

⁸⁷⁶ Vandana, 'Dalit Girls and Sexual Harassment in the University', (2020) 27 (1), Indian Journal of Gender Studies (Sage), 33, 44.

category.⁸⁷⁷ When it comes to non-teaching staff, including administrative, clerical and cleaning staff:

- General category constitutes 54%,
- OBC constitutes 27.6%
- SC constitutes 14%
- ST constitutes 4.4%.⁸⁷⁸

As per the Census 2011, the SCs nearly constitute 201.4 million, amounting to 16.6% of the Indian population.⁸⁷⁹ However, their literacy rate is only 66.1% compared to the all-India level of 73%. The SCs female literacy level is as low as 56.5% compared to the all-India female literacy level of 64.6%.⁸⁸⁰

The AISHE 2018-19 reveals that the total estimated student enrolment is 37,399,388.

- OBC student enrolment is 36.34%.
- SC student enrolment is 14.89%,
- ST student enrolment is 5.53%.⁸⁸¹

This shows how the SCs and STs are underrepresented in the higher education sector, as their share in enrolment is lower than their share in the population, which is 16.6% and 8.6% respectively. While there is no official data to show how many students have directly benefitted from reservation, it is estimated that about a third of the SC students who were pursuing their studies in higher educational institutions, were doing so due to the reservation policy.⁸⁸² It also shows that the SC students are meritorious and can obtain seats through general category. The above figures from 2011 are quite old, but they are still relevant since at that time it had already been 61 years since the adoption of the Constitution which made caste a prohibited marker against discrimination by the State,⁸⁸³ and mandated the State to promote with special care, the educational and economic interests of the weaker sections, particularly the SCs, STs, and protect them from social injustice and all forms of exploitation.⁸⁸⁴

⁸⁷⁷ All India Survey on Higher Education 2018-19 (n 875) 20, 21.

⁸⁷⁸ Ibid 22.

⁸⁷⁹ Raghavendra RH, 'Literacy and Health Status of Scheduled Castes in India', 2020 (12) 1, Contemporary Voice of Dalit (Sage), 97, 99.

⁸⁸⁰ Ibid 98.

⁸⁸¹ All India Survey on Higher Education 2018-19 (n 875) 13, 14.

⁸⁸² Weisskopf TE, *Affirmative Action in the United States and India: A Comparative Perspective* (Routledge, London, 2004) as cited in William Tierney, Nidhi Sabharwal and CM Malish, 'Inequitable Structures: Class and Caste in Indian Higher Education', (2019) 25 (5), Qualitative Inquiry (Sage), 471, 472.

⁸⁸³ Constitution of India, Articles 15 and 16.

⁸⁸⁴ Ibid., Article 46.

Looking from another perspective, the above statistics also make it clear that there is something fundamentally wrong with the gate-keeping mechanism which regulates entry into higher education that makes it discriminatory in favour of the privileged castes and against the lowered castes.⁸⁸⁵ It must be noted that “upper caste identity is such that it can be completely overwritten by modern professional identities of choice, whereas lower caste identity is so indelibly engraved that it overwrites all other identities.”⁸⁸⁶ Some examples to elaborate this would be the fact that Mr. Ram Nath Kovind, the present President of India being referred to as the ‘Dalit President’, while the previous President of India Mr. Pranab Mukherjee was never referred to as the ‘Brahmin President’. Similarly, Justice KG Balakrishnan, who was the Chief Justice of India was referred to as the ‘Dalit CJI’. And most notably the identity of the Chief Architect of the Indian Constitution Dr. BR Ambedkar being reduced to only ‘Dalit Icon’, as opposed to the multitude of frameworks he embodies.⁸⁸⁷ This mirrors the majority mindset in India which reduces a Dalit to his/her caste and overrides any and every other identity he/she possesses.

6.2 Establishment of Premier Educational Institutions

The Dalits have been denied a life with dignity for centuries as discussed in previous chapters. Education is a means to secure a decent livelihood and it helps people to understand the rights and duties enshrined in the Constitution and to benefit from them. Education can be used as a tool to fight for people’s rights, especially the oppressed and help them to secure justice and dignified life on par with others. Thus, education is a means for emancipation.⁸⁸⁸ Any person from a historically and socially oppressed community, who has entered the threshold of an educational institution, would have experienced an enhanced sense of awareness of the world and an improved sense of social worth. Lack of educational opportunities cripples individual thinking thereby creating room for subjugation. Social reformer Jyotiba Phule⁸⁸⁹ thought that an effective way to change the existing power structure was education. He viewed education

⁸⁸⁵ Deshpande, *Exclusive Inequalities* (n 864) 2439.

⁸⁸⁶ Satish Deshpande, ‘Caste and Castelessness: Towards a Biography of the ‘General Category’, (2013) 48 (15) *Economic and Political Weekly*, 32, 32, as cited in Sushrut Jadhav, David Mosse and Ned Dostaler (ed.), ‘Minds of Caste – Discrimination and its Affects’, (2016) 32 (1), *Anthropology Today*, 1, 1.

⁸⁸⁷ See footnote no. 140 of Chapter 2 at 38.

⁸⁸⁸ Fatih Guvenen and Michelle Rendall, ‘Women’s Emancipation Through Education: A Macroeconomic Analysis’, (2015) 18, *Review of Economic Dynamics*, 931, 932.

⁸⁸⁹ (1827-1890), Indian writer, anti-caste thinker and social reformer from Maharashtra.

as a tool to bring about attitudinal change and cultural revolution.⁸⁹⁰ Hence, education is a vital instrument of social mobility to realise multiple freedoms.⁸⁹¹

It was for this very reason education was denied to the Dalits for centuries, sanctioned by law based on religion. With the adoption of the Constitution of free India, as a first step, Dalits started entering State-run schools, since free and compulsory education up to the age of 14, was made a Constitutional obligation. It has to be noted that although the makers of the Constitution were aware and recognised the importance of education, it was put only in the Directive Principles of State Policy,⁸⁹² which is not justiciable in courts of law. The right to primary education was made a fundamental right only in 2009.⁸⁹³ When a section of the marginalised communities started accessing education, the dominant castes started private schools with increased fees, which were unaffordable to the former. Affirmative action/reservation was made Constitutionally mandatory so as to enable the SCs, STs, and OBCs to access education. But this move was opposed by the dominant castes. At the same time, however, they sold the seats in their private educational institutions at exorbitant prices in the name of management quota or Non-Resident Indian (NRI) quota to those who could afford them. The average cost of a management seat is around Rs. 11 lakhs⁸⁹⁴ per annum for just tuition fee. It varies from State to State, with some universities charging up to Rs. 20 lakhs annually. Additionally, the universities collect around Rs. 2 lakhs more for hostel, eateries, exams, library etc. For NRI quota the average tuition fee is Rs. 25 lakhs annually.⁸⁹⁵

I believe that, India is currently going through a very complex transformation. On the one hand, the SCs, STs, and OBCs are fighting for their Constitutionally guaranteed rights,⁸⁹⁶ and on the other, the dominant privileged castes are continuously trying to deny them those rights, and in this way keep their hegemony over the system intact. This contradiction has led the dominant

⁸⁹⁰ Mani, *Debrahmanising History* (n 15) 271.

⁸⁹¹ DS Leelavathi and Gopalakrishna BV, 'Amartya Sen's Contribution to Human Development', (2012) 2 (2), *Anveshana*, 50, 53; also see Christine von Prümmer, *Women and Distance Education: Challenges and Opportunities* (Routledge, London, New York, 2000), 166, 167.

⁸⁹² Constitution of India, Article 45.

⁸⁹³ The Constitution (Eighty-sixth Amendment) Act, 2002, inserted Article 21 A.

⁸⁹⁴ 11,00,000 Indian Rupees

⁸⁹⁵ Rema Nagarajan, 'Quota for the Rich? 28% of the MBBS Seats cost over Rs. 10 lakh per year in Tuition Fee', (7th March 2021), *The Times of India* < <https://timesofindia.indiatimes.com/home/education/news/quota-for-the-rich-28-of-mbbs-seats-cost-over-rs-10-lakh-per-year-in-tuition-fees/articleshow/81371223.cms> > accessed 19th May 2022.

⁸⁹⁶ See Section 3.2 of Chapter 3 at 80 for a detailed discussion on Constitutional protection of the rights of the SCs, STs and OBCs.

castes and their political masters to establish the premier educational institutions. These are often referred to as the power houses of knowledge and excellence, even as “institutions of national importance”,⁸⁹⁷ with full administrative and academic autonomy, to make them free from State interference. The result of this move is the re-establishment of casteism and social exclusion. As is clear from the research reflected in this chapter, the institutions have developed administrative and academic set ups to suit the needs of their castes and classes.

The economic reforms focusing on liberalisation, privatisation, and globalisation that took place in the 1990s resulted in increasing the share of private players in several sectors including education. Between 1995 and 2014 there has been an increase from 11.3% to 27.4% in the share of private unaided institutions at elementary education level, from 7.8% to 25.7% in secondary and higher secondary level and from 6.7% to 33% in higher education level.⁸⁹⁸ This is particularly important as an academic and human rights activist linked the kind of caste-based discrimination in higher educational institutions to the way the education system in India has changed over a period. He explained:

In my generation, schools were common. But today, from the 1980s we have the private, the medium (of instruction) question, then depending upon your income you have a school. And I have a feeling that *the ruling classes in India, those who are in power have very consciously saw to it that the government schools collapse*. The quality of the government schools has been completely brought down. Up to 1980s we had common school system. Be it an upper caste, a landlord's son, a poor man, you are in the same school. At least it is equalizing. But now the school education is unequalising (sic). One set of people come from one background, another from other background. Now you have the medium problem also, you have the economic status centric schools, and you have multi-layered schools. *Whatever is the caste system in India, I think education is reinforcing the caste system*. Upper castes go to one set of schools, middle classes to one set, OBCs to one set, Dalits and poor children go to one type of schools. Now this is exactly the caste system. *Instead of equalizing the opportunities, education has become one of the channels of perpetuating discrimination and inequality. I think this is a serious policy failure.*⁸⁹⁹

It must also be noted that despite the growing private sector, higher education remains mostly State funded in India. The affluent, consisting largely of the privileged castes, have seceded

⁸⁹⁷ Institutes of Technology Act, 1961, Ajantha Subramanian, *The Caste of Merit: Engineering Education in India*, (Harvard University Press, 2019), 6.

⁸⁹⁸ Khalid Khan, 'Access to School and Higher Education among Scheduled Castes and Scheduled Tribes: Changing Scenario and Policy Issues', (2018) 4 (2), *Journal of Social Inclusion Studies* (Sage), 234, 240.

⁸⁹⁹ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

from state school education long ago and send their children to foreign universities to pursue undergraduate studies.⁹⁰⁰ The middle class, consisting of a mixed caste composition, tilting more towards the privileged castes, are now abandoning State schools. However, they do need State-run colleges and universities. The premier institutions like the Indian Institute of Technology (IITs), Indian Institute of Management (IIMs), and All India Institute of Medical Sciences (AIIMS), are equally sought after by the affluent and the oppressed due to the credentials that are offered in these institutions, which can be encashed in the “first world” at “third world” prices.⁹⁰¹ This is the reason why unlike primary, secondary, or general tertiary education, institutions of specialised professional education are subject to enormous political and social pressures. The primary reason for this is the fact that the “long standing monopoly of the upper class elite over these resources is now being challenged by politically resurgent lower castes and classes.”⁹⁰²

As discussed in Chapter 3, the Constitution was first amended in 1951 to insert clause 4 to Article 15, according to which the State shall make special provision for the advancement of any socially or educationally backward classes of citizens or for SCs and STs.⁹⁰³ Many controversies have arisen, relating to the kinds of facilities provided for under this provision, especially with respect to admissions to higher professional courses which *inter alia* relate to the quantum of ‘favour’ particularly of minimum marks for admission and the level of education at which they can be given such as super-specialties. A five-member Constitutional Bench of the Supreme Court in *Preeti Srivastava v. State of Madhya Pradesh*⁹⁰⁴ by a majority of 4:1 invalidated the admission criteria for the SCs, STs and SEBCs which provided a lower percentage of marks for admission to postgraduate medical courses for these categories than provided for the general category. The difference was more than 10%. The court held that though the difference of 10% marks at the level of MBBS (Bachelor of Medicine and Bachelor of Surgery) course could be justified, bigger differences at the level of postgraduate courses could not be upheld.⁹⁰⁵

⁹⁰⁰ Deshpande, Exclusive Inequalities (n 864) 2440, 2441.

⁹⁰¹ Ibid.

⁹⁰² Ibid 2441.

⁹⁰³ Constitution of India, Article 15 (4).

⁹⁰⁴ (1997) 7 SCC 120; Singh, *V.N. Shukla’s Constitution of India* (n 415) 103.

⁹⁰⁵ Ibid.

The difficulty in the operation of Article 15(4) can be seen clearly by the reasoning in which the judges arrived at their conclusions in the above case. Whether the courts should intervene in these matters, and if so, to what extent or should they be left to the will and wisdom of the legislature and the executive, are seriously debatable issues. However, the court's justification of public interest in regulating State action is doubtful, since the determination of public interest is primarily the job of the legislature and the executive. When an individual challenges the action of the State as violative of his/her fundamental right(s), it is the legislature and the executive which defends their action on the grounds of public interest. The role of the court is to examine whether public interest as determined by them conflicts with the rights of the individual. They end up standing on a weak ground, if instead of deciding this question, they simply take up the responsibility of determining public interest vis-à-vis the determination of the legislature and the executive.⁹⁰⁶ Hence, it is essential that in all cases which challenge State action under Articles 15(4) and 16(4), the courts examine if such a special provision violates any of the fundamental rights or any provision of the Constitution. It can be seen that there has been a failure on the part of the court in following this well-settled norm of judicial review, instead it has been competing for participation in policy making. So long as this continues, the controversy will not only subsist, but may also escalate.⁹⁰⁷ Further, it is also vital to note that the lack of clarity, consistency, and misinterpretation of the Constitutional provisions costs heavily to those at the receiving end of the spectrum. The cases discussed in this chapter and chapter 3 are examples of this.

In *Jagdish Saran v. Union of India*⁹⁰⁸, a rule reserving 70% of the seats in the postgraduate medical courses to Delhi University medical graduates and keeping 30% open to all, including Delhi University graduates was challenged as violating Articles 14 and 15 of the Constitution. Though the rule was not invalidated, Krishna Iyer J, explained:

1) Where the aspiring candidates are not educationally backward class, institution-wise segregation or reservation has no place in Article 15; 2) equality is not negated or neglected where special provisions are made with the larger goal of the disabled getting over their disablement consistently with the general good and individual spirit...⁹⁰⁹

⁹⁰⁶ Singh, *VN Shukla's Constitution of India* (n 232) 105.

⁹⁰⁷ Ibid.

⁹⁰⁸ (1980) 2 SCC 768: AIR 1980 SC 820.

⁹⁰⁹ Ibid.

Decades later, the Supreme Court in *Sourabh Chaudri v. Union of India*⁹¹⁰ held that “institutional quota up to 50% in postgraduate and 70% in undergraduate courses in medical institutions on institutional basis is valid under Article 14.”⁹¹¹ In *P.A. Inamdar v. State of Maharashtra*⁹¹² it was held that “neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution.”⁹¹³ These are the two cases where the Supreme Court allowed institutional quotas of above 50%, even though it violated its own upper limit of 50%. The reason being, the 50% limit was for reservation of seats for SCs, STs, and OBCs, but the institutional quota is as per the discretion of the institution. So even though it is violative of its own precedents and Article 15(1), as the Court has discussed in other cases, it was allowed. In the second case, exception to minority institutions is mentioned in the Constitution. However non-minority unaided (private) institutions are an addition by the Supreme Court, thereby restricting the application of reservation in those institutions, as opposed to the Constitutional mandate. Further, in *T.M.A. Pai Foundation v. State of Karnataka*⁹¹⁴ the Supreme Court reiterated its position that Article 19(1)(g) protects the right to establish an educational institution, for charity or for profit, being an occupation.⁹¹⁵ It held that, “imposition of quota of State seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions which cannot be held to be a reasonable restriction within the meaning of Article 19(6)⁹¹⁶ of the Constitution.”⁹¹⁷

I believe, there has been gross misinterpretation of Article 15(4) by the Supreme Court over a period resulting in minimizing the power of the State, thereby limiting the scope of application

⁹¹⁰ (2003) 11 SCC 146; In this case, the Court reiterated *Dr. Pradeep Jain Etc. v Union of India and Ors.* (1984) 3 SCC 654.

⁹¹¹ (2003) 11 SCC 146.

⁹¹² (2005)6 SCC 537; Singh, *V.N. Shukla's Constitution of India* (n 415) 106.

⁹¹³ (2005)6 SCC 537, 603.

⁹¹⁴ (2002)8 SCC 481.

⁹¹⁵ (2002)8 SCC 481, 537; Constitution of India, Article 19(1)(g): All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.

⁹¹⁶ Constitution of India, Article 19(6): Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

⁹¹⁷ (2002)8 SCC 481, 601.

of the provision only to State-run or State-aided institutions. This curtails the opportunities provided to the SCs, STs, and OBCs and restricts them to enter only State-run institutions, as opposed to the Constitutional mandate. Another narrow reading of this provision is by reducing it to only providing reservations in education, while the provision is broad enough to encompass mechanisms other than reservations as well. Consequently, a large number of private educational institutions were established by the dominant privileged castes, where seats were not reserved to SCs, STs and OBCs students. This also amounts to a breach of the two International Covenants, discussed in Chapter 3, whereby India has an obligation to regulate private parties to protect individuals from violations of their rights by the said parties. Regulation of only State institutions amounts to failure in complying with this obligation.⁹¹⁸

Keeping in view with this unhealthy development, Parliament brought in an amendment to Article 15 and inserted Clause (5) in 2006, enabling the Government to enforce the reservation policy even in private educational institutions.⁹¹⁹ The key point to note in this clause is the emphasis the legislators have put on there being a law for the State to bring in such special provisions. This gives discretionary power to the State. As a result, a large number of State governments have not legislated upon this issue, due to which reservation policies are not implemented in most private educational institutions. Minority institutions coming under Article 30(1) are excluded from Article 15(5). As per the AISHE 2017-18, there are 32,426 private institutions in India. This includes 343 universities, 25,383 colleges, and 6,700 standalone institutions. Many private institutions do not follow the reservation norms, since as explained above, it is provided for in the Constitution under Article 15(5) but is not mandated by it. There must be enabling legislation for the implementation of this.⁹²⁰ In January 2019, the Government of India prepared a Private Universities Bill to implement the reservation norms for SCs, STs, and OBCs, and also the new reservation policy for the Economic Weaker Sections, which is discussed below, in private institutions. However, as of May 2022, it had not become law.⁹²¹

⁹¹⁸ See Committee on Economic, Social and Cultural Rights, 'General Comment 20' (42nd Session, Geneva, 2009) E/C.12/GC/20, Para 11.

⁹¹⁹ Constitution of India, Article 15(5); also see page 85 of Chapter 3.

⁹²⁰ Basant Kumar Mohanty, 'Entire Range of Reservations Extended to Private Colleges', (15th January 2019), The Telegraph Online, < <https://www.telegraphindia.com/india/entire-range-of-reservations-extended-to-private-colleges/cid/1681913> > accessed 19th May 2022.

⁹²¹ Kritika Sharma, 'Private Institutions to Come Under Reservation Ambit, Govt prepares to bring in Bill', (24th January 2019), The Print, < <https://theprint.in/india/governance/private-institutions-to-come-under-reservation-ambit-govt-prepares-to-bring-in-bill/182240/> > accessed 19th May 2022.

The Dean of Student's Welfare of a private university, when interviewed, explained the non-implementation of reservation norms in his university. He accepted that the admission for undergraduate courses for medicine and dentistry in his institution takes place through an all India pre-medical entrance test National Eligibility-cum-Entrance Test (NEET), conducted by an agency of the Government of India, where there is a prescribed reservation policy. However, when questioned about reservation in admissions processes for PhDs he said "there are about 15-20 students pursuing PhDs. I doubt reservation applies. PhD is not from the government. It is purely merit-based."⁹²² When questioned about reservation in the recruitment of faculty, he said "No. It is a merit-based selection. This is one of the finest institutions. We prefer people who are academically and research oriented."⁹²³ When questioned about the presence of any SC, ST, faculty members in his institution, he said that he was not sure of the number or if there were any.

Two things emerge from the above excerpts. First, reservation applies only when there is interference by the government, in this case, in conducting entrance examinations for admission to courses. On their own, most private universities do not have a reservation policy, like in the case of admission for PhD programmes. Second, the Dean's undertone is clear when he says the institution prefers people who are academically oriented as faculty members or admission to PhD programs is purely merit-based, implying that people availing reservation are not meritorious.

A stark contrast of Article 15(5) can be made with one of the most recent developments in the field of reservation policies in India, the introduction of Clause (6) to Article 15, through the 103rd Amendment to the Constitution of India in 2019, which provides reservation for Economically Weaker Sections (EWS) of citizens.⁹²⁴ Reservation under Article 15(6) is provided for those sections of citizens which are other than the classes mentioned in clauses (4) and (5), in other words, forward or privileged castes. The wording of the clause is chosen carefully so as to not include a need for a law to enforce this provision as opposed to Article 15(5). A maximum of 10% of the total seats can be reserved under this provision. This provision is particularly important since it strikes against the core values of affirmative action policies designed in India, which is redress of historical injustices primarily caused due to a

⁹²² Interview with O-1, Dean of Student's Welfare at U-10 (Mangalore, 30th May 2019).

⁹²³ Ibid.

⁹²⁴ Constitution of India, Article 15(6). Also see page 86 of Chapter 3.

person's social status and not on economic criteria. This provision effectively equates the reservation policy with poverty alleviation schemes, which goes against the Constitutional will and purpose.

The introduction of this Clause also goes against the 50% upper limit laid down by the Supreme Court of India in *Indra Sawhney v. Union of India*,⁹²⁵ according to which “no provision of reservation or preference can be so vigorously pursued so as to destroy the very concept of equality.”⁹²⁶ This was essentially holding general principles of equality under Articles 15 and 16 on top, stating that any attempt to provide reservation exceeding 50% would tilt the balance. The case strikes against the Mandal Commission's demand for proportional representation. The SCs, STs, and OBCs constituted over 70% of the Indian population. But the Supreme Court by putting a limit of 50% on reservation, forced these oppressed communities to settle for a much smaller proportion of reservation. The other side to this is also the fact that there was 50% of seats reserved for the general category, which was open for all communities including those which had less than that share of population. This is a reflection of the mindsets present in the higher judiciary which is dominated by the privileged castes of the Hindu Social Order. This is particularly important because, when Article 15(6) was introduced, as discussed above, it broke the 50% ceiling put by the Supreme Court. However, so far the Court has chosen to stay silent over this, as the petitions challenging them are still pending before it. But the policy is being implemented.

6.3 Caste-based discrimination in Higher Educational Institutions

As explained in previous chapters, historically the Dalits have been subjected to hardship, slavery, segregation, and marginalisation of the acutest kinds at the hands of the dominant privileged castes. In the present context, the types and forms of untouchability have changed. Affirmative action policies enable Dalit students to enter into educational institutions, which were inaccessible to them before. But the vested interests present in these institutions create hostile environments, forcing these students to take extreme measures which sadly can end up in suicides. As discussed in this thesis, Constitutional principles and religious values are seen to be in conflict in Indian society. Affirmative action, for admission to higher educational institutions, is a Constitutional mandate. However the mindsets of people are rooted in religious

⁹²⁵ 1992 Supp (3) SCC 217; also see page 85 of Chapter 3.

