

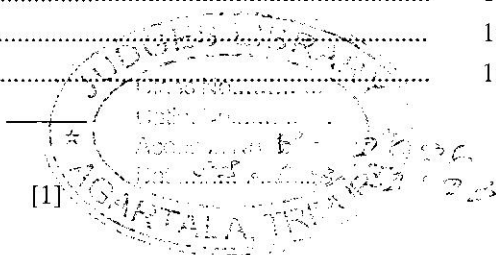
The Protection of Civil Rights Act, 1955

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[1]



The Protection of Civil Rights Act, 1955

[Act 22 of 1955]¹

[8th May, 1955]

*An Act to prescribe punishment for the ²[preaching and practice of
“Untouchability”], for the enforcement of any disability arising
therefrom and for matters connected therewith*

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1.*Short title, extent and commencement.—(1) This Act may be called ³[the Protection of Civil Rights Act], 1955.

(2) It extends to the whole of India.

(3) It shall come into force on such date⁴ as the Central Government may, by notification in the Official Gazette, appoint.

CASE LAW ► Object.—The thrust of Article 17 and Protection of Civil Rights Act, 1955 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish a new ideal for society equality to the Dalits, on a par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the mainstream of national life, *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : 1994 SCC (Cri) 1762.

The Act having been enacted in the background of the practice of untouchability prevalent in India and to prohibit it, the same must receive an interpretation so as to subserve the said object. The provisions cannot be extended to those who are not entitled to the protection thereof. It is not a law for protection of civil rights of anybody or everybody irrespective of caste, creed or community. That is not the area or field of the said legislation. The underlying object of the Act appears to extend complete protection to the civil rights of persons who had to suffer on account of the practice of untouchability, *Bharatinath Namdeo Gavand v. Lakhsman Mali*, (2007) 3 Mah LJ 210.

► Scope.—Protection of Civil Rights Act, 1955 not only prescribes penal offences but also protects civil rights of Dalits. It should be interpreted in the light of the constitutional goals and purpose of the Act, *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : 1994 SCC (Cri) 1762.

Protection of the Civil Rights Act does not extend to “Other Backward Classes”. It cannot be sought by a person who is not a untouchable and recognized as such, *Bharatinath Namdeo Gavand v. Lakhsman Mali*, (2007) 3 Mah LJ 210.

1. Extended to Goa, Daman and Diu with modifications by Regn. 12 of 1962, S. 3 and Schedule (w.e.f. 6-12-1962), to Dadra and Nagar Haveli by Regn. 6 of 1963, S. 2 and Schedule I (w.e.f. 1-7-1965) and to Pondicherry by Regn. 7 of 1963, S. 3 and Schedule I (w.e.f. 1-10-1963).

2. Subs. by Act 106 of 1976, S. 2, for “practice of ‘Untouchability’” (w.e.f. 19-11-1976).

3. Subs. by Act 106 of 1976, S. 3, for “the Untouchability (Offences) Act” (w.e.f. 19-11-1976).

4. 1-6-1955 [Vide Noti. No. S.R.O. 1109, dt. 23-5-1955, Gazette of India, 1955, Extra., Pt. II, S. 3, page 971.]

► **Mens rea.**—Mens Rea is not an essential element in social disability legislation like Protection of Civil Rights Act, 1955, *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : 1994 SCC (Cri) 1762.

2. Definitions.—In this Act, unless the context otherwise requires,—

⁵[(a) “civil rights” means any right accruing to a person by reason of the abolition of “untouchability” by Article 17 of the Constitution;]

⁶[(aa)] “hotel” includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe;

⁷[(b) “place” includes a house, building and other structure and premises; and also includes a tent, vehicle and vessel;]

(c) “place of public entertainment” includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation.—“Entertainment” includes any exhibition, performance, game, sport and any other form of amusement;

(d) “place of public worship” means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein; ⁸[and includes—

(i) all lands and subsidiary shrines appurtenant or attached to any such place,

(ii) a privately owned place of worship which is, in fact, allowed by the owner thereof to be used as a place of public worship, and

(iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;]

⁹[(da) “prescribed” means prescribed by rules made under this Act;

(db) “Scheduled Castes” has the meaning assigned to it in clause (24) of Article 366 of the Constitution;]

(e) “shop” means any premises where goods are sold either wholesale or by retail or both wholesale and by retail ¹⁰[and includes—

(i) any place from where goods are sold by a hawker or vendor or from a mobile van or cart,

(ii) a laundry and a hair cutting saloon,

(iii) any other place where services are rendered to customers].

3. Punishment for enforcing religious disabilities.—Whoever on the ground of “untouchability” prevents any person—

5. *Ins.* by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

6. Clause (a) was *relettered* as clause (aa) by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

7. *Subs.* by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

8. *Subs.* by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

9. *Ins.* by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

10. *Subs.* by Act 106 of 1976, S. 4 (w.e.f. 19-11-1976).

- (a) from entering any place of public worship which is open to other persons professing the same religion ¹¹[* * *] or any section thereof, as such person; or
- (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course ¹²[river or lake or bathing at any ghat of such tank, water-course, river or lake] in the same manner and to the same extent as is permissible to other persons professing the same religion ¹³[* * *] or any section thereof, as such person;

¹⁴[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees].