⁹²⁶ Ibid.

texts which propound the doctrine of inequality when it states that people belonging to the lowered castes are born to serve.⁹²⁷ A Professor at a premier institute explained:

The mindsets of the people of this country is like that, because the training is coming from childhood. Caste discrimination as an attitude comes like a syllabus for everybody. *Caste starts from cradle to death*. Caste and attitude begins at home. Till your death, shadow follows you. *Caste follows you wherever you go*.⁹²⁸

Consequently, there is a perpetuation of caste-based discrimination in the institutions of higher learning. Another Professor at a State University explained:

At present, caste discrimination practised in universities are by the highly educated upper castes. If they are doing it, it means they are aware of the benefits of doing it. They are the losers, if they don't. Every denial is an opportunity for the other community. If you deny appointment, seats or administrative position to SC/ST, that goes to upper castes. Today it is settled in the minds of the upper castes that they have to do it to continue their dominance over the system and society. *They do it in a very subtle, implicit way*. They want to continue this in different and modified forms. Even if laws are there, they do it in such a way that they won't be caught and punished. The deliberate discrimination is with the intent to reduce the presence (of SC/STs), because any increase of their presence in any activity, automatically affects upper caste established dominance/position in the society. It works against their interest. It is always advantageous for them to discriminate. From time to time, there are good policies, programmes that have come from government. Many such are incorporated. But at some point of time, each one fails.⁹²⁹

When questioned about the factors that play a prominent role in the existence of caste-based discrimination in universities, a PhD research scholar from a Dalit community explained:

People will not tolerate the development/success of SCs, because two-three generations ago, SCs were bonded labourers. They worked in homes of the privileged castes, ate what was given to them and lived as bonded labourers. Then, others were using all the resources meant for the SCs. Now we are asking a share in that. Of course, they get angry. They think we are growing as competitors. Their agenda is to make us like how we were before. When it comes to universities, if a Professor is doing good, the moment they realize he a SC professor, they will think of bringing him down... Due to the provisions of reservation given by Babasaheb Ambedkar, a small percentage, like out of 100, 5-6% of us are thinking that we can also live a dignified life and we are working hard towards achieving that. *The main reason behind caste discrimination is that they think we are not eligible to live on equal footing as them*.⁹³⁰

⁹²⁷ The Code of Manu. See Section 2.2 of Chapter 2 at 40.

⁹²⁸ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019) Emphasis supplied.

⁹²⁹ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019) Emphasis supplied.

⁹³⁰ Interview with Student-2 of U-7 (Mangalore, 13th April 2019) Emphasis supplied.

The above excerpt links the perpetuation of caste discrimination in universities in present day to the general mindset prevalent in Indian society, as a result of historical, social, economic, political, and cultural conditioning. Three important things emerge from this; first, the way in which the lives of Dalits have changed due to education which they could access through the affirmative action policies enshrined in the Constitution of India, which is helping them to secure a dignified life on par with others. Second, the mindsets of the privileged castes often continue to remain the same, rooted in religion/caste system, despite there being the Constitution and various other laws prohibiting discrimination. And third, there may not be overt acts of caste discrimination in universities, but instances of abuse and mistreatment of members of SCs are often rooted in caste, like the example of the SC professor mentioned above. Below is the analysis of the Thorat Committee report on caste discrimination in AIIMS, which is the first of its kind in India.

6.3.1 Thorat Committee

The All India Institute of Medical Sciences (AIIMS), Delhi was the centre of the anti-reservation agitations by the dominant privileged castes, that began in 2006 due to which discrimination on SC/ST students increased in the campus.⁹³¹ The government in 2007 appointed a committee (Thorat Committee) headed by the then University Grants Commission (UGC)⁹³² chairperson, Sukhdeo Thorat, to investigate and report on all matters relating to harassment and abuse of SC/ST students reported in the media. The Committee was the first ever to study caste discrimination in higher education.⁹³³ It looked into aspects of caste discrimination faced by students and faculty members of AIIMS and recorded widespread differential treatment based on caste against SC/STs. Such discrimination ranged from the absence of special programs like remedial coaching for improving English language skills, catching up programs on basic courses or any other spheres for SC/ST students, and lack of consultation and interaction where SC/ST students did not receive the same kind of support from teachers as other students, which reflects in performative and psychological problems.⁹³⁴ It also emerged that there was differential treatment in theory papers where SC/ST students felt

⁹³¹ Satendra, “72% Marginalised Students Feel Discrimination” 2007 Thorat Committee Recommendations Yet to be Implemented”, (31st May 2019), The Logical Indian < <https://thelogicalindian.com/news/thorat-committee-recommendations/?infinitescroll=1> > accessed 19th May 2022.

⁹³² See Section 6.4 of this Chapter at 216.

⁹³³ Satendra, “72% Marginalised Students Feel Discrimination” (n 931).

⁹³⁴ Sukhdeo Thorat, KM Shyamprasad and RK Srivastava, ‘Report of the Committee to Enquire Into the Allegation of Differential Treatment of SC/ST Students in All India Institute of Medical Science, Delhi’ (2007), 63, 64.

they were awarded lower marks than expected and there was an absence of feedback. Practical exams and viva voce were unfairly conducted, with SC students not being given sufficient time with examiners in comparison with higher caste students, and that more difficult questions were posed to them. It also found that the examiners questioned the caste background of the students in direct or indirect ways and therefore their grades were affected.⁹³⁵

The report also noted the “difficulty in capturing the nature of discrimination due to the relational nature of such experiences. However self-reported experiences of SC/ST students show that discrimination take the form of avoidance, contempt, non-cooperation and discouragement, and differential treatment by the teachers towards these students.”⁹³⁶ Further the report also noted the increasing caste divisions which reflected as segregation in allocation of hostel rooms, sharing dining facilities, associated living, and participation of SC/ST students in cultural events and sports. Many SC/ST students mentioned facing harassment, abuse, and violence from higher caste students due to which they had to shift to other hostels. They also experience ragging, which is a sort of “initiation ritual” practised in higher educational institutions in India. This involves abuse, humiliation, and harassment of new comers and junior students by senior students. The UGC has enacted regulations to curb ragging in universities.⁹³⁷ However, Dalit students faced ragging where they had to declare their caste background.⁹³⁸ The Thorat committee noted that “it is often difficult to capture the nature of caste bias, as they are imbedded in social relations and behaviour.”⁹³⁹ It restricted its findings only for those in AIIMS and recommended issue-based solutions in the institute.⁹⁴⁰ However, many of the recommendations of the committee have not been implemented. The death of Bal Mukund Bharti, discussed later in this chapter, and many others, took place years after this report was submitted to the government.

⁹³⁵ Ibid 64, 65.

⁹³⁶ Ibid 65.

⁹³⁷ ‘UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions, 2009’, University Grants Commission, New Delhi, < <https://www.ugc.ac.in/oldpdf/ragging/minuterag230409.pdf> > accessed 19th May 2022.

⁹³⁸ Thorat *et al.*, Report of the Committee to Enquire Into the Allegation of Differential Treatment (n 934) 66-68.

⁹³⁹ Ibid 71.

⁹⁴⁰ Ramratan Dhumal, ‘Caste Discrimination in Higher Education: The Future Agenda’, (2018) 53 (29) Economic and Political Weekly, 24, 25.

6.3.2 Caste discrimination at the time of admission

As explained above, higher education by its very nature is exclusionary and it “presupposes a minimum level of economic, cultural, and political resources.”⁹⁴¹ Many Dalit students are first generation learners to enter higher educational institutions.⁹⁴² The most debated issue of ‘merit’ comes into play at this juncture. “At the denotative (concrete, literal) level, merit usually refers to a certification of competence, aptitude or knowledge acquired through an examination of some kind.”⁹⁴³ In the context of entrance examinations for higher and professional institutions in India, this translates to the relative rank obtained in the examination. Meaning, what matters is not how “well” one does in examinations, rather how “better” (or worse) one does compared to others who appeared for the same examination. In this context, the critical factor is getting ranked high enough to qualify for admission.⁹⁴⁴ For example, an institution ‘X’ has 100 seats available to be filled for a particular course, through an entrance examination. For ‘X’ and all the candidates appearing for that examination, ‘merit’ means all ranks from 1 to 100. From the point of ‘X’ all ranks lower than 100 are the same, in the sense that they did not qualify for admission, which is indistinguishable from the category ‘without merit.’⁹⁴⁵

The ‘cut off’ point in any particular examination is the way in which it sorts out candidates into two mutually exclusive categories of ‘meritorious’ and ‘without merit’. This is determined by the number of seats available on a particular course. This implies that the number of ‘meritorious’ candidates is predetermined. The entrance examination is the only means to determine who they are by ranking the candidates.⁹⁴⁶ In principle, the entrance examinations identify merit, which is regarded as sufficient justification for discriminating in favour of its bearers and awarding them with admission to the institutions as opposed to those without merit. In practice however, “examinations coercively generate inequality expressed in rank ordering, and they help to persuade both “selected” and “rejected” that the division is fair.”⁹⁴⁷ As long as the examinations succeed in practise, they are presumed to have succeeded in principle. Thus, the key role of the examination is to produce a rank order which is not disputed by the candidates.

⁹⁴¹ Deshpande, *Exclusive Inequalities* (n 864) 2441.

⁹⁴² Sthabir Khora, *Caste, Reservation, Atrocity Law and Discrimination* (Aakar Books, Delhi, 2020) 113.

⁹⁴³ Deshpande, *Exclusive Inequalities* (n 864) 2442.

⁹⁴⁴ Ibid.

⁹⁴⁵ Ibid.

⁹⁴⁶ Ibid.

⁹⁴⁷ Ibid 2443.

In a January 2022 judgment, the Supreme Court while looking at *inter alia* the OBCs and, EWS quota in NEET examination, noted the long standing debate of whether reservation impinges the idea of merit. It also noted the Constituent Assembly debates where it was “felt that there must be a provision that enables entry of those (SC/ST/OBC) communities into administration since they were deprived of such access in the past and formal equality of opportunity would not suffice. They envisaged that social justice must be read into the promise of equality of opportunity; otherwise the latter merely advances the interests of the privileged.”⁹⁴⁸ Importantly the court noted:

An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate. However, widespread inequalities in the availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system. Special provisions (like reservation) enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also includes their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family. The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family’s standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. They have to put in surplus effort to compete with their peers from the forward communities. On the other hand, social networks (based on community linkages) become useful when individuals seek guidance and advise on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure. Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as - merit reproducing and reaffirming social hierarchies.⁹⁴⁹

The court further noted:

The rhetoric surrounding merit obscures the way in which family, schooling, fortune and a gift of talents that the society currently values aids in one’s advancement. Thus, the exclusionary standard of merit serves to denigrate the dignity of those who face

⁹⁴⁸ Neil Aurelio Nunes and Ors v. Union of India and Ors, Writ Petition (C) No. 961 of 2021, < https://main.sci.gov.in/supremecourt/2021/19820/19820_2021_34_1501_32837_Judgement_20-Jan-2022.pdf > accessed 20th May 2022, 18, 19, 20.

⁹⁴⁹ Ibid 29, 30.

barriers in their advancement which are not of their own making. But the idea of merit based on scores in an exam requires a deeper scrutiny. While examinations are a necessary and convenient method of distributing educational opportunities, marks may not always be the best gauge of individual merit. If a high-scoring candidate does not use their talent to perform good actions, it would be difficult to call them meritorious merely because they scored high marks.”⁹⁵⁰

The analysis offered by the court concurs with the importance of substantive equality. It is exceedingly crucial that reservation is seen as representation of the marginalised communities in education, employment and other fields so that people availing these facilities are not looked down upon as threat to merit. The court rightly identified the hurdles faced by the oppressed communities in competing in exams with forward communities. However, it failed to recognise the measures that may be adopted to bring them to the mainstream. This chapter and chapter 7 delves into it and recommends measures to bring down caste discrimination faced by Dalit students in institutions of higher learning.

Deshpande noted the existence of different kinds of discrimination in countries like India which he broadly summarized as resource discrimination.⁹⁵¹ This at times links with merit discrimination. He argued that since academic success and merit is seen as a form of entitlement in India, privileged castes may not want the marginalised to receive this prerogative.⁹⁵² The dominance of privileged castes cannot be attributed solely to merit and their ability, but the undeniable existence of inequalities in relation to other factors, such as economic and cultural resources, play a major role as well. “It cannot be argued today that large groups numbering in the millions are more or less intrinsically able than other such groups” which is why other factors help in explaining the difference in the privileged caste dominance and place in the society.⁹⁵³

According to Galanter three important kinds of resources are necessary to produce results in competitive examinations which qualify as indicators of merit: (a) economic resources (for prior education, training, materials, freedom from work etc); (b) social

⁹⁵⁰ Ibid 31; also see Krishnadas Rajagopal, ‘SC upholds OBC quota in NEET’, (21st January 2022), The Hindu, Mangalore ed., 1.

⁹⁵¹ Deshpande, *Exclusive Inequalities* (n 864) 2443 as cited in Sriya Bhattacharyya, Megan Woods and Brinton Lykes, ‘Can Educational Policy Redress Historical Discrimination? Exploring a University Community’s Experiences with India’s Caste-based Affirmative Action Policy’, (2017) 3 (2), *Community Psychology in Global Perspective*, 38, 42, 43.

⁹⁵² Ibid 43.

⁹⁵³ Ibid.

and cultural resources (networks of contacts, confidence, guidance and advice, information etc); (c) intrinsic ability and hard work.⁹⁵⁴

It can be well understood that most students from the marginalised communities fail to possess at least the first two of the above indicators. This is also a rationale behind the provisions of affirmative action laid down by the framers of the Indian Constitution. It becomes particularly important in cases of admission of Dalit students through affirmative action/reservation. The rule in the Indian education system is merit-cum-reservation for admission of students.⁹⁵⁵ After Article 15(4), this principle applies. As explained above, as per the seat matrix, in most cases, out of the total number of seats available, a certain number is for general category, a certain number for SCs, STs, and OBCs respectively. But in practice, the educational institutions first fill the reserved seats and do not allow the Dalit students to enter through general seats. While as per procedure, first the general seats need to be filled and if Dalit students secure rank in general quota, they deserve to enter through that. This is how systematically the vested interests restrict the entry of Dalit students into educational institutions. During his interview, a Professor stated that the privileged castes fail to communicate about admission process to SC students, they suppress information or even send delayed intimation. They do not assist SC students in payment of fees and that such discrimination happens in a subtle manner. He explained:

Because any number of seats lapsed in the reserved category will be shifted to general merit. So they work in such a way that there will be fall of reserved seats so it automatically gets transferred to general merit. This I have seen in my own university, my department. *They say since SC/STs have reservation, they are not eligible to get seats under general merit. Earlier there were protests from upper caste faculty to admit SCs students in general merit seats.* Since the number of SCs faculty is increasing in different departments, they are articulating strongly for reservation provisions, so they are now slowly accepting. Wherever SCs faculty is absent, this definitely happens. *If SCs students are eligible to be admitted under general merit, he/she will be admitted only under SC quota. These practice exists not only in State universities but in Central universities as well.*⁹⁵⁶

⁹⁵⁴ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford, New Delhi, 1984) as cited in Deshpande, *Exclusive Inequalities* (n 864) 2443.

⁹⁵⁵ The Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1994, Sec.7; also see Choudhry and Naqvi, *Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Orient Publishing Company, Reprint 2009) 476, 477.

⁹⁵⁶ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019) Emphasis supplied.

This type of violation takes place in the recruitment of members of faculty as well. A PhD researcher explained:

If a SC candidate is eligible to be selected under the General Category, even then the committee under the Vice Chancellor, will not select him/her. Because, they want to give the general seats only to general category and SC seats to SCs only. They do it very intelligently in a systematic manner. Hence, they will get a vacancy in General category. By filling the eligible SC (who would get under general category) in SC category, they will decrease one more SC seat.⁹⁵⁷

A Lecturer, who is also a SC/ST Cell officer, concurred with the above statement saying that “the administration thinks SC/ST candidates should be given chance only under reservation. Even though the candidate is competing under general category, they don’t consider regardless of his credentials. That’s why discrimination is still prevailing. But it is very difficult to notice or quantify.”⁹⁵⁸

It is crucial that the universities represent the plurality of the Indian society. Teachers belonging to the marginalised communities must be in the universities. The Constitution has mandated for it under Article 16(4), discussed in Chapter 3. A Professor explained the kind of discrimination that occurs in the premier institute where he is teaching, stressing on the difference SC faculty makes in the admission of SC students:

Just 20 years back there were no SC students in this institute. Because committee has not selected them. If any SC application came here, they were simply thrown out. They did not follow reservation policy. When the applications are invited, when scrutiny happens, there must be a SC member/Professor. But there were no SC Professor in the scrutiny committee. Now there are two, including myself. 20 years back there was none. People had no voice to ask for it. We went to the court, won the case, brought reservation in 2007. From then slowly things are being changed. The upper castes always say that SCs have no efficiency. That is their attitude now as well. Now we sit in the committee and see personally how many SC applications have come. Now we select based on the percentage of reservation.⁹⁵⁹

As can be seen throughout this chapter, caste discrimination in universities takes place in a very subtle manner like deliberate denial of opportunities to SC students, teachers and staff on flimsy grounds. A Professor explained this further:

⁹⁵⁷ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁹⁵⁸ Interview with O-1, SC/ST Cell Officer at U-7 (Mangalore, 23rd April 2019).

⁹⁵⁹ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019).

If the upper castes come to know that students belong to marginalised sections, particularly SCs, they create all sorts of administrative hurdles. It is very difficult to pin-point a single individual. In almost all institutions, the administrative hierarchy is structured in such a way that there are upper castes in all places. In very subtle organised ways, they try to prevent the candidates belonging to SCs, in appointment and admissions. However some are able to understand it and many fail to understand. This kind of discrimination cannot be understood so easily unless otherwise the person is aware of some of the rules, regulations, policies and programs.⁹⁶⁰

Information accessed by the Ambedkar Periyar Phule Study Circle (APPSC), of Indian Institute of Technology, Bombay (IIT-B), through Right to Information (RTI) has revealed that between 2015 and 2019, IIT-B, which is a premier institution of the country, did not admit a single ST student in 11 out of 26 of its departments, including in mathematics. Only one SC student was admitted by three departments, and the School of Management and Centre of Research Engineering did not admit any SC students at all.⁹⁶¹ The institution on the other hand maintained that it has followed the reservation policy both in letter and spirit. 2,874 candidates were selected for pursuing a PhD, out of which only 1.6% belonged to ST, 7.5% belonged to SC, and 19.2% belonged to OBC. This is in comparison with 71.6% candidates who were from the general category. As per the current scheme of reservation, OBCs have 27% of seats reserved, while SCs and STs have 15% and 7.5% respectively.⁹⁶²

Further, between 2015 and 2019 out of the 8,827 SC students who had applied, only 216 were admitted. Two departments did not admit any SC students. Also, out of 1,522 ST students who had applied, only 47 were admitted in the given period. The APPSC also noted that as per the Union Ministry of Human Resource Development and the UGC, if there is a failure to implement the stipulated reservation for a year, by an institution, they are required to re-advertise the seats and call for admissions again. If there is a failure to fulfil the required number of seats, they should be carried forward into the subsequent year. The APPSC urged IIT-B to explain why these mechanisms mandated by the government have not been followed,

⁹⁶⁰ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

⁹⁶¹ Johanna Deeksha, 'Not a Single ST student was admitted in 11 Depts at IIT Bombay the last five years, RTI reveals', (8th December 2020), The Indian Express EDEX Live <
https://www.edexlive.com/news/2020/dec/08/not-a-single-st-student-was-admitted-in-11-depts-at-iit-bombay-the-last-five-years-rti-reveals-16465.html?fbclid=IwAR2R8CC42EGmD5J_ZRgkCBrtD4yzPz4mcD4HLK5uwkgOAgndPsM-hD3Klfo>
 accessed 20th May 2022.

⁹⁶² Ibid.

despite seats being left vacant for many years.⁹⁶³ However, as will be discussed below, this request has not been granted. Where there are glaring violations of governmental policies pertaining to reservation, as in this case, even the government has chosen to remain silent. This is not limited to one particular political party, but it has been the case with successive governments. The sheer lack of political will is also one of the reasons why reservation policies are not implemented to their letter and spirit, as per the Constitutional mandate.

For a long time the IITs have been projected as Institutes of National Importance⁹⁶⁴ and are entranced in the logic of ‘merit’. The APPSC alleged that the cut-off mark gives a lot of power to the select committee. In many instances, even if a candidate is eligible to appear for the exam, the select committee can reject a student by providing them with a score which is less than that of the cut-off mark. It is also alleged that in many departments in IITs, scores are not given for interviews. Candidates just get told ‘yes’ or ‘no’. The lack of accountability is clear with the fact that there is no data in the public domain on how many SC and ST students have been denied seats since 1973, the time reservation was introduced in IITs, and the number of seats reserved for OBC students that have remained vacant since 2008. The admissions process continues to be opaque. Unless an application is filed under the RTI, one does not get to know if reservation norms are followed, nor how many students from different categories are selected to various departments.⁹⁶⁵ In the guise of making the institutions free from public interference, policies mandated by the Constitution are being violated. The State, media, civil society, and judiciary continue to remain by and large silent over this.

In April 2020, a committee was constituted by the Union Ministry of Education to recommend measures for effective implementation of reservation policies in IITs apropos faculty recruitment and admission of students. The committee so constituted had taken a diametrically opposite stand and recommended that to maintain their ‘academic excellence’ and due to the lack of suitable candidates from reserved categories, the IITs be exempted from following reservation policies. It was also recommended that the IITs be included in the list of ‘Institutes of Excellence’ that are exempted from following the reservation norms under the Central Educational Institutions (Reservation in Teachers’ Cadre) Act 2019, which at present has 8

⁹⁶³ Ibid.

⁹⁶⁴ Subramanian, *The Caste of Merit* (n 897) 6.

⁹⁶⁵ Deeksha, Not a Single ST student was admitted in 11 Depts at IIT Bombay (n 961).

institutions.⁹⁶⁶ It noted that due to the high standard of education offered at the IITs, the expectations on the faculty are very high. Furthermore, there is a low enrolment of reserved category students to PhD and highlighted this issue to be one of the reasons for having a limited number of candidates to be hired as faculty. The committee further suggested offering a Research Assistantship funded by the Ministry of Social Justice and Empowerment, for two years to students from the reserved category who wish to join PhD programmes. However, it stated that there will not be any obligation on IITs to admit them to regular PhD programmes and that it will be only based on ‘merit’. The committee also recommended that in the event of there being vacancies in a given year due to non-availability of reserved candidates, the seats be de-reserved in the subsequent year. It must be noted that the committee, which consisted of the Director of IIT-Delhi, IIT-Kanpur, Registrar of IIT-Bombay, IIT-Madras, and representatives from the Ministries of Social Justice and Empowerment, Tribal Affairs, Department of Personnel and Training, and Department of Persons with Disabilities, submitted its report in June 2020. However, the issue came to fore in December 2020, because of an RTI application filed by an activist.⁹⁶⁷ Upon criticism by the opposition parties which called the recommendations ‘retrograde’ and going against the principles of social justice,⁹⁶⁸ the government has responded saying that as of 17 December 2020 it has not taken any decision on implementation of the committee’s proposal.⁹⁶⁹

It is important to emphasise that, the committee was constituted for the effective implementation of reservation policies in IITs, since, as mentioned above, reservation norms have not been followed in their letter and spirit. In a seeming contradiction to the very purpose of its creation, the committee recommended the removal of reservation in faculty recruitment. The heads of a few of the IITs were part of the committee, the recommendations of which point towards diluting the reservation policies in admission to PhD programmes, in the name of upholding ‘merit’ and preserving ‘academic excellence’. Instead of targeting caste

⁹⁶⁶ Pon Vasanth, ‘Scrap Quotas for Faculty Recruitment in IITs: MoE Panel’, (15th December 2020), The Hindu < <https://www.thehindu.com/news/national/scrap-quotas-for-faculty-recruitment-in-iits-moe-panel/article33338682.ece> > accessed 20th May 2022.

⁹⁶⁷ Ibid; also see ‘AIFRTE slams Centre for Suggesting Scrapping Reservation in IIT Faculty Recruitment’ (21st December 2020) Sabrang < <https://sabrangindia.in/article/aifрте-slams-centre-suggesting-scrapping-reservation-iit-faculty-recruitment> > accessed 20th May 2022.

⁹⁶⁸ ‘Reject Recommendation to Scrap Quota in IIT Faculty Recruitment’, (20th December 2020), The Hindu < <https://www.thehindu.com/news/national/tamil-nadu/reject-recommendation-to-scrap-quota-in-iit-faculty-recruitment/article33375640.ece> > accessed 20th May 2022.

⁹⁶⁹ ‘No Decision on Scraping Quota for IIT Faculty Recruitment: Govt’, (17th December 2020), Hindustan Times, < <https://www.hindustantimes.com/india-news/no-decision-on-scrapping-quota-for-iit-faculty-recruitment-govt/story-YSQBwvTWbmWRDIZflfKWMJ.html> > accessed 20th May 2022.

discrimination which is a hindrance, the focus is shifted to reservation, which is a tool for the oppressed to access education and employment. This is a reflection of the existing mindsets of the administration in the IITs and a brazen example of how caste functions in 21st century India.

An academic and human rights activist who has worked in 4 prominent universities in India, opined that the major problem about caste discrimination in higher educational institutions lies in its very structure. He explained:

The structural problem is that, when we have provided for reservation in admissions, after the graduation when student joins courses, take U-1 (a central university) for example, where I have seen caste discrimination in a stark way. For quite some time the quota of Dalits, that 15%, was not filling up. Not many were getting qualified, so they were leaving the seats vacant. After some of us joined, we said it's a Constitutional obligation and we must fill up. And then we set the cut off marks. The very fact that they pass graduation and are eligible to apply for U-1 should be treated as the eligibility. Only to ordering the merit, you may take the entrance exam as another qualifying exam. Notwithstanding your cut off marks, we must fill up that 15% and 7.5% for SCs and STs respectively. Most of our upper caste friends, at U-1, were opposed to it. They said if you admit unqualified people, we are highly rated institution, we are prestigious institution, the second finest university in the country, we have our own images, we will be diluting the merit. *So, all that starts with the merit. Without defining what is that merit.* You define merit in your own way, and then you apply that merit. They are defining merit in a biased manner. *Merit is always a subjective factor.* It's a question of definition. So, you have an entrance exam. Many teachers were not happy bringing down the cutoff point. When that was done, the Dalit boys and girls joined, through reservation.⁹⁷⁰

These are a few examples of what prevails in a large number of universities in India. The above mentioned universities are premier institutions, which are generally deemed to be 'institutes of national importance'. The instances of caste discrimination shown above are not aberrations, they are the reality of the higher education sector in India. It however increases in premier educational institutions, as seen above. They have been projected to be the upholders of 'merit' and hence reservation is looked down upon in these places. The result of this, is (a) blatant violation of Constitutional obligations of following reservation norms, which often do not have any legal consequences, penal or otherwise, and (b) perpetuation of caste-based discrimination on students who have taken admission in these institutions through reservation.

⁹⁷⁰ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

6.3.3 Caste discrimination after admission

This section discusses the second kind of discrimination faced by Dalit students upon their entry into higher educational institutions, which takes place at multiple levels. They face increased discrimination from the members of dominant castes in these institutions which often lack transparency and accountability. Instances of discrimination in higher educational institutions are not blatant like the practice of manual scavenging or other forms of untouchability. There are subtle forms of discrimination, meted out to Dalit students from the moment of their entry to the institutions. The ‘cut off’ marks for SCs, STs, and OBCs in the entrance examination may not be the same as the general category. It might be slightly lower considering the historical injustices faced by these communities, which has resulted in a lack of access to resources on par with the members of dominant castes.⁹⁷¹ However, the students from these communities gain admission to the institutions, like students from general category, who might have achieved higher ranks in the entrance examination. Upon their admission, they sit in the same classrooms and live in the same hostels. One of the first instances of caste-based discrimination Dalit students face from fellow privileged caste students is based on this very aspect of ‘merit’ which awarded them with admission to a particular institution. Since there are reserved seats in the institutions through which Dalit students gain admission, they are often termed “non-meritorious”, “quota-wala” (the ones who have gained admission through reservation), “underserving” and accused of “stealing” seats from the “meritorious” students.⁹⁷²

An academic and human rights activist highlighted the lack of bridge courses to SC/ST students when they enter universities, due to which they fail in examinations in increased numbers:

The Dalit students join through reservation. In our education system, you get admission in July, by August 10th your first internal assessment starts. You must give your first assignment. Its continuous evaluation. If a Dalit student has 30%-40% and in general category somebody has 60-66%, there is a gap of 20% between the students who entered through the affirmative action and those who entered through the so-called merit. Within 40 days, the Dalit students must compete with the rest of them, with a type of standard that university prescribes. *We do not provide any bridge course, give some time for the Dalits to pick up, give them some breathing time, all that doesn't*

⁹⁷¹ ‘Centre lowers PhD and MPhil cut-offs for SC/ST students’, (28th August 2018), Hindustan Times, <<https://www.hindustantimes.com/education/centre-lowers-phd-and-mphil-cut-offs-for-sc-st-students/story-em2YyJ9Wybw0s7A0YjPESI.html>> accessed 20th May 2022.

⁹⁷² Vidya Subrahmaniam, ‘In Dalit Student Suicides, the Death of Merit’, (8th May 2011), The Hindu, <<https://www.thehindu.com/news/national/In-Dalit-student-suicides-the-death-of-merit/article13881245.ece>> accessed 20th May 2022.

happen. Within 40 days when they take the exam, they fail. From then on, several of them fail, because of the way you have defined merit. When you start entering the university and start the exams, *we have not staggered the time, nor we have given enough of time, nor we have provided any institutional facilities to circumvent the disadvantages whatever they had*, and this discrimination I would say starts from school education itself.⁹⁷³

He further explained how discrimination is imbibed in school education and how higher education is but its extension in magnified form:

Where we could have helped is provide common school and bring all the children together. We have given up that and *we have a completely discriminative education system*. From that channel these children enter higher education, with completely being discriminated. By birth you are discriminated, at home you don't have facilities, parents are illiterate, the school is very qualitatively poor. You study in that school, and come to higher educational institution, that's such a great handicap, right from the childhood till you enter higher education. This cannot be undone overnight. In fact, policy strategy should be right from the childhood. When the child comes to the school, since the parents are illiterate, entire school should have been played the role of the parents, should have provided all the facilities. But there is no method of taking care of the children who come from a different background. *Discrimination is perpetuated, institutionalized. Higher education discrimination is a continuation of this.*⁹⁷⁴

Another Professor explained how the attitude of a person changes based on the caste identities of another person:

Things will be good as long as our caste identity is not known to the other person. *The moment our identity is revealed and known, the transaction automatically will be different, especially in certain cases*. Where there is profit, opportunity, gains are good, things are going to impact life, economically and socially, there will be a lot of checks and balances to prevent SCs.⁹⁷⁵

Upon entry to higher educational institutions, Dalit students are typically taught by privileged caste academics, who are very much part of the same caste-ridden society. Experience shows that these academics often ignore them or do not assist them.⁹⁷⁶ Instances of failing Dalit students deliberately in examinations, teachers not encouraging them like they would otherwise do to a privileged caste student, are common ways in which Dalit students are discriminated

⁹⁷³ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

⁹⁷⁴ Ibid Emphasis supplied.

⁹⁷⁵ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019) Emphasis supplied.

⁹⁷⁶ See the Throat Report, Section 6.3.1 of this Chapter at 183.

against in universities.⁹⁷⁷ One example would be where a Dalit student approaches a Professor to ask a course related question. The Professor would tell him to meet him later, citing some reason, while he would meet with a privileged caste student without any excuse. When the Dalit student approaches him later, at the time given by the Professor, the Professor would cite some other reason and put off meeting with him. Once this continues several times, the student automatically feels discouraged enough to not approach the Professor again. A Professor working in a State University said:

Caste Hindu faculties discriminate against SC/ST students. They hesitate to promote them. For example, awarding of marks, allotting academic assignments, by the way they treat them. There is direct and indirect discrimination. Even if SC/ST students have good performance compared to general category students, their marks will be decreased.⁹⁷⁸

Further, a PhD researcher explained:

If a student is academically bright, but belongs to a lowered caste, the vested interests will not encourage him and not help him in availing various facilities. This happens in a very systematic manner.⁹⁷⁹

There are also instances where direct references to castes of Dalit students have been made by teachers in classrooms, humiliating them before their classmates, due to the castes they belong to, their humble family backgrounds, and even the places they come from. This alienates them further. Blatant caste-based discrimination practised by the members of faculty can be seen in the evaluation of answer papers and projects of students. A PhD researcher narrated:

There is cash prize for SC/ST students who score 60% or more in Masters from the Social Welfare Department, Government of Karnataka. The faculty came to know about it. Last time, the faculty evaluated two of our students in such a way that they have less marks in practical exams and more marks in theoretical exams, every time, for both of them. The fact that our students will be awarded cash prize if they get 60% is the reason why the faculty decided to give them 59 point something percent, so that they don't become eligible for the cash prize. Also, a student should score a minimum of 55% to go for the next level, next eligibility, like PhD or job appointments, else his degree will be a waste. That's why they will stop at 54% for our students. I have heard and seen 4-5 cases of this kind.⁹⁸⁰

⁹⁷⁷ Subrahmaniam, In Dalit Student Suicides (n 972); 'Dr. Jaspreet Singh: The Death of Merit-Another Documentary', (5th May 2011), The Death of Merit < <https://thedeathofmeritinindia.wordpress.com/2011/05/05/dr-jaspreet-singh-the-death-of-merit-another-documentary-2/> > accessed 20th May 2022.

⁹⁷⁸ Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019).

⁹⁷⁹ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁹⁸⁰ Ibid.

A Professor explained the kind of caste discrimination taking place in internal assessments:

Most of the teachers prefer their own caste students to award more marks. This is very much explicitly followed in most of the departments. They deliberately give less marks to SC/STs. Students don't complain because they are worried of their future; they don't protest. There is no institutional mechanism to address such issues. University has not made any institutional provision where they can receive complaints based on caste and social identities. In all universities, the administrators belong to upper castes. The management board does not have fair representation of SCs. Sometimes one member will be nominated and that member is voiceless. The institutional mechanisms that are created like SC/ST cell are almost all under their control. They are not acting independently.⁹⁸¹

He further explained how the students' performance goes down when they enter postgraduate courses in universities as it is easier to identify SC students in a classroom with less strength:

Students enrol to postgraduation with high percentage of marks. But then their performance goes down. If you go by the records, their grade sheets, they pass out with relatively lesser grades than the upper castes. Because in the postgraduation level, students number is very limited like 30-35. In some departments its 10-15. Teachers are able to know each one. Even if it is a blind evaluation, they are able to identify which script belongs to which student. Since 30% weightage is for internal assessment, they will cut down drastically. They have very subtle mechanisms through which they see that Dalit students get relatively lesser marks than the other upper castes. Like they may give better study materials, advance hints before exams, extra care and some orientation personally to the upper caste students; these goes on adding values. *If they come to know which script belongs to whom they are capable of awarding more or less marks according to the identity of the students.*⁹⁸²

When asked about whether there is caste discrimination in conducting examinations, a Professor at a premier institute explained:

There is!! Sometimes, if a candidate is very knowledgeable, knows how to write things, the methodology, despite that he gets less marks. We don't have blind evaluation. Student writes code number. But it can be made out who's paper it is. Some time back there was a student, who failed in Statistics. He came to me and told that he was failed deliberately. He was good at his subject and performed well in the exam. He attempted again and passed. This indicates suppressing the student. Giving less marks, failing them, this is a kind of suppression. So far revaluation has not happened here. I have not come across. A student cannot raise voice. There is no mechanism. This institute is not transparent.⁹⁸³

⁹⁸¹ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

⁹⁸² Ibid Emphasis supplied.

⁹⁸³ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019).

A social activist, narrated a similar instance as he recalled his student days:

When I have been a student of Economics at U-8, till I passed, there was no SC/ST student who had passed with first class marks (60%). The reason behind this is, the professors in Economics, the non-Dalits, used to treat Dalits in a very insulting manner. *While awarding marks, even though the Dalit students were talented and had all the eligibility, the teachers were not willing to give them above 60% marks. This is how practices of untouchability used to operate in their minds.*⁹⁸⁴

When questioned about the kind of discrimination research scholars face, a PhD researcher explained:

A guide (PhD supervisor) who is not in favour of the downtrodden, make the PhD researchers do their personal tasks, telling the researchers to take their children to school, making them do their household work etc. It's a kind of slavery because of the caste the student belongs to... Unnecessary delay in publishing their articles, even though researchers give good presentations, guides simply say that it is not correct and point mistakes, they do everything to torture researchers. I will not say that every Professor does it. But there are some mean-minded Professors, they think like "oh he is SC, why should we help him in finishing off his PhD soon", "why should we do charity, let's make him work" kind of low-level thinking. These things have definitely happened that's why I'm telling you. I've seen it, I have evidence.⁹⁸⁵

About evaluation of projects and conducting vivas, a Professor explained:

Sometimes discrimination takes place by decreasing marks. We have 200 marks for project. *Some teachers decrease the marks in the name of caste...* during viva, caste discrimination happens indirectly. The upper castes will ask more questions and try to discourage Dalit students. They say your answer is not correct, and define it as they like.⁹⁸⁶

Another Professor narrated the kind of caste discrimination that takes place while allotting project topics to students. He said Dalit students are not allowed to research on national issues like electricity, water problem or fiscal policy. The privileged caste professors deliberately discourage them and direct them to work on community-based, caste-based projects. "They never allow SC students to touch the national issues, because they may lose their chance in course of time."⁹⁸⁷ If they research on issues of national importance, they will get wider opportunities, hence they are filtered in the beginning. He said "they give them useless kind of

⁹⁸⁴ Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019) Emphasis supplied.

⁹⁸⁵ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁹⁸⁶ Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019) Emphasis supplied.

⁹⁸⁷ Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019) Emphasis supplied.

studies which have no value in academic arena. This is nothing but caste discrimination, invisible kind.”⁹⁸⁸

A social activist stated that, PhD students face a lot of problems and difficulties due to caste discrimination as explained above. He recalled a case where a non-Dalit Professor was guiding a Dalit student and for 10 years the student was not able to complete his PhD, because of caste discrimination.⁹⁸⁹ He explained that till recently there were no opportunities for Dalit students to pursue PhDs. Even if someone enrolled, they were not allowed to graduate. The reason for this is the realization on the part of the privileged castes that in the coming years the Dalit students would become lecturers and professors in the same universities. Hence, their growth was stunted in the beginning itself. This is also the reason for lack of representation of SC/ST students in universities today.⁹⁹⁰

Prevalence of caste discrimination against SCs and STs can also be seen in the hostel (accommodation) facilities provided by universities. A social activist working for Dalit rights, recalled his student days and explained how “professors used to practice untouchability”, which continues even to this day:

SC/STs students mostly live in hostels. We were 150 students in the hostel. 100 SC/STs students, 50 non-SC/STs, general category. We used to have food in the same dining hall. But *while having food, the general category students used to take their plates to their rooms*. We used to use common plates and keep them in the dining hall itself. This is a total discrimination. *This means, the SC/STs’ should not touch the plates of upper caste students. Even while having food, there is discrimination, in higher education*. Finally, we fought against it. The administration of that time, the Vice Chancellor and Professors bent in favor of the upper castes, *ultimately, where there was one dining hall, it became two, a wall was built. One dining hall for the upper castes and one for SC/STs. This is there even to this day...*the discrimination which had started in 1978-79 is continuing. *The roof is the same, but the wall built then, is still there because of this discrimination.*⁹⁹¹

This is confirmed by a Professor working in the same university:

The upper caste students want to wash their plates separately. They don’t want to mingle the food. They don’t want to sit with the SC/STs students. 3 months ago there was a litigation and we shifted our students to separate hostel, social welfare department

⁹⁸⁸ Ibid Emphasis supplied.

⁹⁸⁹ Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019).

⁹⁹⁰ Ibid.

⁹⁹¹ Ibid Emphasis supplied.

hostel. Now SC/STs students are living separately and upper caste students are living separately in general merit hostels, and there are two mess (eatery present at the students' hostel) facilities. One for SC/STs and one for general merit.⁹⁹²

In some States, the government provides hostel facilities exclusively for students belonging to SCs and STs.⁹⁹³ Accordingly, the Dalit students are given separate accommodations in some universities. While in some universities, despite the demand from the Dalit students, they are not provided. One such instance is explained by a PhD researcher:

There is a need to give separate hostel facilities for SC/ST/OBCs in every district by the Social Welfare Department. When the government has agreed to make SC/ST hostels, the university has given random reason and denied it. Their actual thought is that, the number of SC/ST students would increase, which they do not want. Last time the university told that if we make separate SC/ST hostels, it looks as if we are isolating them. That's why we will give them seats in general merit hostels along with others. We have fought for a separate hostel and it is sanctioned. But till date it has not materialised. We want those separate hostels. It is the duty of the university to give that to us.⁹⁹⁴

A professor in the same university concurred with him:

In almost all universities there is separate hostel for SC/STs. This is provisioned just to increase their presence in higher education, because without hostel facilities it is very difficult for them to come and pursue higher education. But my own university is not ready to build separate hostels exclusively for SCs... They are afraid that if they create a separate hostel for SC/ST, their number would increase which would probably irk them and they don't like their presence more.⁹⁹⁵

Formation of friendship circles on university campuses are often based on caste and this inevitably keeps the Dalit students outside the majority privileged caste students circles on campuses. They are alienated, physically abused, and socially excluded.⁹⁹⁶ As a Professor explained:

⁹⁹² Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019).

⁹⁹³ 'Hostel Admission', Social Welfare Department, Government of Karnataka, < <https://sw.kar.nic.in/hosteladmissions/> > accessed 20th May 2022.

⁹⁹⁴ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

⁹⁹⁵ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

⁹⁹⁶ Navsarjan Trust, The All India Dalit Mahila Adhikar Manch and the International Dalit Solidarity Network, 'Alternative Report to the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) for the Examination of the 4th and 5th Periodic Reports of India at the 58th CEDAW Session in July 2014, Multiple Discrimination Against Dalit Women' (2014), 8; see 'Who Killed Dr. Bal Mukund Bharti in AIIMS?' (21st May 2011), The Death of Merit < <https://thedeathofmeritinindia.wordpress.com/2011/05/21/who-killed-dr-balmukund-bharti-in-aiims/> > accessed 20th May 2022; also see The Suicide of Rohith Vemula.

The upper castes have their own groups, they eat together, sit together. They don't try to mingle with the marginalized groups. This is a very passive kind of discrimination. They don't say it. They say we have our own likes, dislikes, tastes, preferences, we have formed group etc. But if you look at that group, it is very homogeneous. They belong to the same caste, have same behavior, that is purely caste-based and region-based. Very rarely we see diversity in the groups.⁹⁹⁷

These experiences have often forced Dalit students to take drastic steps like quitting the institutions and in some cases even committing suicide.⁹⁹⁸

An undeniable aspect of caste discrimination in higher educational institutions is the economic backgrounds of Dalit students. An academic and human rights activist explained:

Discrimination is built into the economic structure of landlessness, being absolutely poor, sometimes not having the economic incomes, not being able to send children to better schools and sending them to government schools where the quality of education is very poor. From there, children struggle, and because of affirmative action they manage to get into higher education. But once they enter higher education, there are no institutional mechanisms to undo discrimination and disadvantage; we have no policy strategy. You just push the children, except giving some scholarships, some fee concessions, that's not what the child requires. That anyway they must get. But what the children require is confidence building. And *the institutional mechanism in this country is a complete failure*. In U-1 (a central university), once they enter, they start failing on a big scale, particularly sciences, they really collapse, many times they quit. Even studies show the drop out. In U-4 (a premier law university), if you study the drop-out rate of the law school, if there are 10-15 dropouts, 60-70% of them will be Dalits.⁹⁹⁹

In what can be seen as a testimony to the above statement of Dalit students performing poorly in universities, IIT Roorkee (IIT-R) a premier institute, had expelled 73 students for underperformance in their first year of the Bachelor of Technology (B.Tech) course in 2015. The decision was taken by the senate of the institution consisting of over 100 Professors.¹⁰⁰⁰ 90% of the students expelled belong to reserved categories (31 students belonged to STs, 23 to SCs, 8 to OBCs, 4 physically challenged, and 7 general category).¹⁰⁰¹ A year before this

⁹⁹⁷ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

⁹⁹⁸ Who Killed Dr. Bal Mukund Bharti in AIIMS? (n 996).

⁹⁹⁹ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

¹⁰⁰⁰ Press Trust of India, 'IIT Roorkee Expels 73 Students for Underperformance' (11th July 2015), NDTV < <https://www.ndtv.com/india-news/iit-roorkee-expels-73-students-for-underperformance-780288> > accessed 20th May 2022.

¹⁰⁰¹ Ritika Chopra, '90% of Students Expelled from IIT-Roorkee belong to Reserved Categories' (13th July 2015), the Economic Times, < <https://economictimes.indiatimes.com/news/politics-and-nation/90-of-students-expelled-from-iit-roorkee-belong-to-reserved-categories/articleshow/48059941.cms> > accessed 20th May 2022.

incident, in the guise of ensuring ‘quality education’ in this premier autonomous institution, a rule was framed which mandated expulsion of students who scored less than 5 CGPA in two consecutive semesters. Accordingly, 73 students were expelled.¹⁰⁰² The students then approached the High Court of Uttarakhand, after which they were allowed to take a re-examination.¹⁰⁰³ The Ministry of Human Resource Development chose to remain silent on this issue. However, newspapers reported an official from the Ministry who remarked that the SC/ST students will ‘obviously’ have trouble coping with the rest of the class since the cut-off marks for them in the entrance test is lower than the general category students.¹⁰⁰⁴ If indeed it was so obvious that SC/ST students would fail, which would lead to their expulsion, why then was such a rule not impugned? It must be noted that students who enter through reservation, when not supported, would in some cases quit, making the vested interests attribute it to their inability to cope up with the high academic standards. The other side to this, is the institution itself overtly building hurdles in the way of Dalit students, thereby attempting to prove that admission through reservation is a futile exercise. But this act by IIT-R also brings into fore, yet again, the clash between ‘merit’ and ‘social justice’ in higher and premier educational institutions in India.

The administration of IIT-R expelled students in an apparent act of exercising its autonomy. With autonomy comes discretion, which then makes one probe to whether there is discrimination masqueraded as discretion.¹⁰⁰⁵ How is the expulsion of 73 students in their very first year citing their underperformance justified while they have not even had a chance to learn and adapt to the new academic environment? This is where the social, economic, cultural and educational background of a student comes into play. Most students belonging to general category appear for IIT entrance exams after taking rigorous coaching classes for years, during their school education. This however is not possible for most of the Dalit students. Premier institutions such as IITs are “ideally positioned to cater to a third-generation higher education participant rather than a first-generation learner. Thus, when a first-generation enters these institutions, s/he faces an uphill task.”¹⁰⁰⁶ The institutions need to develop mechanisms to cater to students coming from reserved categories to help them cope up with the new academic

¹⁰⁰² ‘73 expelled IIT-Roorkee Students may get a Second Chance’, (21st July 2015), Hindustan Times, < <https://www.hindustantimes.com/india/73-expelled-iit-roorkee-students-may-get-a-second-chance/story-cNBzaCoDBezd67DpqfjXN.html> > accessed 20th May 2022.

¹⁰⁰³ Khora, *Caste, Reservation, Atrocity Law and Discrimination* (n 942) 111.

¹⁰⁰⁴ Chopra, 90% of Students Expelled from IIT-Roorkee belong to Reserved Categories (n 1001).

¹⁰⁰⁵ Khora, *Caste, Reservation, Atrocity Law and Discrimination* (n 942) 112, 113.

¹⁰⁰⁶ Ibid 113.

environment. Rather, what appears to be taking place, is the institutions turning more antagonistic and expulsion of students by the administration with concurrence of over 100 Professors is an example of the same. Note that though these institutions are autonomous in nature, their actions cannot be beyond scrutiny. It was a gross error on the part of the Ministry of Human Resource Development and concerned other ministries to stay silent over this act of expulsion, which cannot merely be seen as an administrative action taken to uphold academic standards.

6.3.4 Discrimination faced by Dalit women in higher educational institutions

While Dalit students in general face caste-based discrimination, it is increased when it comes to female Dalit students. They face the triple threat of caste, class, and gender. Female Dalit students coming from poor economic backgrounds are often targeted by both privileged caste men and women when it comes to the places they come from, their humble families, their upbringing, their education so far, and even the clothes they wear.¹⁰⁰⁷ As discussed before, historically the Dalits have been oppressed and Dalit women suffered the brunt in multiple ways. Often, they were victims of sexual abuse and rape at the hands of privileged caste men. A classic example is that of devadasis, where young Dalit girls were openly thrown into prostitution in the name of God and tradition.¹⁰⁰⁸ This being so, with the adoption of the Constitution and certain progressive laws and policies, the Dalit women were able to enter higher educational institutions and universities. However, the caste-feudal mindsets still prevail in these places. Instead of making Dalit women welcomed in these places, they have built multiple hurdles in their way to hinder their progress. As a result, they often become victims of sexual assault, sexual abuse, and rape.¹⁰⁰⁹

When interviewed, a Reader in a State University, who is also the SC/ST Cell Officer, spoke about a suicide which took place in his university over 10 years ago. A SC woman who was pursuing her PhD and was also teaching, had committed suicide. The Professor revealed that the Head of the Department was her guide and that there was some ‘problem’ (inferring some kind of abuse being perpetuated against the female student) between the two, and that she committed suicide because of caste discrimination. He further stated that the guide took transfer to another university. “There ends the matter” he said. When questioned further about the legal

¹⁰⁰⁷ Maurya, *In Their Own Voices* (n 20) 20.

¹⁰⁰⁸ See page of 13 of the Introduction.

¹⁰⁰⁹ Vandana, *Dalit Girls and Sexual Harassment* (n 876) 34.

course of action like abetment to suicide (since it is a criminal offence punishable under the Indian Penal Code), he said “nothing”. On further questioning, he stated that the institution has not taken any action since the guide took a transfer to another university. About the family of the victim (which consisted of her husband and a school-age son), he said “they also moved out of the campus. So there ends the matter. Normally such things happen.”¹⁰¹⁰

It must be noted that there is a dearth of academic literature when it comes to the intersection of caste, class, and gender about the experiences of Dalit women, particularly students, in institutions of higher learning in India. Intersectionality is a “method and disposition, a heuristic and analytical tool.”¹⁰¹¹ It is “political, philosophical and pedagogical in nature.”¹⁰¹² It helps us to consider, identify, and address concepts of oppression and workings of privilege which often remain hidden. Scholars on intersectionality have recognized that “women are not a homogeneous group, and their experiences differ on the basis of their histories, socio-economic and political locations, identity, race, ethnicity, and class.”¹⁰¹³ Likewise the experiences of Dalit women are different from that of privileged caste women in universities and looking at them merely as gender-related issues does not do them justice. For example, Dalit women are targeted more often than privileged caste women, for “it is well known that their bodies are violated with impunity where their gender intersects with caste and class.”¹⁰¹⁴ Some scholars have noted this and have argued that the experiences of Dalit women are qualitatively different from those of Dalit men and privileged caste women.¹⁰¹⁵ However, their experiences of sexual harassment in universities are downplayed, as is the case with their experiences in other contexts.

In one of the few pieces of qualitative research conducted on sexual harassment faced by Dalit women in universities in North India, the researcher Vandana noted that, “when Dalit girls assert themselves and question the upper caste behavior, the consequence is caste and gender

¹⁰¹⁰ Interview with O-1, SC/ST Cell Officer at U-7 (Mangalore, 23rd April 2019).

¹⁰¹¹ Devon Carbado, Kimberlé Crenshaw, Vickie Mays and Barbara Tomlinson, ‘Intersectionality: Mapping the Movement of a Theory’, (2013) 10 (2), *Du Bois Review*, 303, 303.

¹⁰¹² Vivian May, *Pursuing Intersectionality, Unsettling Dominant Imaginaries* (Routledge, New York, 2015) 21.

¹⁰¹³ Vandana, Dalit Girls and Sexual Harassment (n 876) 34; also see Kimberlé Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’, (1991) 43 (6), *Stanford Law Review*, 1241-1299.

¹⁰¹⁴ Ibid 34, 35; also see Nitya Rao, ‘Marriage, Violence and Choice: Understanding Dalit Women’s Agency in Rural Tamil Nadu’ (2014) 29 (3), *Gender and Society*, 410-433.

¹⁰¹⁵ Gopal Guru, ‘Dalit Women Talk Differently’ (1995) 30 (41/42), *Economic and Political Weekly*, 2548-2550.

based verbal abuse, harassment, and violence.”¹⁰¹⁶ Privileged caste PhD supervisors publicly humiliate female Dalit students which is an apparent show of high handedness and a visible tool of control over them. Should they assert their legitimate rights, such as their right to apply for a particular course, they are also threatened with dire consequences including rape.¹⁰¹⁷ Ill-treatment of female Dalit students in universities is not only caused by privileged caste faculty members, but also extends to administrative staff, who openly harass Dalit women. Public humiliation, sexual gestures, intentionally exposing one’s private parts, and threats of rape are emblematic of the extreme power the upper caste members of faculty seek to impose over Dalit women.¹⁰¹⁸ This is their way of sending out a message to the assertive Dalit women that they are vulnerable, and their bodies can be violated. Such behaviors can be seen as modified tools used by the privileged castes inside the ‘safe’ spaces of higher education to intimidate, punish, coerce, and humiliate Dalit women and curb their assertiveness.¹⁰¹⁹

One of the issues that deserves attention is that Dalit women in the above study noted that privileged caste women were some of the main culprits responsible for spoiling the academic environment in universities. They were of the opinion that in most cases the privileged caste women capitulate to the lust of male members of faculty and enter into illicit relationships in return for privileges, such as higher rank and teaching opportunities, which they otherwise would not get.¹⁰²⁰ The atmosphere created by the privileged caste male faculty members clearly implies that if female students accept their sexual advances, they will be rewarded with better learning, career opportunities, academic exposure, and good results. Vandana noted that the “Dalit girls strongly believe that in comparison to upper caste girls, they are morally upright and do not surrender to the male guide’s sexual advances. Their self-image is of one who does not believe in easy routes to success; a Dalit girl is ready to suffer and sacrifice her academic work and learning opportunities rather than sell her body and be called a loose character.”¹⁰²¹ That said, it is also to be noted that the Dalit women do not hesitate to appreciate and respect the privileged caste women who stand up against male professors who seek sexual favors from them.¹⁰²² There is another angle to this. The privileged caste women often approach right wing

¹⁰¹⁶ Vandana, *Dalit Girls and Sexual Harassment* (n 876) 42.

¹⁰¹⁷ *Ibid* 43.

¹⁰¹⁸ *Ibid* 44.

¹⁰¹⁹ *Ibid*.

¹⁰²⁰ *Ibid* 48.

¹⁰²¹ *Ibid* 49.

¹⁰²² *Ibid*.

student organizations such as the Akhil Bharatiya Vidyarthi Parishad (ABVP),¹⁰²³ who they take up their cause and fight for them. However, in many universities, there are no Dalit students' organizations. So, Dalit women do not find a similar kind of refuge.

When interviewed, a Professor narrated an incident where there was a dispute between a Dalit woman and a privileged caste woman in the ladies' hostel which reached the police station. A complaint was lodged by the Dalit woman and a counter-complaint by the privileged caste woman. The police refused to register the FIR and instead suggested to resolve the dispute cordially. After much deliberation, both complaints were withdrawn.¹⁰²⁴

It is important to observe the above, in the light of the difference education makes to the lives of Dalits and Dalit women in particular. The emancipatory nature of education is clearly visible in this, since as mentioned before, historically Dalit women were oppressed, to the extent that they did not have rights over their own bodies, where they were dedicated to Gods. With the adoption of the Constitution and access to education, it has brought awareness and they are able to assert their legitimate rights even in the privileged caste dominated spaces. However, it is a vicious circle, where upon assertion, again they are targeted by the vested interests. It then becomes increasingly difficult for Dalit women to handle such instances of abuse due to the lack of institutional support. Hence, they mostly resort to avoidance of such faculty members, choose to remain silent, share objectionable and disturbing incidents with others from the community, and take support from faculty members from marginalized communities, where present.¹⁰²⁵

6.3.5 Drop-outs, Suspension and Suicides of Dalit Students

Whilst blatant practices of untouchability are criminalized as per law,¹⁰²⁶ the above acts which take place in institutions of higher learning (apart from the crimes such as abetment to suicide, sexual abuse, and rape, which are criminalized under the Indian Penal Code), are not covered in any statutes, especially since they are very subtle and tacit in nature, difficult to quantify. They are also an unmistakable example of how caste operates in modern 'progressive' Indian society, where caste now resides as a 'feeling inside the mind/heart.'¹⁰²⁷ An often-overlooked

¹⁰²³ Ibid.

¹⁰²⁴ Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019).

¹⁰²⁵ Vandana, *Dalit Girls and Sexual Harassment* (n 876) 51.

¹⁰²⁶ Constitution of India, Article 17 read with The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended.

¹⁰²⁷ Mosse, *The Saint in the Banyan Tree: Christianity and Caste Society in India* (University of California Press, Berkeley, 2012) as cited in Jadhav *et al.*, *Minds of Caste* (n 886) 2.

factor in this, is the impact the attitude of the privileged castes have, on the mental health of Dalit students in university spaces, be it in rejection by professors, classmates, humiliation or marginalization.¹⁰²⁸ The success of Dalit students is often attributed to external factors such as reservation and their failure to inherent deficits (and vice versa for privileged caste students). The discriminatory and prejudicial treatments tend to increase when the Dalit students are more meritorious and competitive and can excel in their academics, despite the odds posed by the system. They effectively challenge the hostile environment forced upon them. In this context, it is their merit and claim to status which become a threat to the vested interests. Sometimes this can result in university spaces becoming more toxic and antagonistic thereby creating all the more hurdles to the talented high achieving Dalit students, who may end up committing suicide as a consequence of social defeat or a failed struggle.¹⁰²⁹ The suicide note of Rohith Vemula, with which this chapter began, is a glaring example of this.

As per the data from AISHE 2018-2019, the enrolment of Dalit students to undergraduate and postgraduate courses stood at 11%. They comprised 10% of PhD students and 16% of MPhil students. They also comprised 14% of diploma holders, and 13% of certificate holders.¹⁰³⁰ The data provided by the Ministry of Human Resource Development on drop-outs revealed that between 2017-2019, out of 2,461 drop-outs from the IITs, 1,171(47.5%) are SCs, STs and OBCs. Out of 99 drop outs from IIMs, 14 belonged to SC, 21 to ST, and 27 to OBC.¹⁰³¹

On the issue of why Dalit students drop-out from universities on a large scale compared to students from other castes, a Professor when interviewed, noted that the issue of caste-based discrimination against Dalits in higher educational institutions is not limited only to those coming from poor economic backgrounds. He gave an example of a Dalit student, who was a son of an IAS (Indian Administrative Service) Officer (Civil Servant), who was studying in one of the premier law institutions (U-4), where he has worked:

¹⁰²⁸ Bhattacharyya *et al.*, Can Educational Policy Redress Historical Discrimination? (n 951) 40.

¹⁰²⁹ Gopal Guru (ed.), *Humiliation: Claims and Contexts*, (Oxford University Press, New Delhi, 2009) as cited in Jadhav *et al.*, Minds of Caste (n 886) 2.

¹⁰³⁰ Rukmini S, 'India's Unequal University System', (10th September 2019), Mint < <https://www.livemint.com/news/india/still-too-few-dalits-in-indian-colleges-1568013598781.html> > accessed 20th May 2022.

¹⁰³¹ "Stark Discrimination forces higher dropout among Dalit, Tribal" (12th August 2019), Matters India < <https://mattersindia.com/2019/08/stark-discrimination-forces-higher-dalit-tribal/> > accessed 20th May 2022; also see Subodh Varma, 'Enrol and Dropout, Education is a One-way Street for Dalits', (24 January 2016), The Times of India, < <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/Enrol-and-dropout-education-is-a-one-way-street-for-dalits/articleshow/50701654.cms> > accessed 20th May 2022.

Having joined U-4, within 2-3 months the boy completely lost control and started feeling very discriminated by the students. I used to take care of him, coach him personally. But there was no way he could cope. The discrimination was so high that the boy felt completely out of place. And up to first year, I went on advising the father let us try, whether he will improve. Particularly the course on history, although she is not a Brahmin but very Brahmanical (referring to a history professor who is a catholic). And they don't understand children, backgrounds, or disadvantages. They have no sensitivity. They think students must compete. Universal standard. So, this boy started failing in history. First year he failed in several courses. Father didn't know what to do. Second year I asked this boy what we will do now, you have not submitted your assignments. The boy even must have taken to alcohol. I have a feeling that he was losing the balance. Second year I told the father we must withdraw this boy. His life will be ruined otherwise. So, we pulled him out. I rang up a student of mine, who is a professor now. He is a Dalit, a professor at U-5. He got him admitted to U-5. *In the graduation, that boy was a topper.* And now he is in Beijing, student of International Diplomacy and Formulations. And he got a full fellowship to go to Beijing to do this course. He became a sort of student leader at U-5... I think the minute he withdrew (from U-4), the boy thought that somehow, he got liberated.¹⁰³²

The Professor cited several examples of Dalit students who have faced caste discrimination in universities. One such example was a Dalit girl, a daughter of an engineer, who had to be taken to a psychiatrist. "She felt completely humiliated. But she picked up. Somehow, this girl struggled. Now she is doing litigation. She is very well settled. She withstood."¹⁰³³ He spoke about the way he has helped the Dalit students overcome the discrimination they faced in universities. "Out of 15-20 PhD students under me, more than half would be Dalits. And these Dalit boys and girls whom I have guided, first thing what I have done is giving confidence...They have all the capabilities. System failed and entire teaching faculty, if they become democratic, socially sensitive, a large part of the discrimination can be fought."¹⁰³⁴

These examples also mirror the fact that most Dalit students are talented and meritorious; it can be drawn from the very fact that they have been able to enter those higher and premier educational institutions. But the hostile environment created by the vested interests in the universities force them to take drastic steps. However, when taken out of these places, they thrive, as shown in the cases above, which points to the problem that lies in the very structure

¹⁰³² Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

¹⁰³³ Ibid.

¹⁰³⁴ Ibid.

of these institutions, which are built to maintain the caste hegemony of the privileged castes.

A senior Professor opined:

Discrimination is so institutionalized that the Brahmin fellows and upper castes, they believe that Dalits are not capable of pursuing higher education. You can't even imagine. You can't believe how they will argue with you. And you must fight with them. And when you fight with them, they say you are a populist. They don't think that you are fighting for a democratic cause.¹⁰³⁵

The Professor narrated another incident where 11 doctoral students belonging to Dalit communities were suspended at U-1. He explained how difficult it is for a Dalit to become a doctoral student, particularly in science. "And imagine that 11 doctoral students! *The reason was the scholarship amount was not given; this is another form of discrimination*" he said. He explained how the Dalit students were unable to pay the mess bill, since they were falling short of the scholarship amount provided by the State. The mess was common and the upper caste and upper class students who had income, were able to pay.

Every month the chief warden, now the VC, used to put a list of defaulters and every time the Dalit boys' and Dalit girls' names used to figure in. This was one discrimination. *Sometimes they used to forgo a meal, they would have only one meal, somehow adjust the bill. This was their struggle.*¹⁰³⁶

There were instances where the Dalit students helped other Dalit students by providing them shelter, when they would come to U-1 to appear for exams. The chief warden used to go in the night to raid the rooms of the students, take the Dalit boys who have come from villages and leave them at an unknown place. This angered the Dalit students who became violent and "wanted to really thrash the chief warden, because they could not take this whole thing."¹⁰³⁷ When they approached the chief warden, a Dalit teacher came to protect him since he was a warden and he thought as a warden he must protect the chief warden. The students ended up beating him up. As an SC teacher had been beaten up, the question of discrimination was dissolved.

Now the university, the entire upper castes were completely against the Dalit boys and they said these fellows should be removed as per rules, since they have beaten a teacher, this is the disciplinary action. *11 of them were suspended. And a criminal case was also*

¹⁰³⁵ Ibid.

¹⁰³⁶ Ibid Emphasis supplied.

¹⁰³⁷ Ibid.

*filed, for assault. It was quite hard to see, because these were all doctoral students, somebody had a fellowship to go to Australia, very competitive boys.*¹⁰³⁸

The professor then explained how things unfolded when there was a change in the leadership of the university administration and the UGC,¹⁰³⁹ with privileged caste members leaving and people concerned about the marginalized communities taking over and the university exempted and reduced the time of punishment of the Dalit students. He explained:

*But that was the time, you should have seen the discrimination in U-1. How hungry, the upper castes were for the Dalits' blood! We said 11 students, coming from poor background, doctoral students, doing important subjects like communication, chemistry, potential scholars of the country, losing 11 scholars in one go and ruining their career, imagine how much loss of social capital that is.*¹⁰⁴⁰

He explained how the system works from within, since he was the member of the Executive Council and for some time in-charge Vice Chancellor. The structure saw the Dalit students as 'criminals' for having beaten a teacher. The argument was that if they could beat a Dalit teacher, they could beat any other teacher as well. He continued:

*Imagine their family background. How much of a humiliation they have suffered? It is a cumulative anger of the Dalit boys, and we must understand it in a context. But even if you argue this, the net result would be the structure, the whole system is against them. One or two teachers, group of teachers can't help, when the structure is against them.*¹⁰⁴¹

Within this context, a prominent Dalit rights activist narrated two instances of suicides of Dalit students. The first took place at the renowned Indian Institute of Science (IISc), Bangalore, which is a premier institution, where a Dalit student, committed suicide during his PhD in 2017. In his suicide note, he mentioned that his guide, tortured him in all possible ways so that he should not be awarded his PhD degree. There is an ongoing investigation regarding this.¹⁰⁴² The second suicide took place at the well-known University of Agricultural Sciences, Bangalore. He said:

Only highly meritorious students gain admission in that university. He was a rank student. He got admission because he was very much eligible. His guide was a Lingayat (OBC). His guide thought, a Dalit student pursuing a PhD should not be successful, and

¹⁰³⁸ Ibid Emphasis supplied.

¹⁰³⁹ See Section 6.4 of this Chapter at 216.

¹⁰⁴⁰ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

¹⁰⁴¹ Ibid emphasis supplied.

¹⁰⁴² Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019).

hence he created many difficulties for him. He humiliated this student when he submitted his quarterly or monthly reports, saying it was not well written. He also created hurdles in the student getting his fellowship from the university. *The Professor did not accept his report and said straight away to his face that he belongs to a Dalit community and that he is not eligible to do a PhD and he scolded him, due to this he committed suicide. He consumed poison from their lab itself. The amount of discrimination is so high that when the student goes to take the poison, the Professor does not even try to stop him. Even when he was in pain after consuming poison, the Professor did not try to give him first aid.* Such is the extent of caste discrimination and harassment in universities.¹⁰⁴³

When questioned about the case attracting multiple provisions of the Indian Penal Code and the SC/ST (POA), Act, including abetment to suicide, the activist replied that a case was filed, and the Vice Chancellor, Minister for Higher Education, and Deputy Commissioner of Police were all made aware of it. But “they closed the case” he said. He tried his best fighting to get justice for the Dalit scholar who tragically lost his life but the vested interests “succeeded in saving a castiest (sic) professor who had committed a criminal offence”¹⁰⁴⁴ he said. This is very important since a report as recent as March 2020 shows how the Brahmins on India’s elite campuses said that studying science is natural to upper castes and that they were natural inheritors of scientific practice. The study was conducted on the very same campus of IISc.¹⁰⁴⁵ There have been 4 suicides of students in IISc in 2021 and 3 of which were by hanging to ceiling fans. The most recent (December 2021) solution IISc administration came up with for the issue of student suicides is removing of ceiling fans from hostel rooms to prevent suicides in this way.¹⁰⁴⁶ Yet, addressing caste discrimination is not on its agenda.

“Out of 25 students who committed suicide between 2007 and 2013, 23 were Dalits.”¹⁰⁴⁷ Data also reveals that between 2008-2011, 18 Dalit students committed suicide in one of India’s premier institutions.¹⁰⁴⁸ It must be noted that there is no systematic data on suicides of Dalit

¹⁰⁴³ Ibid Emphasis supplied.

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ Renny Thomas, ‘Brahmins on India’s Elite Campuses say Studying Science is Natural to Upper Castes: Study’, (13th March 2020), The Print < <https://theprint.in/opinion/brahmins-on-india-campuses-studying-science-is-natural-to-upper-castes/378901/> > accessed 20th May 2022.

¹⁰⁴⁶ Soniya Agarwal, ‘After 4 Suicides in a Year – 3 by Hanging – IISc begins Removing Ceiling Fans in Hostel Rooms’, (18th December 2021), The Print < <https://theprint.in/india/education/after-4-suicides-in-a-year-3-by-hanging-iisc-begins-removing-ceiling-fans-in-hostel-rooms/783764/> > accessed 20th May 2022.

¹⁰⁴⁷ Sukhdev Thorat, ‘Discrimination on the Campus’ (26th January 2016) The Hindu *as cited in* Maurya, In Their Own Voices (n 20) 18.

¹⁰⁴⁸ ‘Dalit’s Access to Education’, IDSN Briefing Paper, < http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Key_Issues/Education/DALIT_EDUCATION_IDSNbriefingpaper.pdf > accessed 20th May 2022.

students in higher educational institutions. However the National Crime Records Bureau (NCRB) has data on crimes against Dalits across India and according to it, a crime against a Dalit was reported every 11 minutes, ranging from rape, beatings and land-related violence in 2014.¹⁰⁴⁹ It is conceded that the issue of crimes in general and that of suicide in particular are different. However, suicides of Dalit students in higher educational institutions are often as a result of caste discrimination as seen in this chapter. This in turn relates to the dissatisfaction, apathy, and intolerance against Dalits which is reflected in the increasing crime rate. The prosperity/growth of Dalits becomes a direct threat to the Hindu Social Order, due to which the vested interests try to curb them, in all possible means. Crimes against Dalits are a direct result of it. Suicides of Dalit students are also a result of it, but due to the nature of caste discrimination that operates in institutions of higher learning, they are less talked about and hushed up immediately in the guise of Dalit students having psychological problems.

It must also be noted that, with the awareness created by education, and the perpetual caste discrimination in universities, which have left the Dalit students frustrated, they have started organizing themselves. A Professor during his interview stated that “there is a voice now, that was not there earlier. And this voice is being tried to stifle by all methods.”¹⁰⁵⁰ In this context, Rohith Vemula’s suicide must be noted. Rohith was a 26 year of PhD(Sociology) student at the prestigious Hyderabad Central University. He had gained admission through general category and not through reservation. Described as a hard-working, brilliant student, kind hearted soul and keen reader of revolutionary literature by his friends in the university, he was an active member of Ambedkar Students’ Association (ASA), an organisation fighting for the rights of Dalits. Indian universities have students’ wings of political parties. However ASA was not affiliated to any political party, rather was based on modern ideologies which trump conservative organisations. They used to take up contentious issues in their campus and organised debates on them.¹⁰⁵¹ One such debate became so controversial that the ABVP, the student wing of the present ruling dispensation, alleged that the Dalit students of ASA attacked one of their activists, thereby setting political machinery in motion. A union minister wrote to the Vice Chancellor that the members of ASA were indulging in ‘casteist’ and ‘anti-national’

¹⁰⁴⁹H Couderé, ‘India: Violence against Dalits on the rise’ (19th May 2016) as cited in Maurya, *In Their Own Voices* (n 20) 18. Also see Chapter 2 for more data.

¹⁰⁵⁰ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

¹⁰⁵¹ Kancha Ilaiah, ‘Rohith Vemula, Death of a Philosopher to Purify Higher Education’, (20th January 2016), *Hindustan Times*, < <https://www.hindustantimes.com/india/reform-higher-education-prevent-deaths-like-rohith-kancha-ilaiah/story-G8IMRVH6bvUr5fwzSzpgGM.html> > accessed 20th May 2022.

activities.¹⁰⁵² Following this, Rohith, along with his four fellow mates were expelled from university accommodation in early August 2015. They were then suspended from the university in September 2015. The Dalit students denied the charges levelled against them, which the university accepted in its initial inquiry, only to reverse it in December 2015. The university also allegedly stopped paying his fellowship amount, mentioned in his suicide note, with which this chapter began. In a letter to the Vice Chancellor in December, Rohith requested that a “nice rope” be supplied to rooms of all Dalit students and stated “please give us poison at the time of admission itself instead of humiliating us like this.”¹⁰⁵³ Once the suspension was confirmed, the Dalit students moved out of their hostel rooms. On 3rd January 2016, they set up a tent inside the campus and began a relay hunger protest. On 17th January 2016, Rohith committed suicide.¹⁰⁵⁴

This is also an example where the State can be clearly seen in interfering in the administration of the university, thereby supporting the privileged caste students and repressing the voices of the Dalit students. In this case, a Minister of the Union Government wrote a letter to the Vice Chancellor which can be stated to be a catalyst due to which the university administration took the harshest measures against Dalit students, the end result of which was a tragic loss of life of a meritorious young scholar. When interviewed, a Professor recalled an incident where some Professors and himself were accessible to students, should they need to approach them. He pointed out that when he stopped getting such information from students, it led to Rohith Vemula’s case. He explained:

They would have come to me and 7-8 teachers to whom they had access. And when Rohith and his friends went on fasting, I definitely would have gone and supported, would have negotiated. That’s what I have done all through, but then I asked the VC, when Rohith wrote a letter, “as a VC did you not think it’s your responsibility to forgive?” He said “No I handed over the letter to Dalit teachers and asked them (to deal with it) and Dalit teachers failed. I gave the responsibility to Dalit teachers.” And they put a Dalit teacher, as a Pro-VC. And this Pro-VC never bothered. Now he says “what have I to do, because Dalit teachers have not handled.” But *Rohit Vemula’s suicide, comes as the highest form of expression of the discrimination in higher education. Because I think he was so bright, his suicide note is almost like a philosophy and very abstract, he would have been a great philosopher, if he would have survived, he had all the abilities and then the boy died.* I think the protest against the discrimination has

¹⁰⁵² Ibid.

¹⁰⁵³ Omer Farooq, ‘Rohith Vemula: The Student who Died for Dalit Rights’, (19th January 2016), BBC, < <https://www.bbc.com/news/world-asia-india-35349790> > accessed 20th May 2022.

¹⁰⁵⁴ Ibid.

taken a form of forming students associations, separate students' association of Dalits... now they have some forms of protests, they do that, they agitate, what Dr. Ambedkar suggested, 'agitate', and now the teachers slightly recognize, they think twice before they do something, that there is a voice that they will not keep quiet.¹⁰⁵⁵

Suicides of Dalit students in the institutions of higher learning are often brushed aside by authorities, terming them to be cowardly acts taken because of failure to cope up with the rigorous and high academic standards in those institutions. The key factor which is neglected is the role caste plays in such suicides. The case of Bal Mukund Bharti must be noted in this regard. Bharti was a school topper and was awarded with several certificates as a token of his academic excellence, including one from the President of India, before appearing and clearing an all-India entrance examination to gain admission at India's premier AIIMS, New Delhi.¹⁰⁵⁶ On 3rd March 2010, Bharti, who was a final year MBBS student at AIIMS, hung himself to death after a failed attempt on his life a few days earlier. He was going to be the first doctor from his village in over 50 years. Activists claim that his suicide was a mere formality and that he was killed much before that.

He was abused, humiliated, harassed by professors, beaten up severely by his seniors in the name of ragging, completely alienated from the 'mainstream' campus life, all due to his Dalit background, Dr. Bharti died a very painful and slow death that stretched into the entire period of about 6 years of his stay in AIIMS.¹⁰⁵⁷

The administration issued a standard statement of "a student who went into depression as he was not able to cope with the rigorous academic environment of AIIMS."¹⁰⁵⁸ The case was also allegedly closed by the police who forced Bharti's father, who had gone to take the dead body of his son, to sign a statement that "he has nothing against AIIMS administration."¹⁰⁵⁹ Many such instances of suicides by Dalit students in higher educational institutions which are documented, only mirror the fact that they are not aberrations, rather is an existing reality of academic spaces in the 21st century India.

¹⁰⁵⁵ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

¹⁰⁵⁶ Anoop Kumar, 'The Death of Anil Meena', (14th March 2012), The Indian Express, < <http://archive.indianexpress.com/news/the-death-of-anil-meena/923471/> > accessed 20th May 2022.

¹⁰⁵⁷ Who Killed Dr. Bal Mukund Bharti in AIIMS? (n 996).

¹⁰⁵⁸ Ibid.

¹⁰⁵⁹ Ibid.

It is important to note that the Union Minister for Health and Family Welfare is the President of the Institute and Governing Bodies of AIIMS. The management also consists of members of Parliament, top bureaucrats, and academics.¹⁰⁶⁰ Likewise, the IITs are administered centrally by an apex body established by the Government of India called the IIT Council, headed by the Minister of Human Resource and Development. However, the overall administration comes under the Board of Governors in each institution,¹⁰⁶¹ for example, the President of India nominates the Chairman of the Board of Governors of IIT-B.¹⁰⁶² Similar is the case with other higher and premier educational institutions in India, apart from the private institutions. The composition of the board is important as it can be seen that the members of the ruling dispensation and the executive are a part of it. Despite this being the case, there are instances of caste discrimination against the Dalit students in most of the higher educational institutions, with many cases leading to suicides.

The Government, along with the judiciary, hold the key to changing the scenarios in multiple ways with respect to any aspect of society, and so is the case with caste-based discrimination in higher educational institutions in India. The lack of political will is glaring when it comes to this issue. A senior Professor and activist noted of the changes taking place in the sphere of higher education:

Now the other State universities (not the premier institutions), where the Dalit students are in large number, they collapse. No teaching, classroom, library, facilities, infrastructure, or education. In U-1 there is education. There is a class, lab, library. Like U-6, in U-1 (both are premier universities), Dalit students benefitted. In U-2 (a State university), discrimination may not be this striking like U-1, but there's no education. Students are not able to compete. They are not able to stand. Whereas quality education is given in U-1. But discrimination is also very high. *The upper castes think that these are their institutions.*¹⁰⁶³

When questioned about whether the privileged castes are trying to maintain the caste hegemony in the premier and elite institutions, he explained:

¹⁰⁶⁰ Institute Body, All India Institute of Medical Sciences, New Delhi, < <https://www.aiims.edu/en/2019-01-24-10-24-11/hospital-affairs-committee.html> > accessed 20th May 2022.

¹⁰⁶¹ Administration, Indian Institute of Technology, Madras, < <https://www.iitm.ac.in/the-institute/administration/overview> > accessed 20th May 2022.

¹⁰⁶² IIT Bombay Functional Organization, Indian Institute of Technology, Bombay, < <https://www.iitb.ac.in/en/about-iit-bombay/iit-bombay-functional-organisation> > accessed 20th May 2022.

¹⁰⁶³ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

Yes absolutely. And they think the Dalit students are the potential competitors for them. And that's the reason why you think both in U-1 and U-4 (both are premier institutions), the upper caste students, the upper caste teachers, they do not want the structure to be disturbed. Whereas in U-2 (a State university), structure is disturbed. There is no structure. I'm a product of U-2. When you go there, nothing happens. U-3 (a State university), where I taught, a large number of Dalit students come there. But no teaching, no facilities, nothing is happening... They can't go anywhere, because they have not been properly trained. So, they have done two things in discrimination, in institutions of excellence, there is discrimination; in institutions where they give real care or where they are sensitive, they collapse. I think two things happen simultaneously.¹⁰⁶⁴

6.4 Legislation and Institutional Mechanisms

As mentioned earlier in this chapter, there is no legislation enacted to specifically address the instances of caste-based discrimination that take place in institutions of higher learning in India. The SC/ST (Prevention of Atrocities) Act 1989¹⁰⁶⁵ does not contain any provisions which deal directly with the issue of caste discrimination in higher educational institutions. However, there are provisions¹⁰⁶⁶ which touch upon the issues of humiliation, insult, intimidation, abuse, touching a SC/ST woman without her consent when such touch is of sexual nature, and obstructing SC/STs entering educational institutions. The implementation, and the flaws in the drafting and interpretation of the Act will be discussed in the next chapter. However, a few regulations are enacted in relation to this by the University Grants Commission (UGC), which are discussed briefly in this section, as they deal directly with caste discrimination in higher educational institutions.

The UGC is a statutory body established through the UGC Act, 1956, which is vested with two main responsibilities; (i) providing funds and (ii) coordination, determination and maintenance of standards in higher educational institutions.¹⁰⁶⁷ The UGC enacted the UGC (Promotion of Equity in Higher Educational Institutions) Regulations in 2012 (UGC(PEHET) Reg, 2012), which came into force in January 2013 and are applicable to all higher educational institutions in India. These regulations *inter alia* define discrimination,¹⁰⁶⁸ harassment,¹⁰⁶⁹ unfavorable

¹⁰⁶⁴ Ibid Emphasis supplied.

¹⁰⁶⁵ See pages 91 of Chapter 3 and 236 of Chapter 7.

¹⁰⁶⁶ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3 (1) (r), (s), (u), (w) (i) (ii) and (za) (D).

¹⁰⁶⁷ Mandate, University Grants Commission, < <https://www.ugc.ac.in/page/Mandate.aspx> > accessed 20th May 2022.

¹⁰⁶⁸ The UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, Reg. 2(b).

¹⁰⁶⁹ Ibid., Reg. 2(d).

treatment,¹⁰⁷⁰ and victimization.¹⁰⁷¹ The regulations mandate higher educational institutions to prohibit all forms of discrimination and harassment of students, thereby eliminating this and provide for preventive and protective measures to facilitate its eradication and punish those indulging in any form of discrimination or harassment.¹⁰⁷²

The regulations specifically state that “no higher educational institution shall discriminate a student belonging to SCs and STs categories, or allow or condone any constituent of higher educational institution to discriminate such a student or group of such students.”¹⁰⁷³ It mandates a list of measures by mentioning the possible ways in which discrimination occurs including during admissions by not following reservation norms, and treating unfavourably these students during the admission process.¹⁰⁷⁴ The regulations also mandate the higher educational institutions and their constituents to prohibit all persons and authorities of those institutions from harassing or victimising any student. 8 parameters are mentioned in the regulations which include:

announcing, verbally or otherwise, the names of the castes, tribes, religion or region of the students in the classroom; labelling students as reserved categories in the classroom; passing derogatory remarks on the student’s caste, social, regional, racial or religious background as a reason for underperformance in the classroom; allotting differential time to a particular student to meet the faculty as compared to other students; not allowing the student to work in the laboratory, even though she is allowed to enter, thereby keeping her idle; earmarking separate seats to a student or group of students; following differential treatment to any student with regard to issue of books, journals or magazines and treating a student or group of students separately in utilizing sports facilities on the basis of their caste, creed, religion or region.¹⁰⁷⁵

The regulations further mandate the higher educational institutions and their constituents to not discriminate in evaluation and re-evaluation by giving lower marks to students belonging to particular categories, by delaying declaration of results and by not giving full information on fellowships, withholding or stopping these, by not segregating such students from other students in hostels, mess, common rooms etc, by not indulging in acts of ragging¹⁰⁷⁶ targeting

¹⁰⁷⁰ Ibid., Reg. 2(g).

¹⁰⁷¹ Ibid., Reg. 2(f).

¹⁰⁷² Ibid., Reg. 3(b).

¹⁰⁷³ Ibid., Reg. 3(2).

¹⁰⁷⁴ Ibid., Reg. 3 (2)(a)(i) – (viii).

¹⁰⁷⁵ Ibid., 2012, Reg. 3 (2)(b)(i) – (viii).

¹⁰⁷⁶ The UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions, 2009, Reg. 3.4 defines Ragging as “Any conduct whether by words spoken or written or by an act which has the effect of teasing,

such students, by doing anything which disrupts the regular activities of such students, by act of financial extortion or forceful expenditure, by not allowing such students to participate in cultural or sports events.¹⁰⁷⁷

It must be noted that the exhaustive list of the ways in which discrimination should be prohibited as mandated by the regulations mirror the existing types, forms and pattern of discrimination that takes place in higher educational institutions. Taking cognizance of this, the UGC has enacted these regulations, meaning, even though the universities actively deny charges of caste discrimination, as seen in this chapter, the UGC is aware of the ground realities and enacting these regulations can be seen as a step towards acknowledging this.

The regulations also mandate higher educational institutions to establish an Equal Opportunity Cell in order to promote equality among all sections of the society. Such a cell is to have an Anti-Discrimination Officer.¹⁰⁷⁸ The regulations further require the higher educational institutions “to educate educational fraternity and public and raise public awareness on the importance of equality and overcoming any form of caste-based discrimination and harassment against students belonging to the marginalised sections including SC/ST students of society.”¹⁰⁷⁹ With regard to punishment in cases of discrimination or harassment, the anti-discrimination officer is the person to initiate the preliminary fact finding inquiry, upon receipt of a complaint. On his/her recommendation, the institution shall take appropriate follow up action, in accordance with laws in force.¹⁰⁸⁰ If a person is aggrieved by the order made by the anti-discrimination officer, he/she may prefer an appeal to the Head of the higher educational institution within a period of 90 days from the date of the order.¹⁰⁸¹

treating or handling with rudeness any other student, indulging in rowdy or undisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student or asking students to do any act or perform something which student will not in the ordinary course and which the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the physique or psyche of a fresher or a junior student.” See ‘UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions, 2009’, University Grants Commission, New Delhi, < <https://www.ugc.ac.in/oldpdf/ragging/minuterag230409.pdf> > accessed 19th May 2022; also see Rajnish Jain, D.O. No. F.1-15/2009 (ARC) pt.III, University Grants Commission, Ministry of Education, Government of India, (23rd October 2020) < https://www.ugc.ac.in/pdfnews/6225980_English.pdf > accessed 20th May 2022.

¹⁰⁷⁷ The UGC (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, Reg. 3 (2)(c)(d)(e).

¹⁰⁷⁸ Ibid., Reg. 3(2)(f).

¹⁰⁷⁹ Ibid., Reg. 3 (2)(i).

¹⁰⁸⁰ Ibid., Reg. 4.

¹⁰⁸¹ Ibid., Reg. 6.

The key issues that arise with the above are firstly that the regulations do not mention in specific terms what punishment can be given. It refers to the laws in force. But there is no legislation enacted by the central government which deals with this. And since education comes in concurrent list¹⁰⁸² of the Constitution, State governments can also enact laws on the same. In the absence of specific legislation, it then becomes the discretion of the authorities to decide the quality and quantum of punishment. And this risks being arbitrary in nature. Another issue is that there are no procedures laid down for the adjudication of the appeals. What is the course of action an aggrieved party has to take, if he/she is not satisfied with the decision of the Head of the institution? Can he/she go for further appeal? If yes, where should he/she approach? The final and most important issue relates to the course of action to be taken on the higher educational institutions and their constituents, if they fail to adhere or violate the contents of these regulations. Will the authorities be criminally prosecuted against? Will the institutional licence be cancelled? The regulations are silent on these fundamental issues.

The UGC also enacted the UGC (Grievance Redressal) Regulations, 2012 (UGC(GR)Reg, 2012) which are applicable to every university established or incorporated under Central or State legislation, and institutions recognised by the UGC and all institutions deemed to be a university under the UGC Act, 1956.¹⁰⁸³ As per the regulations a grievance *inter alia* includes complaints of the aggrieved students when the reservation policy is breached during admissions;¹⁰⁸⁴ when students belonging to SCs, STs, OBCs, woman, minority, or disabled students are allegedly discriminated against;¹⁰⁸⁵ when there is a delay or non-payment of scholarships where such institution is committed;¹⁰⁸⁶ when there is a denial of quality education;¹⁰⁸⁷ when the evaluation is non-transparent or unfair¹⁰⁸⁸ and when there is harassment or victimisation of students including sexual harassment.¹⁰⁸⁹

To redress the grievances of the students, the regulations mandate every university to appoint an Ombudsman.¹⁰⁹⁰ He/she shall hear grievances from a student against a university or

¹⁰⁸² Constitution of India, Schedule 7, List III, Entry 25, where both the Union and State governments can make laws on the items in the list.

¹⁰⁸³ The UGC (Grievance Redressal) Regulations, 2012, Reg. 1(2).

¹⁰⁸⁴ *Ibid.*, Reg. 2(f)(viii).

¹⁰⁸⁵ *Ibid.*, Reg. 2(f)(ix).

¹⁰⁸⁶ *Ibid.*, Reg. 2(f)(x).

¹⁰⁸⁷ *Ibid.*, Reg. 2(xiii).

¹⁰⁸⁸ *Ibid.*, Reg. 2(xiv).

¹⁰⁸⁹ *Ibid.*, Reg. 2(xv).

¹⁰⁹⁰ *Ibid.*, Reg. 4(1)(2).

institution, after the student has availed the remedies available in such institution for grievance redressal. He/she can also hear any grievance of an applicant for admission as a student to such an institution.¹⁰⁹¹ When there is a case of alleged discrimination the regulations empower the Ombudsman to seek assistance of any person belonging to marginalised communities as *amicus curiae* for hearing complaints.¹⁰⁹² The grievance redressal committee or the ombudsman must speedily dispose off the applications, no later than a month after receipt of the grievance. A reasoned order needs to be passed and any relief as desired by the affected party shall be issued on conclusion of proceedings, which the institutions shall comply with. In cases of non-compliance by institutions, it shall be reported to the UGC.¹⁰⁹³

On 1st February 2021, the UGC wrote to all the Central/State/Deemed to be Universities and Grants-in-aid institutions stating that it is continuously monitoring the implementation of reservation policy for SC/ST/OBC/EWS, and persons with disabilities in teaching, non-teaching and admission to all level courses in universities and colleges.¹⁰⁹⁴ It also stated that all centrally funded universities/institutions/colleges must strictly follow the Government of India rules/orders on reservation in their institutions, and that State universities/institutions/colleges must follow the reservation policies of concerned States. Furthermore, it is mandatory to furnish statistical information apropos teaching, non-teaching, and admissions to all level courses and hostel accommodation during 2020-21.¹⁰⁹⁵ It however does not mention the consequences for failure in following the mandates issued in the letter.

Unlike the UGC (PEHEI) Reg, 2012, the UGC (GR) Reg, 2012 have a specific section dealing with consequences of non-compliance. According to this, where there is wilful contravention or repeated failure by an institution in complying with orders of the ombudsman or the grievance redressal committee, the UGC may take actions which include withdrawal of declaration of fitness to receive grants; withhold grant allocation to the institution; informing the general public including potential candidates for admission that such an institution does not possess the minimum standards for grievance redressal. Where it is an institution deemed to be

¹⁰⁹¹ Ibid., Reg. 6(1)(a)(b).

¹⁰⁹² Ibid., Reg. 6(3).

¹⁰⁹³ Ibid., 2012, Reg. 7.

¹⁰⁹⁴ GS Chauhan, Joint Secretary, 'Implementation of Reservation Policy of the Government in Universities, Deemed to be Universities, Colleges and Other Grant-in-aid Institutions and Centres F.1-8/2014(SCT)', University Grants Commission, Ministry of Human Resource Development, Government of India (1st February 2021).

¹⁰⁹⁵ Ibid.

a university, they can recommend the Central government withdraw such a declaration; where it is a State university, they can recommend withdrawal of university status and take such other action as the UGC may deem fit in accordance with the powers conferred by the UGC Act.¹⁰⁹⁶ However, as reflected in the qualitative interviews used in this Chapter, these regulations have not been very effective on the ground, as there is still a prevalence of caste discrimination in institutions of higher learning leading to students dropping out of institutions and even committing suicides.

6.4.1 Scheduled Castes and Scheduled Tribes (SC/ST) Cells

Apart from the above, the UGC provides for the establishment of Special Cells for SCs and STs in universities and institutions deemed to be universities, “to ensure effective implementation of the reservation policy in admission, recruitment, allotment of staff quarters, hostels etc.”¹⁰⁹⁷ The UGC also provides financial assistance to universities for setting up of the Special Cell for SC/STs (SC/ST Cell). The key function of the Cell is to help the said categories integrate with the mainstream of the university community and the removal of difficulties they may be experiencing.¹⁰⁹⁸ Where approved by the affiliated colleges and university, they are also to monitor the working of the remedial coaching schemes. Notably, they are to function as a Grievance Redressal Cell for the grievances of SC/ST students and employees of the university and provide them with necessary assistance in solving their academic and administrative problems respectively. The UGC mandates appointing a liaison officer in the rank of Professor under whom the Cell may be placed, for the effective implementation of policies and programs of the reservation policy. Further a Standing Committee on SC/ST with the Vice-Chancellor as the Chairman is constituted to oversee the implementation of the reservation policy. The standing committee is also entrusted to visit, review, and monitor the work of SC/ST Cells in the universities.¹⁰⁹⁹

These cells are the only institutional mechanisms in the universities which are established to deal with issues which SC/ST students and staff face. In 2007, the UGC noted that up to the end of its IXth Plan profile of Higher Education in 2002, SC/ST Cells have been established in

¹⁰⁹⁶ The UGC (Grievance Redressal) Regulations, 2012, Reg. 9.

¹⁰⁹⁷ Para 10.B2, Xth plan profile of Higher Education in India in Establishment of Special Cells for Scheduled Castes and Scheduled Tribes in Universities And Institutions Deemed to be Universities, < https://www.ugc.ac.in/oldpdf/xplanpdf/special_cell.pdf > accessed 10th May 2022.

¹⁰⁹⁸ Establishment of Special Cells for Scheduled Castes and Scheduled Tribes in Universities And Institutions Deemed to be Universities, < https://www.ugc.ac.in/oldpdf/xplanpdf/special_cell.pdf > accessed 10th May 2022.

¹⁰⁹⁹ Ibid.

109 universities.¹¹⁰⁰ However, as of 2nd May 2022, there are a total of 1043 universities in India.¹¹⁰¹ There is no mention of any consequence of non-establishment of the SC/ST Cells in universities, including whether they get to keep the funding or not which is granted for the establishment of the cells. But more importantly, such institutions lack heavily on institutional mechanisms to protect the rights of the Dalit students and staff, the result of which is often the perpetuation of various kinds of caste discrimination, with little to no mechanisms to help the victims of such discrimination and harassment. This drastically affects the mental health of the Dalit students and staff, as discussed earlier in this chapter.

When a Professor at a Premier Institute was asked about redressal mechanisms, he said:

There is a woman's cell. *There is no SC/ST cell.* There is no redressal cell in this institute. *SC/ST students sometimes suffer in silence.*¹¹⁰²

When asked about anti-discrimination redressal institutional mechanisms, the SC/ST Cell liaison officer of U-7 noted:

There is SC/ST Grievance Redressal Committee which meets once a month. It is for the students, faculty, and administrative staff. They can submit their problems. The committee will discuss the situation. It will also call the person and take their opinions and suggestions. The committee discusses, in the administration level, we try to give notice or circulars to all the departments. If it is anything specific, like harassment, then we form a committee and conduct departmental enquiry. Caste-based harassment, particularly sexual harassment for SC/ST students, for such things we form a committee, including senior professors from different areas and legal experts, retired judges etc. and conduct departmental enquiry.¹¹⁰³

This statement raises some fundamental questions about how a university (U-7) handles crime against Dalits. When questioned about approaching the police, the liaison officer responded that there is a specific committee (dealing with complaints of sexual harassments) in the university which receives a complaint that they will forward to the police. Upon further questioning as to how the committee has any legal basis to adjudicate a case when it does not have any such powers conferred by law, he spoke about the regulations in the university according to which institutional enquiry is the initial stage. If the aggrieved person is unhappy with the decision, then they can take further action. But any such committee does not have the

¹¹⁰⁰ Ibid.

¹¹⁰¹ 'Total Number of Universities in the Country as on 02.05.2022', University Grants Commission, <<https://www.ugc.ac.in/oldpdf/consolidated%20list%20of%20all%20universities.pdf>> accessed 20th May 2022.

¹¹⁰² Interview with F-1, Faculty Member at U-11 (Bangalore, 26th April 2019) Emphasis supplied.

¹¹⁰³ Interview with O-1, SC/ST Cell Officer at U-7 (Mangalore, 23rd April 2019).

power under law to investigate cases such as sexual harassment, molestation, or rape, since they are covered by penal statutes where a complaint needs to be filed at the police station and a FIR needs to be lodged. When questioned about SC/ST women getting justice from such a system, he answered that normally, the committee favors the victims. However, since there is a scope for appeal, the accused will go for appeal and once it is out of the jurisdiction of the university, it will not interfere.¹¹⁰⁴ Ideally when there is a crime of this nature, it sets the penal statutes in motion and the law will take its course as per procedure established by criminal law.

I believe, it is a welcome move to have a committee to investigate allegations of sexual harassment in universities. However, vesting them with adjudicatory powers is not legally tenable. As the above statements by the liaison officer reveal, the system in place is flawed as instead of supporting the victims, it has become an easy way for the accused to get away with the crimes they are accused of, which they otherwise could not, if the law enforcement mechanisms like the police are involved. The purpose of establishing any such committee should be to support the victim in such cases to press charges to get justice as per law.

About the SC/ST Cell, the liaison officer stated:

It is only a mediating agency between the government and students. Whatever facilities the government provides, we directly give them to the students. Facilities include fees reimbursement. Whatever fees paid by the SC/ST students in the initial stage, will be fully reimbursed, once we get grant from the government. Secondly, we must reimburse the hostel expenditure of SC/ST students, including the mess and electricity bills. Then if any money remains, we distribute them laptops for their project work etc. This is for all SC/ST students, undergraduate, postgraduate and PhD students. We also have subplans. Tribal Sub-Plan and Scheduled Caste Sub-Plan. These are for attending seminars, foreign trips, conducting field work, we give the financial support. The Cell functions totally based on the government fund. The university does not pay anything.¹¹⁰⁵

When asked about the students approaching the cell for redressal of their grievances, he answered that the students can approach, but the cell refers it to the redressal committee, mentioned above and stressed that the cell is only a mediating office, contrary to what the UGC has stated in its objectives and functions at the time of its establishment.

¹¹⁰⁴ Ibid.

¹¹⁰⁵ Ibid.

The SC/ST Cell liaison officer of U-9 stated:

B.Tech and M.Tech admissions are centralized. But PhD admissions are based on internal selection. During PhD admission there might be caste discrimination, as not all the seats allotted for PhDs are filled. If there was no discrimination, this would not have been the case. Even though there are applications from SC/ST students, they are not being accepted. I have taken the earlier statistics of the allotted seats (reserved seats) and how many of them are filled up and sent circulars. After that there is an increase in the intake. In our department, we made a circular that those faculty members who have not guided SC/ST students, need to guide. Hence, last year almost all allotted seats in our department filled up.¹¹⁰⁶

He further remarked:

We are conducting special coaching for SC/ST students. We even conducted some mentoring to them if they want. We conduct orientations and before placement, we are planning to organize some skill development programmes. The orientation will be common for all in the first week. If SC/ST students need, we have special coaching for them, in the evening, for each subject 2 hours in a week. We are also conducting English communication classes for SC/ST students.¹¹⁰⁷

The term of the liaison officer is 2 years in U-9. He said since he took over the office, he had not received any complaints of caste discrimination from students. However, he noted an incident from 4-5 years ago, where a faculty member questioned a Dalit student about his background, place he came from, CGPA, among other things, in the classroom. “Because of humiliation, some Dalit students left the institution...If they approach the Cell or some higher authority, we would have found a solution. But they left without approaching us” he said.

A liaison officer of the SC/ST Cell at U-8 explained the good work his cell has been doing:

We give counselling. If there is a dispute between higher caste students and SC/ST students, the special officer will call them and resolve the dispute. The Cell should also promote the students in research, curricular and co-curricular activities, sports etc. We will give funds to them. Our Cell is performing well like enhancement of stipend. Every researcher of U-8 is getting Rs. 22,000 (220 GBP approx.) stipend per month. They will also get medical reimbursement, hostel facilities. University is also providing books, conducting coaching classes for competitive exams. Hostels are free. Tuition fee is also very nominal. Rs. 300 per year. This is how the university has taken care of the SC/ST students. We will sanction Rs. 3-4 lakhs (3,000-4,000 GBP approx.) for visiting abroad for international conferences to research scholars, once a year. Last year one girl got Rs. 3 lakhs from the Cell. We are giving Rs. 10,000 for research scholars for their good research articles on publications. Minimum 10 students got this award, cash

¹¹⁰⁶ Interview with O-1, SC/ST Cell Officer at U-9 (Mangalore, 2nd May 2019).

¹¹⁰⁷ Ibid.

prize. We have also given good laptops with all configuration to all SC/ST research scholars.¹¹⁰⁸

While the above are the opinions of the liaison officers, speaking about the SC/ST Cells, a PhD researcher said:

The Vice-Chancellor has complete authority to appoint or remove the special officer of the Cell. If the VC is concerned about the downtrodden and Dalits, he will appoint those who will genuinely work for them as Cell officer. But when he is not bothered, he will appoint those who are not bothered about Dalits, and systematically the work slows down. Another thing, if for example there are 10 SC members of faculty, we cannot say that all 10 are in favour of the downtrodden. So, they will choose such a person so that to the outside world, it will look like a SC is holding the post of the Cell officer or warden, but he will also do their work.¹¹⁰⁹

A similar opinion is shared by a prominent Dalit rights activist where he highlighted how the university administration does not let the SC/ST cells to function for the purpose for which they are established. He stated that the administration appoints a Dalit officer who is submissive to the university administration. As such, he lacks full authority to take decisions in cases of caste discrimination against SC/STs. Even though the authority is given by law, the administration will not let him implement it.

He will not be in favour of the SC/ST victims. Rather he will be under the control of the castiest (sic) mindsets operating in the universities. Even though there are SC/ST Cells for the protection of SCs/STs, there will not be any opportunity for it to function in the way it is designed. There are many cases of this nature, because *there is a mindset which operates against the Dalits in the system of higher education. There is no mechanism to curb that mindset.*¹¹¹⁰

He noted that many universities fail to establish the SC/ST cells:

We have fought for it and after that in many places, these Cells and Grievance Redressal Cells are established. In every university, attempts are being made to snatch away the powers given to the SC/ST Cells. There is a mechanism. But if you let the mechanism function, it will work according to the rules and there will be possibilities of punishment of the guilty. That's why they place an officer who cannot function in those places... There are instances where a Dalit student suffering approaches the SC/ST Cell but the authorities make the Cell trouble the student instead. So, the very purpose of the Cell established to prevent atrocities has become useless now.¹¹¹¹

¹¹⁰⁸ Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019).

¹¹⁰⁹ Interview with Student-2 of U-7 (Mangalore, 13th April 2019).

¹¹¹⁰ Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019) Emphasis supplied.

¹¹¹¹ Ibid.

Another Professor explained that over time SC/ST cells have been functioning only as cells giving scholarships, receiving applications and distributing laptops. They have failed in addressing issues of caste discrimination. Even though the UGC has directed to set up committees to address caste and gender discrimination, they are not functioning as desired:

For SC/ST standing committee or committee to address caste discrimination, members are drawn mainly from the upper castes. For namesake one-two members who are not able to articulate are included from the SCs. The administration deliberately constitute it in such a way that the members don't take up the issues and don't give any task to the university. They have received complaints on caste discrimination from time to time but not addressed properly. The police also have similar mindset. When complaint is lodged they don't register FIR. They just give endorsement that it does not fall under SC/ST(POA)Act. They wash off their hands. Only if there is some political pressure then they will file the FIR. This is so because of the dominance of upper castes in the police system.¹¹¹²

Another important issue to be noted is that the UGC mandates a Professor to be the liaison officer of the SC/ST Cell. But among the three SC/ST Cell officers interviewed for this thesis, only one was a Professor. The other two were Associate Professor/Reader and Assistant Professor/Lecturer respectively. It might appear to be a procedural irregularity on the part of the universities. But it also raises a larger question of appointment of SC/ST faculty members and their promotion as Professors. A few participants interviewed for this thesis touched upon the caste discrimination that takes place in the appointment of teaching and administrative staff. Whether reservation norms are followed in recruitment and promotion of faculty and staff goes beyond the scope of this thesis. However, more research needs to be conducted on this equally vital issue.

6.5 Concluding remarks

This chapter has discussed the ways and means through which Dalit students are discriminated against in higher educational institutions, and how in many instances it has led to their tragic suicides. This can also be seen as a changing form of practise of Untouchability, the way it operates in post-independent India, which is a democratic Republic, the Constitution of which expressly abolishes untouchability and forbids its practice in any form. The enforcement of any disability arising out of untouchability is an offence punishable in accordance with law.¹¹¹³ This leads to the question of the role of the State in recognising such practises and disabilities

¹¹¹² Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

¹¹¹³ Constitution of India, Article 17.

that arise due to untouchability and enact appropriate penal legislations to give effect to Article 17 of the Constitution. The issue of caste discrimination in higher educational institutions sits at this crucial juncture. The lack of political will in enacting a specific legislation to curb the menace of caste discrimination in institutions of higher education, is glaring, as shown through the narratives incorporated in this chapter from interviews with a range of stakeholders and Dalit students. So far, the only action taken by the government in this regard is in the last 10 years, where it has brought out regulations through the UGC. Analysis in this chapter reveals the apathy of the State towards the plight to the Dalit students in higher educational institutions, where on one hand it appears that there are regulations enacted for the sake of enacting, while on the other, they are enacted in a flawed manner, where there are no effective enforcement mechanisms, or consequences for non-enforcement and non-compliance, which defeats the purpose of such regulations. Consequently, caste thrives in institutions of higher learning, and so does caste discrimination and harassment in all its varied forms.

Chapter 7: Conclusion

Throughout this thesis with the help of analysis of the qualitative interviews conducted on the two core areas, I have established that Untouchability thrives in visible and not so apparent forms in modern industrialised India. The evidence that I have presented in favour of this is both direct and circumstantial. This will be discussed further in this chapter. Hence, this chapter critically concludes (i) that Untouchability operates on a distinctly different plane, parallel to modern society (ii) that the practise of Untouchability has been evolving with the evolving times, being a unique form of violation of human rights (iii) that there is a need for amendments to key domestic and international legal instruments dealing with caste-based discrimination against Dalits, particularly manual scavenging and caste discrimination in institutions of higher learning (iv) that there is a need to strengthen administrative mechanisms and consider the best way forward.

Untouchability manifests itself in different forms in post-independent India. This thesis focused on two specific kinds of caste-based discrimination against Dalits, at seemingly opposite ends of the spectrum. One faced by the most vulnerable sections of Dalits, often very poor and illiterate, the manual scavengers, and the other faced by the literate in the Dalit communities, in the institutions of higher learning. One of the main arguments advanced by people (mostly privileged castes) who deny the presence of caste-based discrimination, particularly untouchability in the 21st century is that it exists only in remote corners in the villages of India, that the literates in the cities do not discriminate based on castes and that untouchability vanishes with Dalits being literate.¹¹¹⁴ This thesis through its qualitative interviews shows that such arguments do not hold merit. Untouchability is in fact present in both urban and rural milieus, that both literate and illiterate members of privileged castes practice it, and both literate and illiterate Dalits experience it. The difference lies in the *modus operandi*. The two areas dealt with in this thesis are both practises of Untouchability arising out of an iniquitous caste

¹¹¹⁴ Interview with O-1, Dean of Student's Welfare at U-10 (Mangalore, 30th May 2019); also see Subodh Ghildiyal, 'Untouchability alive in rural areas: Study', (27th July 2009), The Times of India, < <https://timesofindia.indiatimes.com/india/untouchability-alive-in-rural-areas-study/articleshow/4823917.cms> > accessed 21st May 2022; also see Ritwika Mitra, 'Untouchability Still Prevails in over 640 Tamil Nadu Villages', (30th April 2019), The New Indian Express < <https://www.newindianexpress.com/states/tamil-nadu/2019/apr/30/untouchability-still-prevails-in-over-640-tn-villages-1970871.html> > accessed 21st May 2022; also see Yashica Dutt, 'The IITs have a long history of systematically othering Dalit Students', (17th February 2019), The Print < <https://theprint.in/pageturner/excerpt/the-iits-have-a-long-history-of-systematically-othering-dalit-students/193284/> > accessed 21st May 2022.

system, prevalent in 21st century independent India. India is an emerging global economy and yet a section of her own citizens are discriminated against, to such an extent that they may lose their lives either in the dark toxic sewers gasping for breath, or be driven to commit suicide due to perpetual discrimination or what has also been termed as institutional murders,¹¹¹⁵ in the higher and premier educational institutions.¹¹¹⁶ This dissertation proves the arguments of the privileged castes to be false beyond reasonable doubt, with the help of in-depth qualitative interviews with various stakeholders including manual scavengers and Dalit students. These arguments are a façade by the privileged castes to maintain their hegemony over the political, social, and economic systems of the country. This thesis proves that despite the Constitution, all the progressive legislation, and international conventions guaranteeing equality and non-discrimination, untouchability continues to exist in India, and it walks in parallel to modern India. Ambedkar argues that “caste is a state of mind. It is a disease of mind. The teachings of the Hindu religion are the root cause of this disease.”¹¹¹⁷ The attitude of the privileged castes do not change merely due to the change in the political regime in India. In other words, Untouchability continues to exist and operates on a distinctly different plane, in the modern industrialised India.

The goal of this thesis was to explore the issues of manual scavenging and caste-based discrimination in higher educational institutions in all their facets. And, to consider to what extent the existing domestic laws and international conventions, rules, and principles can be applied to; (1) put an end to the heinous practice of manual scavenging which denies a person even the basic right to life with dignity; and (2) recommend necessary structural changes in the educational institutions to make them more inclusive of all sections of society. And also to create an anti-discriminatory environment through the help of laws and policies which might

¹¹¹⁵ Press Trust of India, ‘Vemula’s Suicide an ‘Institutional Murder’: Satchidanandan’, (23rd January 2016), The Hindu, < <https://www.thehindu.com/news/national/Vemula's-suicide-an-'institutional-murder'-says-poet-Satchidanandan/article60541030.ece> > accessed 21st May 2022; also see Abha Goradia, ‘Fathima Lateef’s Suicide Institutional Murder: IIT-B Students’, (20th November 2019), The Indian Express < <https://indianexpress.com/article/cities/mumbai/fathima-lateefs-suicide-institutional-murder-iit-b-students-6127826/> > accessed 21st May 2022.

¹¹¹⁶ D Karthikeyan, ‘Suicide by Dalit Students in 4 Years’ (5th September 2011), The Hindu, < <https://www.thehindu.com/news/cities/Madurai/suicide-by-dalit-students-in-4-years/article2425965.ece> > accessed 21st May 2022; also see ‘75,000 Student Suicides Between 2007 and 2016 in India!’, (28th November 2019) SabrangIndia < <https://www.sabrangindia.in/article/75000-student-suicides-between-2007-and-2016-india> > accessed 21st May 2022; also see Section 6.3.5 of Chapter 6 at 201.

¹¹¹⁷ BR Ambedkar, ‘What Path to Salvation?’ (Speech delivered by Dr. Ambedkar to the Bombay Presidency Mahar Conference, 31st May 2016, Bombay. Translated from Marathi by Vasant W Moon) < http://www.columbia.edu/itc/mealc/pritchett/00ambedkar/txt_ambedkar_salvation.html > accessed 21st May 2022.

emerge after extensive research. This will enable students from all communities irrespective of caste, religion, colour, gender or place of birth, get an equal opportunity to access quality education. To achieve this, translation and dissemination of my work to people who can use it to make change is needed, because I believe it has a potential to benefit the larger community of participants. Conversations around caste and untouchability make people uneasy even in 21st century. However, these conversations need to happen, in academia and in civil society at large, for they directly affect a section of the society which are a silent mass. Making their voice heard is the need of the hour, which is why the stories of the participants are woven into the narrative of this thesis. This is where Fontes' suggestions of finding various methods to disseminate research findings discussed in Chapter 4 comes into play. Throughout the process of research, I have presented parts of my work in various international conferences to varied audience, setting the discussion on caste in modern India into motion. I was also interviewed for a television programme in the UK in August 2019 and a renowned Indian magazine in May 2022, on issues of caste discrimination in universities. Further I intend to continue my research in this field and work on the impact caste has on Indian diaspora especially in the UK and USA, through a stakeholders' project in the near future.

Manual scavenging as seen in Chapter 5 is the most visible sign of untouchability. However, the kind of discriminatory treatment of Dalit students in higher educational institutions seen in Chapter 6 are often not acknowledged as caste-based discrimination. They are brushed aside as mental health issues faced by the Dalit students.¹¹¹⁸ An analysis of laws in Chapter 3 revealed that the word "Untouchability" cannot be precisely defined. Article 17 of the Indian Constitution is broad enough to encompass all practises that arise as a result of untouchability. But the difficulty arises in proving Untouchability as the cause for such acts, which is why the abettors in cases of suicides of Dalit students often walk free. The need to prove *mens rea* of the accused in these cases has paved the way for continued violations of the human rights of one of the most marginalised and vulnerable sections of Indian society. Hence, this chapter proposes legislative amendments which not only intend to make the laws more stringent but also protect the rights of the Dalits.

Before venturing into the proposed amendments, it is vital to briefly re-look at where India has breached its International obligations. As discussed in Chapter 3, one of the measures

¹¹¹⁸ AIIMS, New Delhi's response to the death of Bal Mukund Bharti, see page 214 of Chapter 6.

recommended by the CERD in effective dispensation of justice to the victims of caste atrocities, is punishing the guilty and providing just and adequate reparations.¹¹¹⁹ However, as seen in the chapters that followed, only minimal efforts have been made by the State, like providing one time compensation, in some cases, to the families of manual scavengers who have lost their lives at work, which in the first place, they should not be engaged in. In terms of punishing the guilty, the 1993 Act on manual scavenging did not see any convictions. Also, there are no records of reparations paid to Dalit students who are victims of caste-based discrimination in higher educational institutions, with the acknowledgment that they have been so victimised. There are other procedural violations of India's obligations in relation to International Conventions it is a signatory to, including failure to submit periodic reports on time, as discussed earlier.

One of the key issues which was highlighted in Chapter 3, is that India repeatedly failing to acknowledge that 'caste' is a prohibited marker against discrimination in international conventions. Consequently, India has maintained that it is not obligated to report on caste-based issues at the international forums relevant to the Conventions. However, the analysis in Chapter 3 showed that 'caste' indeed can be included in all three international Conventions discussed in that chapter. This being the case, the role of the committees and general international community becomes crucial, since violations of rights of Dalits is widely acknowledged in multiple concluding remarks by various human rights treaty bodies. But, there has not been any concrete steps taken in that direction, where real substantial effect can be seen on the lives of the Dalits. The committees indeed recommend a number of measures to eradicate discrimination against Dalits. However, India has not acted on many of them. The lack of mechanisms by the Committees to ensure effective implementation of the rights enshrined in those conventions, is noteworthy. The State Parties are trusted with it. But the case of Dalit atrocities can be seen as glaring examples of the reality where the State is a silent spectator or becomes an accomplice, directly/indirectly in human rights abuses of its populace. As such, there is a clear failure on part of India as they ignore their international obligations. Being aware of this harsh reality, the committees, dealt with in Chapter 3, have not been able to do anything constructive. Whether this can be seen as one of the drawbacks of the international human rights regime is a pertinent question open to debate.

¹¹¹⁹ See Section 3.1.1 of Chapter 3 at 61, 62.

Chapter 2 discussed various kinds of caste atrocities on Dalits taking place to this day. It is extremely disappointing to note that there are no concrete measures taken by the international human rights conventions to protect the rights of the Dalits. One way is to give an inclusive definition to the terms in the Conventions as discussed earlier, which the Committees dealt with in this thesis have given, by including caste as a prohibited marker against discrimination. As HRC noted caste system continues to be a major hurdle to realising the principle of equality to all within society, per Article 26 of the ICCPR, to which India has neither made a reservation nor a declaration.¹¹²⁰ The other is to amend the relevant Articles of the Conventions and insert the word “caste” into it, making it explicitly a prohibited marker against discrimination like race. As briefly discussed in Chapter 3, with the migration of Hindus outside India, the problem of caste and inherited discrimination has acquired a global dimension to it. Dalits living outside India face caste-based discrimination at the hands of the privileged castes.¹¹²¹ Expressly including “caste” as a prohibited maker would make other States which believe in equality and non-discrimination ratify the amendment. This would naturally increase political pressure on India by the international community, and once India ratifies the amendment, it would be extremely difficult for India to evade its obligations under the Conventions. The fact that it has not been done with conviction, reflects the lack of authoritative nature of the international conventions in protecting human rights, especially of the voiceless vulnerable and downtrodden sections.

This thesis also discussed various affirmative action policies implemented for the benefit of the Dalits. The mere designing and implementation of affirmative policies and action can be seen as a powerful ideologically symbolic exercise to project the image of proactive policy for social justice and national integration.¹¹²² There have been multiple attempts over the years, to undermine the legitimacy of affirmative action through court challenges and political actions, so are the efforts to justify them, as seen throughout this thesis. The continuing debate on affirmative action, is a mirror to its complex history. Whatever position one might choose to take, the undeniable fact is that affirmative action has served the interests of many people, particularly the downtrodden, the marginalised, and the disadvantaged communities and

¹¹²⁰ Human Rights Committee, ‘Summary Record (Partial) of the 1606th Meeting’ (1997) CCPR/C/SR.1606, Para 56; also see page 63 of Chapter 3.

¹¹²¹ See pages 77, 78 of Chapter 3.

¹¹²² Ratuva, *Affirmative Action and Transglobal Study* (n 95) 4.

consequently, it will continue to exist as a major developmental strategy in the foreseeable future.¹¹²³

The previous chapters, have noted how the Dalits have been subjected to injustice and humiliation of the cruellest forms for over 2000 years.¹¹²⁴ The Constitution of India has made a remarkable contribution in radically transforming the plight of the Dalits as seen in Chapter 3. However, the Chairman of the Drafting Committee of the Constitution, Ambedkar pointed out in his address to the Constituent Assembly:

...however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot... The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics.¹¹²⁵

These words of Ambedkar continue to be true and relevant even after seven decades of democracy. As seen in Chapter 5, it took 43 years from the adoption of the Constitution of free India, to enact a law prohibiting manual scavenging. For four decades, the Indian Railways, an undertaking of the Government of India, was blatantly violating the human rights of the Dalits by employing them as manual scavengers to clean toilets in the railway cars and railway tracks.¹¹²⁶ This, in addition to thousands of Dalit women who were forced to carry the nightsoil of people for meagre wages, and thousands of Dalit men who were forced to enter the toxic sewers and clean them.¹¹²⁷ The State, judiciary, media and civil society were silent. When the 1993 Act was enacted, it proved to be ineffective and not a single conviction took place under the Act. Twenty years later when the 2013 Act was enacted, broad exceptions were provided

¹¹²³ Ratuva, *Trans-global Affirmative Action* (n 97) 243.

¹¹²⁴ See Chapter 2.

¹¹²⁵ 'Ambedkar's Last Address to the Constituent Assembly' (4th November 1948) in Prasar Bharati, 'BR Ambedkar: Selected Speeches', < https://prasarbharati.gov.in/whatsnew/whatsnew_653363.pdf > accessed 21st May 2022.

¹¹²⁶ 'Kanimozhi slams Govt for employing Manual Scavengers in Railways' (11th July 2019), *The Hindu* < <https://www.thehindu.com/news/national/kanimozhi-slams-govt-for-employing-manual-scavengers-in-railways/article28377410.ece> > accessed 21st May 2022; also see Bhasha Singh, 'Caste: The Ugly Side of the Indian Railways', (13th April 2018), *News Click*, < <https://www.newsclick.in/caste-ugly-side-indian-railways> > accessed 21st May 2022; also see Hency Thacker, 'Manual Scavenging – A Law without Enforcement', (11th March 2022) *The CSR Journal*, < <https://thecsrjournal.in/manual-scavenging-a-law-without-enforcement/> > accessed 21st May 2022.

¹¹²⁷ Prachi Salve, 'Though Government bodies deny it, Manual Scavenging is widespread in India despite a ban', (27th August 2016), *Scroll.in* < <https://scroll.in/article/814976/though-government-bodies-deny-it-manual-scavenging-is-widespread-in-india-despite-a-ban> > accessed 21st May 2022.

with multiple loopholes in the Act, as analysed in chapter 5. This is a reflection of the continued apathy and callous attitude of the State towards the Dalits. The reason for this attitude, is the fact that the State though an institution, is run by people, who are a part of the same caste-feudal Indian society. A majority of them carry the centuries old caste-based prejudices against the Dalits and this is reflected in the public policies they formulate and implement.¹¹²⁸

This thesis noted how India is undergoing a complex transformation and how the mindsets of the people are rooted deeply in the religious tenets. Despite there being the Constitution and other progressive laws, there is a prevalence of caste-based discrimination in the Indian society, untouchability being the ugliest form. Ambedkar rightly noted:

Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.¹¹²⁹

This being the case, the State has failed to evolve concrete mechanisms to consciously cultivate Constitutional morality among Indian citizens.

One of the goals of this thesis was to probe into whether law can affect social change, and if so, to what extent. The analysis of international human rights instruments in Chapter 3 shows the need to enact legal prohibition on caste discrimination at all spheres. Without expressly doing so, the victims of caste discrimination do not get justice. Further, the analysis of Indian Constitutional provisions in that chapter shows how the Constitution legally prohibits caste discrimination by the State, abolishes untouchability and adopts affirmative action policies as a mandate. As a result of these initiatives, a section of the Dalits have been able to access education and public employment. Hence, law has been able to make a quantum shift in their lives. As reflected in the qualitative interviews in Chapter 6, Dalit students have entered higher educational institutions through affirmative action, the doors of which were closed to them in the pre-Constitution era. The Constitution has radically transformed the lives of the marginalised sections by granting them fundamental rights on par with other citizens which were absent before independence. Many legislations and institutional mechanisms have also been established to uplift the downtrodden. However, as the research in this thesis reflects, the enforcement of the law is discriminatory. There is sheer lack of political will in trying to bring the marginalised to the mainstream by rigorous implementation of policies and legislation

¹¹²⁸ Committee on Economic, Social and Cultural Rights, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights: India' (40th Session, 2008) E/C.12/IND/CO/5, Paras 14, 19, 22, 27.

¹¹²⁹ Bharati, BR Ambedkar: Selected Speeches (n 1125).

meant for their betterment. The three wings of the State, legislature, executive and judiciary have largely been apathetic to the problem of untouchability in modern India. It again relates to the fact that India is still a caste-feudal society. That is the reason why this evil practice has been able to penetrate all spheres of socio-political life in India.

It is true that law has affected social change in Indian society, since the traditional forms of practice of untouchability discussed in Chapter 2 is slowly vanishing from the society. While the Dalits were totally enslaved in various forms prior to the Constitution, now there is improvement in their condition. To that extent law has been a vehicle for social transformation. However, as discussed in Chapters 5 and 6, untouchability has been changing forms and law has not been aptly amended to suit those changing forms. The qualitative interviews in Chapter 5 show how law has not yet penetrated to the most vulnerable sections of the society, the manual scavengers. Their lives by and large remain untouched and unchanged by the law. It is also very important to note that caste is a state of mind. There have not been any concrete efforts by the State to erase the feeling of caste discrimination by the general public, be it by creating awareness or including it in the curriculum right from schools. The feeling of birth based discrimination still exists among the 'civil' society. That is the reason why people employ manual scavengers to clean their nightsoil. Further, as discussed throughout this thesis, the major problem is the implementation of the legislation to its letter and spirit. Since that is absent, the problem of untouchability continues to exist. The key is to enact and carefully implement progressive legislation aimed at ensuring right to life with dignity to all.

The Indian Constitution outlawed caste discrimination by the State as discussed in Chapter 3, under Articles 15 and 16 and abolished Untouchability under Article 17, for which legislation need to be enacted. The legal prohibition against caste discrimination by the State is already in place but it needs to be extended to caste discrimination by individuals in all spheres, both public and private. However, there exists subtle forms of caste discrimination against the Dalits which are not mentioned expressly in the SC/ST(POA) Act or PCR Act. They are a result of the changing patterns of untouchability which the law fails to acknowledge. One such practice is the caste discrimination faced by the Dalit students in higher educational institutions in India which this thesis critically analysed in Chapter 6. As discussions in that Chapter reveal, the government acknowledged the presence of caste discrimination in higher educational institutions and enacted regulations to curb them. However, there is no specific legislation enacted to deal with these issues, which is why this thesis recommends certain legal and

administrative measures which can be adopted to legally abolish caste discrimination in institutions of higher learning and protect the rights of the Dalits.

In light of the above discussion, the following are some of the immediate measures which can be adopted to end caste discrimination against Dalits in all spheres.

7.1 Need for Amendments to Legislation

The main penal legislation protecting the Dalits against atrocities is the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. It was initially enacted in 1989 following a huge protest by the Dalit rights groups, against a brutal atrocity on Dalits in Belgaon, Karnataka, where people belonging to privileged castes forced the Dalits to eat human excreta in 1987. The SC/ST(POA) Act was amended a few times in the subsequent years. The Act gives an exhaustive list of the offences committed on SC/STs that are punishable with imprisonment for a term which shall not be less than 6 months but may extend to death.¹¹³⁰ The lengthy list of offences in the Act, gives a glimpse to some of the atrocities committed on Dalits even after 70 years of democracy, ranging from non-SC/STs forcing SC/STs to eat/drink inedible and obnoxious substances, forcible removal of clothes, forcible shaving the hair from the head, removing moustaches, wrongful occupation/cultivation of land allotted to SC/STs, making SC/STs bonded labourers, compelling SC/STs to dispose or carry human or animal carcasses or dig graves, performing/promoting devadasi system, obstructing or intimidating SC/STs in taking part and performing various political activities like exercising their vote or preforming public duties under the Constitution, instituting false, malicious or vexatious legal proceedings against SC/STs etc.¹¹³¹

With regard to the two key areas of this thesis, the Act also states “whoever, not being a member of SC/ST, makes a member of SC/ST do manual scavenging or employs or permits the employment of such person for such purpose”¹¹³² and “obstructs or prevents a member of SC/ST in any manner with regard to entering any educational institution...”¹¹³³ should be punished. It must be noted that the Act fails to mention anything about the caste-based discrimination faced by SC/ST students after they enter educational institutions. This is one of

¹¹³⁰ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec. 3 < https://legislative.gov.in/sites/default/files/A1989-33_2.pdf > accessed 21st May 2022.

¹¹³¹ Ibid., Sec. 3(1).

¹¹³² Ibid., Sec. 3(1)(j).

¹¹³³ Ibid., Sec. 3(1)(za)(D).

the reasons why such discrimination goes unpunished. Practises of untouchability are evolving with the evolving times. It is understandable that all kinds of discrimination cannot be listed in legislation. But it is equally vital to acknowledge the changing patterns of atrocities, protect the Dalits, and punish the guilty. I recommend making Sec. 3 which deals with punishments for offences atrocities an inclusive one. This is done by redefining the term “atrocities”.

Sec. 2(1)(a) currently defines “atrocities” as “an offence punishable under Sec. 3.”¹¹³⁴ Due to the lack of specific definition of atrocities, I hereby propose amending it in the following manner:

“atrocities” means an offence punishable under Sec. 3 and also includes whoever not being a member(s) of Scheduled Castes or Scheduled Tribes by his action(s) or inaction(s) or utterance(s) or gesture(s) or posture(s) or by any other means discriminates or creates or imposes or makes a way for any type of disability including physical, mental, psychological, economic, social, educational, cultural, political and administrative, is an offence under this Act, though it is not explicitly mentioned under Sec. 3.

This is an all-inclusive definition and covers all kinds of caste-based discrimination faced by Dalits including that in higher educational institutions. This also will stand the test of the time as it recognises the changing patterns of untouchability and the ways in which it can manifest itself.

The Act also deals with punishment for wilful neglect of duties required to be performed by a public servant under this Act and Rules. The punishment shall be for a term not less than 6 months, extendable to one year. Such charges shall only be booked on recommendation of an administrative enquiry.¹¹³⁵ Two major flaws with this section are, first, it exempts a public servant belonging to SC/ST though he wilfully neglects his duty under the Act, and second, it mandates to prove the wilful negligence of the public servant. This points to *mens rea*. It would be more appropriate if the term “wilfully” is removed from the section and the exceptions accorded to SC/ST public servants. By doing this, it removes the exceptions provided for SC/ST public servants, so if they neglect their duties under this Act, they also will be liable to be punished on par with non-SC/ST public servants. And more importantly, by removing the term “wilfully”, it would be sufficient to prove that there is negligence on part of the public servant. This erases the shield which the public servants might take that they did not wilfully

¹¹³⁴ Ibid., Sec. 2(1)(a).

¹¹³⁵ Ibid., Sec. 4.

neglect their duties under the Act. Therefore, so far as there is negligence under the Act, the public servants are liable to be punished.

One of the key issues with this legislation is the unnecessary emphasis on the intention of the accused. For example, “whoever, not being a member of a SC/ST, with intent to cause injury, insult or annoyance to any member of a SC/ST, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood,”¹¹³⁶ or “intentionally insults or intimidates with intent to humiliate a member of a SC/ST in any place within public view”,¹¹³⁷ shall be punishable with imprisonment not less than six months but may be extended to five years and with a fine.¹¹³⁸ It is very obvious that when such offences are committed, there is an intention. However, the drafters of the legislation have put the onus on the victim to prove the intent of the accused. We can also get a glimpse into the minds of the ruling dispensation when they make such insults and humiliations punishable only when they takes place within public view. This totally excludes the countless types of humiliations faced by the Dalits in private, including that between a teacher and a student in a higher educational institution. When a penal law is designed to protect the most vulnerable sections of the population from atrocities, the applicability should be made with ease and no ambiguity. The fact is that when there is an atrocity on SC/ST, this Act gets invoked. This itself is sufficient to presume the caste-factor and the intent that goes with it. I propose amending the relevant sections to remove the aspects of intent and public view, making the Act applicable in all spheres of life. Sec. 3(1)(c) will then read:

causes injury, insult or annoyance to any member of a SC/ST, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;
and Sec. 3(1)(r) will read:

insults or intimidates with intent to humiliate a member of a SC/ST in any place.

This will go a long way in curbing the atrocities against Dalits in private spheres as well.

Sec. 8 of the Act deals with presumption as to offences, “where in a prosecution for an offence, if it is proved” *inter alia* that “the accused was having personal knowledge of the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the

¹¹³⁶ Ibid., Sec. 3(1)(c).

¹¹³⁷ Ibid., Sec. 3(1)(r).

¹¹³⁸ Ibid., Sec. 3(1).

victim, unless the contrary is proved.”¹¹³⁹ The problem with this section comes in when it is applied in the case of higher educational institutions. The arguments from the members of faculty who discriminate against SC/ST students, most often will be that they are unaware of the caste identities of the students. This is highly debatable and can be rebutted since the administration will have the details of students, including that of caste. But proving that will be an uphill task, because again it relates back to intention to discriminate. The burden of proof lies on the victim. I propose shifting the burden of proof from the victim to the accused when it comes to atrocities on SC/STs. For this, reference may be made to Sec. 12 of the PCR Act, discussed briefly in Chapters 3 and 5. It states:

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste, the court shall presume, unless the contrary is proved, that such act was committed on the ground of “untouchability”.¹¹⁴⁰

This section of the PCR Act is often overlooked and least invoked when it comes to atrocities on SC/STs. The Act is still in force and not repealed yet. I propose reintroducing this section in the SC/ST (POA) Act with necessary amendments to incorporate offences in the SC/ST (POA) Act. This shifts the burden of proof on to the accused to prove his innocence. The accused can willingly opt for lie detector test or narco analysis test¹¹⁴¹ to prove their innocence. A law which does not take into account the societal reality, becomes a tool for oppression in the hands of the privileged. Hence, this amendment is proposed especially taking into account the unequal balance of power in a society based on graded inequality.

It is also vital to identify procedural loopholes in the laws when it comes to crimes against Dalits. When there is a cognizable offence, the first step is to register a FIR in the police station under Sec. 154 of the Code of Criminal Procedure (CrPC). But when it comes to the crimes against Dalits, many times there is a delay in registration of FIR and in many cases the police refuse to register it. This has also been noted by CERD in its concluding observations discussed in Chapter 3.¹¹⁴² This is one of the main reasons why several cases under the SC/ST(POA) Act result in acquittals. I propose developing institutional mechanisms using technology like a toll-free number, so that information can be passed on to the police station/department. As of the

¹¹³⁹ Ibid., Sec. 8(c).

¹¹⁴⁰ The Protection of Civil Rights Act, 1955, Sec. 12.

¹¹⁴¹ Niranjana Rajalakshmi, ‘What is a Narcoanalysis Test?’ (8th October 2020), Science, The Wire < <https://science.thewire.in/the-sciences/narcoanalysis-test-sodium-thiopental-hathras-case-gaba-anaesthesia-ethics/> > accessed 21st May 2022.

¹¹⁴² Committee on the Elimination of Racial Discrimination, ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination: India’ (70th Session, 2007) CERD/C/IND/CO/19, Paras 14 and 26.

date of writing (May 2022) there is a toll-free number 100, which connects to the police control room and every district has one. But it is not treated as FIR. Hence, technology must be developed and used so that it can be used to file a complaint under the CrPC, including voice notes, because an oral complaint is also recognised. A complaint so communicated orally, must be reduced to writing by the police as per Sec.154 CrPC. Using technology will make registration of a complaint automatic. Necessary amendments need to be made to the Indian Evidence Act, 1872 to give evidentiary value to it. By doing this, as soon as an incident takes place, it can be reported to the Police. If the police do not act on it, with a reasonable action, within a reasonable time as per the law, it should attract Sec. 4, SC/ST(POA)Act, discussed above. The burden then shifts onto the police that a crime has been reported and they are bound to carry on their usual procedure as per the law. Necessary amendments need to be made to the SC/ST(POA)Act to incorporate such a section, which in turn should be treated as FIR on par with Sec. 154 CrPC.

It must be noted that the Supreme Court in a 2011 case, discussing various kinds of caste-based discrimination faced by the Dalits, noted that caste system is a curse on the country and highlighted the role of the administration, stating that despite having the knowledge of prevalence of such discrimination, if the administration and police officers do not launch criminal proceedings in their jurisdiction, they will be accountable and departmentally proceeded against.¹¹⁴³ The court also directed the State Government to:

immediately suspend the District Magistrate/Collector and SSP/SPs (Superintendent of Police) of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.¹¹⁴⁴

The Court also directed that the judgment copy should be sent to all relevant government offices/departments for strict compliance and also to all High Courts to be circulated to the Judges.¹¹⁴⁵

¹¹⁴³ *Armugam Servai v. State of Tamil Nadu*, AIR 2011 SC 1859, Paras 14, 17.

¹¹⁴⁴ *Ibid.*, Paras 17, 20.

¹¹⁴⁵ *Ibid.*, Paras 19, 22.

7.2 Reforms in the Administrative Structure

A detailed discussion was made in Chapter 5 on various loopholes in the legislation relating to manual scavenging. As a first step, it is vital that these loopholes be rectified through necessary amendments. It is even more crucial to totally ban the practice of manual scavenging in all forms, with no exceptions whatsoever. It is a practice which degrades human dignity and should rightfully be seen so. Laws have to be strictly implemented and where there is a failure, as discussed above, SC/ST(POA)Act must be invoked on the authorities for negligence in performing their duties. There is a need for the State, media, judiciary, and civil society to consciously make efforts to bring manual scavengers into mainstream by implementing the rehabilitation schemes in their letter and spirit. Further, as discussed in Chapter 3, Constitutional values and human rights education must be imparted to children within primary schools. Mandatory training and sensitisation of public servants and judges to the realities of Indian society, will go a long way in curbing the evils of untouchability as it will improve the quality of the process of law enforcement, be it by registering more FIRs when there is a crime and general awareness of Indian society where inherited caste-based discrimination is an accepted value.

To address caste discrimination in higher educational institutions a multi-fold approach needs to be taken. A few immediate steps would be as follows:

First, to enact special penal legislation to address every aspect of caste discrimination in higher educational institutions. As shown in chapter 6, it is important to understand the structural aspect of caste discrimination in higher educational institutions. A Professor and Human Rights activist noted:

We might have passed progressive laws because of the Dalit struggles, Dalit consciousness and the Ambedkarite (sic) movement. But the enforcement of law is absolutely discriminatory. We have seen the SC/ST(POA)Act hardly enforced. The law may be in favor of the Dalits, but the structure cancels it out. *The force of the law is cancelled out by the cultural structure and the social structure of the society and the attitudes.* I think we must see *higher education as a product of the larger socio-economic structure.* Fascist politics has now taken over today, and I would think that this is something counter to the whole Dalit consciousness. Where this society has a breakthrough likely to become equal and much more participative, *I think at that historical juncture, for different reasons today we have the Brahmanical ideology back in power, in political power, in the proper State power. Now this struggle is of a much higher kind.*¹¹⁴⁶

¹¹⁴⁶ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019) Emphasis supplied.

Due to the complex nature of structural discrimination involved in higher education, though enacting penal laws is vital, they may fall short in some instances. The Professor continued:

In universities, it is completely internal evaluation. Once law is passed, there are some areas where enforcement will be extremely difficult. Law will say don't discriminate. Law always implies punishment when there is failure to observe it. *Law cannot be proactive. Law cannot inspire. It can only intimidate. It can generate fear but cannot generate values. I don't think any law will give a new value system. Law is a negative process...* It might very well happen that professors in the universities would refuse to guide/supervise Dalit PhD scholars due to a particular law being there for their protection. The professors will wash off their hands. Law cannot say you must guide. Even assuming so, guidance depends upon my commitment. Guidance does not depend upon the law. The student cannot say that the guide has not looked at his chapter, cannot go to court. Then the guide will say that the quality of the chapter is very poor. The court cannot say if the quality is poor improve the quality, then the guide will say revise the chapter. *I think there are certain grey areas where law cannot enter.* It will be difficult for law to enter. *But still I think we must explore the possibilities.* If we have a law that in higher education if the teachers discriminate, it will be followed by some punishment, some action, may be in the absence of any legal recourse, having some legal system or some law in place may help.¹¹⁴⁷

Another Professor explained the need for sensitisation:

Whatever measures you suggest, they have the ability to undermine that effort. Whatever new institutional mechanism you come up with, after some time it becomes redundant, old or useless. We have to design programmes to change the mindsets of the upper castes. Government has not been doing such things. We need to sensitise the administrators first. Some structured programmes are necessary. Caste discrimination is increasing in society mainly because of the educated upper castes, because there is concerted effort by Dalits who are consistently fighting against this. The upper castes have become intolerant to this. They don't have any remorse/regrets that this system has denied SCs education and rights for centuries. Lack of awareness of social history is also a problem. Even if they are aware, their lack of willingness to accept.¹¹⁴⁸

Second, restricting the monopoly of the privileged castes in higher educational institutions by strictly following reservation norms in the recruitment of faculty members and administrative staff, thereby making their social composition diverse. Measures to provide a rich curriculum, sensitisation on caste and gender issues, new orientation programmes, and improving diversity and plurality must be taken by the administration. A Professor interviewed for this thesis also

¹¹⁴⁷ Ibid Emphasis supplied.

¹¹⁴⁸ Interview with F-1, Faculty Member at U-7 (Mangalore, 23rd April 2019).

suggested that institutions which help Dalit students must be rewarded with incentives, so that the institutions are recognised.¹¹⁴⁹ The National Assessment and Accreditation Council (NAAC) which accredits and assess higher educational institutions need to evolve new criteria which include checking the number of Dalit students studying in an institution, their educational progress, placements after completion etc., so that universities can be assessed on those criteria as well, for being inclusive and bringing social justice. This has to be built into the structure by amending laws so that it leads to positive change.¹¹⁵⁰

Third, Dalit teachers should become the agents of change. A study of sexual harassment and Dalit girls in university, quoted in Chapter 6, revealed that the presence of male Dalit faculty members who are ideologically inclined and trained towards the welfare of the marginalised communities, and who did not fail to assert their presence in a visible manner in everyday social interactions in the university, boosted the confidence of Dalit girls studying there. They were seen as supporters and sympathisers who would advise Dalit girls to be tactical within the environment dominated by the privileged castes.¹¹⁵¹ Many such instances are narrated by a Professors and activists interviewed for this thesis. Further a Professor stated:

In this university there are more SC/ST faculties. More than the percentage of reservation. That is the reason why SC/ST students are taken care of. If anything goes wrong, we will take care of it. We will start agitating. They (upper castes) are very scared of us.¹¹⁵²

The Dalit students would feel a sense of belonging with the Dalit faculty members who assert and fight for their rights. This would also make the privileged castes in the university spaces wary and more cautious, which in turn acts as a check on the caste discrimination practised by them.

And finally, community participation in institutional mechanisms. A Dalit rights activist suggested that if eminent Dalit activists who work for the community are involved in institutional mechanisms such as SC/ST cells, things will improve, thereby preventing discrimination, atrocities and harassment in universities.¹¹⁵³ This is important since as seen in chapter 6, there are no checks on the institutional mechanisms, and consequently they fail to achieve the desired results. Having members of the community who understand the problems

¹¹⁴⁹ Interview with CS-1 HEI, Civil Society Activist (Bangalore, 29th April 2019).

¹¹⁵⁰ Ibid.

¹¹⁵¹ Vandana, *Dalit Girls and Sexual Harassment* (n 876) 45, 46.

¹¹⁵² Interview with O-1, SC/ST Cell Officer at U-8 (Bangalore, 30th April 2019).

¹¹⁵³ Interview with CS-2 HEI, Civil Society Activist (Bangalore, 5th June 2019).

faced by Dalits in universities, would not only help in resolving them in a better manner, but also act as a check on the mechanism since universities are public institutions.

7.3 Need of the Hour

This thesis is woven around the ideals of equality and non-discrimination. The Indian Constitution relies heavily on these concepts in trying to make a quantum shift in the thinking of the traditional caste-feudal Indian society. However, making India a truly participatory democracy, where the rule of law prevails and the idea of one man, one value reigns supreme is not a reality yet. It must be noted that the privileged castes have a lot to lose when the existing power structure collapses and the vertical plane becomes horizontal. Disturbing the caste order is detrimental to their interests of maintaining their hegemony over the system. To maintain the status quo, they have evolved ways and means and continue the suppression and oppression of the marginalised communities. Unless and until we democratise public institutions, with inclusive policies ensuring social justice and equity at all levels of governance with transparency and accountability as its core values, these kinds of caste atrocities on Dalits will continue and are bound to take new forms in the coming years.

Ambedkar emphasised the need to have social democracy at the base of political democracy, without which it will not stand the test of time. Social democracy is a means of life which recognises liberty, equality, and fraternity as principles of life.¹¹⁵⁴ In his last address to the Constituent Assembly, he warned:

On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man, one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.¹¹⁵⁵

¹¹⁵⁴ Bharati, BR Ambedkar: Selected Speeches (n 1125) 44.

¹¹⁵⁵ Ibid 45.

In conclusion, this thesis has demonstrated how even after 70 years of democracy, caste remains an extremely crucial factor in deciding every aspect of the Indian life, with discrimination woven to every facet of it. Caste-based discrimination manifests in both overt and subtle tacit forms, depending on the contexts as seen through the two key areas in this thesis. It has the ability to hide in plain sight, which is also one of the reasons why the reality of Indian society is not known to the general international community, unless acknowledged by international bodies and media. As stated throughout this thesis, caste is a state of mind, resulting from centuries of conditioning believing in the values of graded inequality. It is exceedingly vital that the caste hierarchy must collapse for India to be a true democracy, where people irrespective of race, religion, caste, sex, or place of birth can endeavour to live a dignified life on equal footing with everyone. The Constitution and various international conventions have shown the path to remove these barriers.¹¹⁵⁶ However, there have been massive failures in the implementation as seen throughout this thesis. The key is to have political will to make the change and a populace which firmly believes and asserts constitutional values and hold those at the helms of affairs accountable.

¹¹⁵⁶ Constitution of India, Article 13; also see Chapter 3 for International Conventions.

ANNEXURE – I

Participant information sheet for Students

(For case study on Caste-based Discrimination in Higher Educational Institutions)

I am Preethi Lolaksha Nagaveni, a native of Mangalore, coastal Karnataka, pursuing Ph.D in Law at Lancaster University, UK. The title of my thesis is ‘Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-Discrimination in Higher Educational Institutions in India’.

Please take time to read the following information carefully before you decide whether or not you wish to take part in the study.

The Study:

Indian Constitution declares that ‘Untouchability’ is abolished and its practice is a punishable offence. But a section of people in India is engaged in ‘Manual Scavenging’, a banned occupation. Meanwhile a few students studying in various higher and premier educational institutions in India, have committed suicides alleging that they were the victims of caste-based discrimination in their institutions. They are all known as ‘Untouchables’ and legally recognized as ‘people belonging to Scheduled Castes’, the underprivileged social groups. The study will examine [1] whether the practice of untouchability and caste-based discrimination against these specific groups of people are still prevalent and violate their Human Rights and [2] what are the responses of the State and the Civil Society to the actual prevailing condition of these vulnerable social groups in India. This will be done through a Study in India with an active participation of ‘victims’ and other stakeholders.

Request for Participation:

I would like to invite you to take part in my research on caste-based discrimination in higher educational institutions in India, as I believe your experience as a Dalit (Scheduled Caste) /Adivasi (Scheduled Tribe) student studying in higher educational institution, will help immensely in enriching my knowledge on this subject and will help in exploring remedial measures to the problems, if any.

I will be ever grateful to you, if you can share your valuable experiences and information on the said subject with me when we meet at your convenient place and time. Approximately one-

hour interaction between us will certainly enrich our knowledge on the subject. In this one hour, I will give you a questionnaire to fill. If you consent, I will take your interview (ask a few questions), the audio of which will be recorded in my iPhone/encrypted Dictaphone.

The information which you provide is strictly confidential and will only be used for academic purposes. Full anonymity is ensured. Your data will be stored in encrypted files (that is no one other than me, the researcher will be able to access them) and on password-protected computers and also on One Drive (standard academic practice at Lancaster University). I will store hard copies of any data securely in locked cabinets in my office/home in Lancaster University. I will keep data that can identify you separately from non-personal information (e.g. your views on a specific topic). In accordance with the University guidelines, I will keep the data securely for a minimum of ten years.

In spite of this if you feel that you should withdraw from the study, you are free to do that. But kindly let me know your decision within 15 days from the date of our interaction, your information will be destroyed.

If you have any further question you are requested to contact me at email: p.lolakshanagaveni@lancaster.ac.uk

I do hope and believe that you will be part of my research work and contribute to enhance the quality of the study.

[Preethi Lolaksha Nagaveni]

BA. LLB (Hons.) (NLSIU, Blore); LLM (U.K); NET; AIBE

Thank you for considering your participation in this project.

ANNEXURE – II

Consent Form for Students for Interviews

Project Title: Untouchability, a Unique Form of Violation of Human Rights. A study of Practice of Untouchability in the form of Manual Scavenging and Caste-discrimination in Higher Educational Institutions in India

Name of Researcher: Preethi Lolaksha Nagaveni

Email: p.lolakshanagaveni@lancaster.ac.uk

Please tick each box

1. I confirm that I have read and understand the information sheet for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily	<input type="checkbox"/>
2. I understand that my participation is voluntary and that I am free to withdraw at any time during my participation in this study and within 15 days after I took part in the study, without giving any reason. If I withdraw within 15 days of taking part in the study my data will be removed. If I am involved in focus groups and then withdraw my data will remain part of the study.	<input type="checkbox"/>
3. I understand that any information given by me may be used in future reports, academic articles, publications or presentations by the researcher, but my personal information will not be included and I will not be identifiable. Fully anonymised data will be stored securely at the Lancaster University Data Archive, the access to which is restricted to others, i.e., access only on request in writing to the researcher.	<input type="checkbox"/>
4. I understand that my name/my organisation's name will not appear in any reports, articles or presentation without my consent.	<input type="checkbox"/>
5. I understand that any interviews or focus groups will be audio-recorded and transcribed and that data will be protected on encrypted devices and kept secure.	<input type="checkbox"/>
6. I understand that data will be kept according to University guidelines for a minimum of 10 years after the end of the study.	<input type="checkbox"/>
7. I agree to take part in the above study.	<input type="checkbox"/>

Name of Participant

Date

Signature

I confirm that the contents of the consent form has been explained to the participant in a language understood by him/her (Kannada/Tulu/Hindi) and the participant was given an opportunity to ask questions about the study, and all the questions asked by the participant have been answered correctly and to the best of my ability. I confirm that the individual has not been coerced into giving consent, and the consent has been given freely and voluntarily.

Signature of Researcher /person taking the consent_____ **Date**
_____ Day/month/year

[One copy of this form will be given to the participant and the original kept in the files of the researcher at Lancaster University]

ANNEXURE-III

KEY / PROMPT QUESTIONS FOR MANUAL SCAVENGERS

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail first hand information from Manual Scavengers on their life, livelihood and other related issues and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by the Manual Scavengers will strictly be used only for academic purposes. Their identity and personal information will not be disclosed to the general public and will not be used for any other purpose.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

Part-I

1. Name:

2. Sex :

3. Date of Birth/Age:

4. Place of Birth:

(a) Taluk:

(b) District:

(c) State:

5. Education:

6. Marital Status: Single/Married

7. Name of the Husband or Wife and age:
8. Total no. of Children:
 - (a) Female & age:
 - (b) Male & age:
9. Present status of your children:
 - (a) Students [give details]:
 - (b) If students, give details of how they are being treated by other students, teachers and staff:
 - (c) Working (employed/self-employed) [give details]:
 - (d) whether any of your son/daughter engaged in manual scavenging? Yes No

If yes, give details.
10. Name of the mother & age:
11. Occupation of mother:
12. Name of the father & age:
13. Occupation of father:
14. Do you own house? Yes No
15. If yes, the extent (in sq ft) and location of the house:
16. Do you own land? Yes No
17. If yes, extent and nature of the land you own: House site/agricultural land/dry land/other
18. Place of work:
19. The distance between your place of residence and place of work:
20. Have you migrated from your native place? Yes No
21. If yes, give reasons:
22. Your Occupation:
23. Manual Scavenging: Full time / part time occupation / whenever called for:
24. How was your experience when you first got into manual scavenging? Please explain.

25. How has been your experience as a manual scavenger?
26. What is your Income? Monthly/daily/other:
27. How is the attitude of the general public towards you? Please give details.
28. How are your experiences at local temples/churches/mosques/hotels/shops/schools/public offices? Please give details.
29. Are you doing manual scavenging: willingly/without any other option/by force/as a caste occupation?
30. Did you ever file complaint with the police/any authority on any atrocity committed against you/members of your family?
- If yes, give details.
- If no, why? Please give details.

Part-II

[General Awareness]

1. Name of your caste and category:
2. Name of your religion:
3. How do the people commonly identify you?
 - (a) with your caste?
 - (b) with your religion?
 - (c) with your occupation?
 - (d) Don't Know
4. Names of the 'other castes' that exist in your area/locality:
 - (a) Castes, Lower than your caste:
 - (b) Castes, Upper than your caste:
 - (c) Don't Know

5. Are you aware of the rights/protection/facilities/rehabilitation scheme being provided to manual scavengers?
- (a) Yes / No / Don't know
- (b) If yes, give details:
6. Are you aware of the rights of Scheduled Castes (Dalits) /Scheduled Tribes?
- (a) Yes / No / Don't Know
- (b) If yes, Give details:
8. Have you ever availed any of such facilities?
- (a) Yes / No / Don't know
- (b) If yes, give details:
9. Have you heard about Karnataka State Commission for Safai Karmacharis?
- (a) Yes / No / Don't Know
- (b) If yes, did you ever go to the Commission? Do you know what do they do?
- [give details]
10. Have you heard about National Commission for Safai Karmacharies?
- (a) Yes / No / Don't Know
- (b) If yes, did you ever go to the Commission?
- (c) Do you know what do they do?
- Please give details.
11. Are you aware of SCs & STs (Prevention of Atrocities) Act which considers manual scavenging as an atrocity and a cognizable offence?
- (a) Yes / No / Don't Know
- (b) If yes, did you ever go to the Police Station to file complaint? [give details]
12. What are the fundamental problems manual scavengers are facing today?
13. What are the fundamental problems female manual scavengers are facing today?

14. Are you aware of Directorate of Civil Rights Enforcement?
- (a) Yes No Don't Know
- (b) If yes, give details whether you have approached them at any time?
15. Are you aware of department of Social Welfare, Karnataka and department of Social Justice and Empowerment, Government of India?
- (a). Yes No Don't Know
- (b). If yes, give details whether you have approached them at any time?
16. Whether any Dalit Organisation/NGO/any activist/any government agency supported you, when you were fighting against any injustice or atrocity?
- (a). Yes No Don't Know
- (b). If yes, give details of their support?
17. Whether you are willing to quit manual scavenging and engage in other employment/job?
- (a). Yes No
- (b). If yes, what are your requirements?
18. Is there any further comment, thoughts or experiences that you would like to share?

ANNEXURE-IV

KEY / PROMPT QUESTIONS FOR THE CIVIL SOCIETY ACTIVISTS

ON MANUAL SCAVENGING

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the first hand response from the Representatives of the Civil Society on Manual Scavenging and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for academic purposes.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Name of your organisation:
2. Your name & designation:
3. Your Address, Mobile No & email id:
4. Sex & Age: Female/Male/Other:
5. Your caste & category:
6. When did your organisation come into existence and what are its main objectives?

Please explain.

On Manual Scavenging:

7. What is your understanding of manual scavenging? Please explain.
8. Does it exist in Karnataka/India?: Yes/No/Don't know.

If yes, how do you look at manual scavengers? Please explain.

How many families and persons are engaged in manual scavenging today? Please give details.

What are the various forms of manual scavenging being done in Karnataka/India? Please explain.

9. Is there any legislations prohibiting manual scavenging in force in Karnataka/India?:

Yes/No/Don't know.

If yes, give details.

If no, please explain.

10. Is there any institutional mechanism put in place by the Government to ensure zero tolerance against manual scavenging in Karnataka/India? : Yes/No/Don't know.

If yes, can you provide details of such mechanism?

If no, why?

11. Do you know of any loopholes in the existing laws/Government Orders/Circulars/ Guidelines issued by Governments and other appropriate authorities on manual scavenging which could be misused by individuals and institutions?

Yes/No/Don't know

Please explain your response.

12. Do you know of any examples where these loopholes are being misused? Please give details below.

13. Can you suggest any remedial measures, including institutional and legal measures, as to how manual scavenging can be eliminated in Karnataka/India?

14. Are you aware of the Manual Scavengers' Rehabilitation Scheme? Yes/No/Don't know

If yes, what is your comment on the Scheme?

15. What is the role played by your organisation in protecting the rights of the manual scavengers?

16. If there any further comments, thoughts or experiences you would like to share?

ANNEXURE-V

KEY / PROMPT QUESTIONS FOR REPRESENTATIVES OF THE STATE

ON MANUAL SCAVENGING

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the first hand information from the Representatives of the State on Manual Scavenging in India and other related issues and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for academic purposes. Any personal information will not be disclosed to the general public and will not be used for any other purpose.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Your name & designation:
2. Your Address, Mobile No & email id:
3. Sex & Age:
Female/Male/Other:
4. Your caste & category:
5. Does Manual Scavenging exist in Karnataka/India? : Yes/No/Don't know.

If yes, how many families and persons are engaged in manual scavenging today?

And what are the various forms of manual scavenging being done in Karnataka/India?

Please explain.

6. Are there any legislations prohibiting manual scavenging in force in Karnataka/India?:
Yes/No/Don't know.
If yes, please give details.
If no, please explain why.
7. Is there any institutional mechanism put in place by the Government to ensure zero tolerance against manual scavenging in Karnataka/India? : Yes/No/Don't know.
If yes, can you provide details of such a mechanism?
If No, why?
8. Do you find any loopholes in the existing laws/legislations/Government Orders/Circulars/ Guidelines issued by Governments and other appropriate authorities on manual scavenging which were being misused by individuals and institutions?
If yes, please explain what loopholes are and suggest remedial measures, including institutional and legal measures, as to how the manual scavenging can be eliminated in Karnataka/India.
9. What is Manual Scavengers' Rehabilitation Scheme?
How does the Government/ Commission ensure dignified lives to manual scavengers who wish to quit the occupation?
10. Please explain how the government, commission and the Civil Society can work together to eradicate manual scavenging in Karnataka/India?
11. Do you have any further comments, thoughts or experiences you would like to share?

ANNEXURE-VI

KEY / PROMPT QUESTIONS FOR REPRESENTATIVES OF

HIGHER EDUCATIONAL INSTITUTIONS

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the response from the representatives of higher educational institutions in India on caste based discrimination and other related issues and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for academic purposes. Any personal information will not be disclosed to the general public and will not be used for any other purpose.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Name of the institution & address:
2. Your Name & designation, Mobile No & email id:
3. Sex & Age: Female/Male/Other:
4. Your caste & category:
5. Your academic status:
6. Does caste based discrimination exist in your institution?: Yes/No/Don't know
Please give details
7. Are you a victim of caste based discrimination when you were a student? : Yes/No.
If yes, how did you fight against this discrimination? Please give details.

If no, why? Please explain.

8. Is there any type of caste based discrimination in the process of selection of students to your institution? : Yes/No/Don't know.

If yes, please give details.

If no, please explain why.

9. Is there any caste based discrimination in the allotment of hostel accommodation to students? : Yes/No/Don't know.

If yes, please give details.

If no, please explain why.

10. Is there any caste based discrimination in the dining halls of students' hostels? :

Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

11. Is there any caste based discrimination in conducting examinations/tests? :

Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

12. Is there any caste based discrimination in allotment of Project Topics to the students? :

Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

13. Is there any caste based discrimination in evaluation of Projects written by students? :

Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

14. Is there any caste based discrimination in conducting Project based Viva and granting marks to students? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
15. Is there any caste based discrimination in evaluation of answer sheets of examinations/ tests? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
16. Is there any caste based discrimination in granting of marks to students in internal assessments? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
17. Is there any caste based discrimination in the selection of students for any competition to represent your institution? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
18. Is there any caste based discrimination in the selection of students to any awards or medals in your institution? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
19. Is there any caste based discrimination in the selection of office bearers to the Students Union? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.

20. Is there any caste based discrimination in the selection of students to lead any group/ wing/club in your institution? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
21. Is there any caste based discrimination in the selection of articles to various journals or institute magazine being published in the institute? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
22. Is there any caste based discrimination in the selection of students to editorial boards of journals and institute magazine being published in the institute? : Yes/No/Don't know. If yes, please give details.
- If no, please explain the reasons.
23. Is there any caste based discrimination in the selection of members of faculty in your institution? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
24. Is there any caste based discrimination in the selection of students for exchange programmes (sending to foreign universities)? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
25. Is there any caste based discrimination in the selection of students for various internship programmes? : Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.

26. Is there any caste based discrimination in the selection of various administrative officers, like Registrar (Admin), Registrar (Examinations), Finance officer, Estate Officer, Hostel Wardens etc in your institution? : Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

27. Is there any anti-discrimination redressal institutional mechanism put in place to ensure zero tolerance to caste based discrimination in the institution? : Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

28. What are the important factors that play a prominent role for the existence of caste based discrimination in your institution. Please explain. :

29. Please provide information on other types of caste based discrimination, if any, that exists

in your institution and suggest remedial measures, including institutional and legal measures, as to how caste based discrimination can be eliminated in your institution.

30. Is there any further information, thoughts or experiences you would like to share?

ANNEXURE-VII

KEY/PROMPT QUESTIONS FOR DALIT STUDENTS

IN HIGHER EDUCATIONAL INSTITUTIONS IN INDIA

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the first hand information from students including research scholars belonging to Scheduled Castes (Dalits), in higher educational institutions in India on caste based discrimination and other related issues and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for the academic purpose. Their identity and personal information will not be disclosed to the general public and will not be used for any other purpose.

-Preethi Lolaksha Nagaveni.

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Name of the institution:
2. Your Address, Mobile No & email id:
3. Sex & Age: Female/Male/Other:
4. Your caste & category:
5. Your academic status:
 - a. Student/ Research Scholar
6. Course:
7. Year of study:

8. Does caste based discrimination exists in your institution?: Yes/No/Don't know
 - a. Please explain your response.
9. Are you a victim of caste based discrimination in your institution? : Yes/No.
 - a. If yes how did you fight against this discrimination? Please give details.
 - b. If no, please explain the reasons.
10. If you have faced caste discrimination in your institution, have you complained/shared/talked about it with your parents? Yes/No/NA
 - a. If yes, what was their response?
 - b. If No, why?
11. If you have faced caste discrimination in your institution, did you approach the institutional authority and file a complaint? Yes/No/NA
 - a. If yes, oral or written? What was their response? Result of the same? Please explain.
 - b. If no, why?
12. If you have faced caste discrimination in your institution, have you approached any Dalit organisation with respect to this? Yes/No/NA
 - a. If yes, how did they respond to this? Please explain.
 - b. If no, why?
13. If you have faced caste discrimination in your institution, have you approached the police? Yes/No/NA
 - a. If yes, did you file a complaint? What was their response? Result of the same? Please explain.
 - b. If no, why?
14. Is there any type of caste based discrimination in the process of selection of students to your institution? : Yes/No/Don't know.

- a. If yes, give details.
- b. If no, please explain.

15. Is there any caste based discrimination in the allotment of hostel accommodation to students? : Yes/No/Don't know.

- a. If yes, give details.
- b. If no, please explain the reasons.

16. Is there any caste based discrimination in the dining halls of students' hostels? :

i. Yes/No/Don't know.

- b. If yes, give details.
- c. If no, please explain the reasons.

17. Is there any caste based discrimination in conducting examinations/tests? : Yes/No/Don't know.

- a. If yes, give details.
- b. If no, please explain the reasons.

18. Is there any caste based discrimination in allotment of Project Topics to the students? : Yes/No/Don't know.

- a. If yes, give details.
- b. If no, please explain the reasons.

19. Is there any caste based discrimination in evaluation of Projects written by students? : Yes/No/Don't know.

- a. If yes, give details.
- b. If no, please explain the reasons.

20. Is there any caste based discrimination in conducting Project based Viva and granting marks to students? : Yes/No/Don't know.

- a. If yes, give details.

- b. If no, please explain the reasons.
21. Is there any caste based discrimination in evaluation of answer sheets of examinations/ tests? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.
22. Is there any caste based discrimination in granting of marks to students in internal assessments? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.
23. Is there any caste based discrimination in the selection of students for any competition to represent your institution? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.
24. Is there any caste based discrimination in the selection of students to any awards or medals in your institution? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.
25. Is there any caste based discrimination in the selection of office bearers to the Students Union? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.
26. Is there any caste based discrimination in the selection of students to lead any group/ wing/club in your institution? : Yes/No/Don't know.
- a. If yes, give details.
- b. If no, please explain the reasons.

27. Is there any caste based discrimination in the selection of articles to various journals or institute magazine being published in the institute? : Yes/No/Don't know.
- a. If yes, give details.
 - b. If no, please explain the reasons.
28. Is there any caste based discrimination in the selection of students to editorial boards of journals and institute magazine being published in the institute? : Yes/No/Don't know. If yes, give details.
- a. If no, please explain the reasons.
29. Is there any caste based discrimination in the selection of members of faculty in your institution? : Yes/No/Don't know.
- a. If yes, give details.
 - b. If no, please explain the reasons.
30. Is there any caste based discrimination in the selection of students for exchange programmes (sending to foreign universities)? : Yes/No/Don't know.
- a. If yes, give details.
 - b. If no, please explain the reasons.
31. Is there any caste based discrimination in the selection of students for various internship programmes? : Yes/No/Don't know.
- a. If yes, give details.
 - b. If no, please explain the reasons.
32. Is there any caste based discrimination in the selection of various administrative officers, like Registrar (Admin), Registrar (Examinations), Finance officer, Estate Officer, Hostel Wardens etc in your institution? : Yes/No/Don't know.
- a. If yes, give details.
 - b. If no, please explain the reasons.

33. Is there any anti-discriminatory/redressal institutional mechanism put in place to ensure zero tolerance to caste based discrimination in the institution? :
- a. Yes/No/Don't know.
 - b. If yes, give details.
 - c. If No, why?
34. What are the important factors that play a prominent role for the existence of caste based discrimination in your institution. Please explain.
35. Please provide information on other types of caste based discrimination, if any, that exists
- a. in your institution and suggest remedial measures, including institutional and legal measures, as to how the caste based discrimination can be eliminated in your institution.
36. Do you have any further thoughts, comments or experiences that you would like to share?

ANNEXURE-VIII

KEY / PROMPT QUESTIONS FOR PERSONS REPRESENTING CIVIL SOCIETY **ON CASTE-DISCRIMINATION IN HIGHER EDUCATIONAL INSTITUTIONS**

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the first hand response from the Representatives of the Civil Society on Caste-based discrimination in Higher Educational Institutions in India and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for academic purposes.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Name of your organisation:
2. Your name & designation:
3. Your Address, Mobile No & email id:
4. Age & Sex: years & Female/Male/Other:
5. Your religion, caste & category (*only if you wish to share*):
6. When did your organisation come into existence and what are its main objectives?
Please explain.
7. What is your understanding of Caste based discrimination in higher educational institutions? Please explain.
8. Does it exist in Karnataka/India? Yes/No/Don't know.
If yes, please explain.

If no, why?

9. Is there any legislation prohibiting caste based discrimination in higher educational institutions in force in Karnataka/India? Yes/No/Don't know.

If yes, give details.

If no, please explain.

10. Is there any institutional mechanism put in place by the Government to ensure zero tolerance against caste based discrimination in higher educational institutions in Karnataka/India? Yes/No/Don't know.

If yes, can you provide details of such mechanism?

If no, why?

11. Are there any loopholes in laws/Government Orders/Circulars/ Guidelines which prohibit caste based discrimination?

Yes/No/Don't know.

If yes, please explain.

12. Can you suggest any remedial measures, including institutional and legal measures, as to how caste based discrimination in higher educational institutions can be eliminated in Karnataka/India?

13. Have you been approached by any student facing caste based discrimination in higher educational institutions?

If yes, what was your response?

14. What is the role played by your organisation in protecting the rights of the students affected by caste based discrimination in higher educational institutions?

15. Would you wish to share any other information, thoughts or experiences on the issue?

ANNEXURE-IX

KEY / PROMPT QUESTIONS FOR MEMBERS OF FACULTY

Declaration: I, Preethi Lolaksha Nagaveni, doing research for PhD in Law at Lancaster University, UK, do hereby declare that these key/prompt questions are prepared to avail the response from the members of faculty of higher educational institutions in India on caste based discrimination and other related issues and it will be used as part of their interviews for the thesis titled '*Untouchability, a Unique Form of Violation of Human Rights. A Study of Practice of Untouchability in the form of Manual Scavenging and Caste-based discrimination in Higher Educational Institutions in India.*' All information provided by them will strictly be used only for academic purposes. Any personal information will not be disclosed to the general public and will not be used for any other purpose.

-Preethi Lolaksha Nagaveni

Research Scholar

Lancaster University, UK.

Email: p.lolakshanagaveni@lancaster.ac.uk

1. Name of the institution & address:
2. Your Name & designation, Mobile No & email id:
3. Age & sex:years &Female/Male/Other:
4. Your religion, caste & category (*only if you wish to share*):
5. Does caste based discrimination exist in your institution? Yes/No/Don't know
Please give details
6. Are you a victim of caste based discrimination when you were a student/member of faculty? If yes, please give details.
7. Is there any type of caste based discrimination in the process of selection of students to your institution? Yes/No/Don't know.

If yes, please give details.

If no, please explain why.

8. Is there any caste based discrimination in the allotment of hostel accommodation to students? Yes/No/Don't know.

If yes, please give details.

If no, please explain why.

9. Is there any caste based discrimination in the dining halls of students' hostels? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

10. Is there any caste based discrimination in conducting examinations/tests? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

11. Is there any caste based discrimination in allotment of Project Topics to the students? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

12. Is there any caste based discrimination in evaluation of Projects written by students? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

13. Is there any caste based discrimination in conducting Project based Viva and granting marks to students? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

14. Is there any caste based discrimination in evaluation of answer sheets of examinations/ tests? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

15. Is there any caste based discrimination in granting of marks to students in internal assessments? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

16. Is there any caste based discrimination in the selection of students for any competition to represent your institution? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

17. Is there any caste based discrimination in the selection of students to any awards or medals in your institution? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

18. Is there any caste based discrimination in the selection of office bearers to the Students Union? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

19. Is there any caste based discrimination in the selection of students to lead any group/ wing/club in your institution? Yes/No/Don't know.

If yes, please give details.

If no, please explain the reasons.

20. Is there any caste based discrimination in the selection of articles to various journals or institute magazine being published in the institute? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
21. Is there any caste based discrimination in the selection of students to editorial boards of journals and institute magazine being published in the institute? Yes/No/Don't know. If yes, please give details.
- If no, please explain the reasons.
22. Is there any caste based discrimination in the selection of members of faculty in your institution? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
23. Is there any caste based discrimination in the selection of students for exchange programmes (sending to foreign universities)? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
24. Is there any caste based discrimination in the selection of students for various internship programmes? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
25. Is there any caste based discrimination in the selection of various administrative officers, like Registrar (Admin), Registrar (Examinations), Finance officer, Estate Officer, Hostel Wardens etc in your institution? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.

26. Is there any anti-discrimination redressal institutional mechanism put in place to ensure zero tolerance to caste based discrimination in the institution? Yes/No/Don't know.
- If yes, please give details.
- If no, please explain the reasons.
27. What are the important factors that play a prominent role for the existence of caste based discrimination in your or any other institution. Please explain.
28. Please provide information on other types of caste based discrimination, if any, that exists
- in your institution and suggest remedial measures, including institutional and legal measures, as to how caste based discrimination can be eliminated in your institution.
29. Is there any other information, thoughts or experiences you would like to share?

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