Explanation.—For the purposes of this section and Section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swami-narayan Sampraday shall be deemed to be Hindus.

CASE LAW ▶ Enforcing religious disabilities.—The person prevented must either be professing the same religion as other persons to whom the place is open, or in the case of denominational or sectional places of public worship, he must belong to the particular denomination or section. *State v. Puranchand*, AIR 1958 MP 352 relied on in *State v. Venkiteshwara Prabhu*, (1961) 1 Cri LJ 265.

▶ **Private function.**—Where the function was a private one and it was not a place of public worship and the complainant, a Harijan, was not on the basis of his being an untouchable as people of his caste were allowed to participate in the function the accused could not be convicted under Section 3 of the Act. *Kandra Sethi v. Matra Sahu*, ILR (1965) Cut 465 : 29 Cut LT 363.

▶ **Entry to members.**—Where it was established that ever since the temple came into existence only the members of Gowda Saraswath Brahmin community who wear the sacred thread have entered the "Nalambalam", no offence under this clause is committed by preventing persons belonging to a different community or denomination from entering the "Nalambalam". *State v. Venkiteshwara Prabhu*, (1961) 1 Cri LJ 265.

▶ **Priests or poojaris.**—Custom of restricting functions of priests or poojaris to Brahmins only, is violative of human rights, human dignity, concept of social equality and the specific mandate of the Constitution and cannot be considered an integral part of the Hindu religion. Therefore such custom cannot be used to claim any right under Article 25(1) or Article 26(b) properly trained and qualified person may be appointed a poojari regard less of caste, *N. Adithayan v. Travancore Devaswom Board*, (2002) 8 SCC 106.

11. The words "or belonging to the same religious denomination" omitted by Act 106 of 1976, S. 5 (w.e.f. 19-11-1976).

12. *Ins.* by Act 106 of 1976, S. 5 (w.e.f. 19-11-1976).

13. The words "or belonging to the same religious denomination" omitted by Act 106 of 1976, S. 5 (w.e.f. 19-11-1976).

14. *Subs.* by Act 106 of 1976, S. 5 (w.e.f. 19-11-1976).

4. Punishment for enforcing social disabilities.—Whoever on the ground of “untouchability” enforces against any person any disability with regard to—

- (i) access to any shop, public restaurant, hotel or place of public entertainment; or
- (ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharmshala, sarai or musafirkhana for the use of the general public or of ¹⁵[any section thereof]; or
- (iii) the practice of any profession or the carrying on of any occupation, trade or business ¹⁶[or employment in any job]; or
- (iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or ¹⁷[any section thereof], have a right to use or have access to; or
- (v) the use of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public, or ¹⁸[any section thereof]; or
- (vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of ¹⁹[any section thereof]; or
- (vii) the use of, or access to, any public conveyance; or
- (viii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or
- (ix) the use of any dharmshala, sarai or musafirkhana which is open to the general public, or to ²⁰[any section thereof]; or
- (x) the observance of any social or religious custom, usage or ceremony or ²¹[taking part in, or taking out, any religious, social or cultural procession]; or
- (xi) the use of jewellery and finery;

²²[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees].

²³[*Explanation.*—For the purposes of this section, “enforcement of any disability” includes any discrimination on the ground of “untouchability”.]

CASE LAW ► Applicability.—Section 4(iv) does not apply to private wells, *Bendhar Sahu v. State*, 157 ILR (1962) Cut 256 : 28 Cut LT 157.

15. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

16. Ins. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

17. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

18. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

19. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

20. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

21. Subs. for “taking part in any religious procession” by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

22. Subs. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

23. Ins. by Act 106 of 1976, S. 6 (w.e.f. 19-11-1976).

► **Abolition of untouchability.**—By abolition of untouchability under Article 17 of the Constitution no right to use private well accrues, *Bendhar Sahu v. State*, 157 ILR (1962) Cut 256 : 28 Cut LT 157.

► **Sacred well.**—Proof of being a public well is not sufficient to satisfy the requirement of Section 3, it should be proved to be a sacred well. *State of Orissa v. Rengsa*, 1985 Cri LJ 1917 (Ori).

► **Cognizance of offence.**—For offence of practising untouchability with regard to the use of utensils and other articles kept in a Tea Hotel for the use of general public, Cognizance of offence can be taken after the expiry of limitation period. Article 17 of the Constitution abolishes untouchability and forbids its practice in any form. It declares the enforcement of any disability arising out of untouchability as an offence punishable in accordance with law. The Act has been enacted to prescribe punishment for the preaching and practice of untouchability, for the enforcement of any disability arising therefrom and for matter connected therewith. In the present case, accused were prosecuted with the allegations of having enforced disability against the members of Scheduled Caste community on the ground of untouchability with regard to the access of the members of said community to a Tea Hotel and with regard to the use of utensils and other articles kept there for the use of the general public. Having regard to the mandate of the Constitution in Article 17 of the Constitution, the object and purpose of the Act, the nature and the gravity of the allegations made against the accused, the seriousness of the charge, which totally escaped the attention of the Magistrate when he proceeded to consider the question as to whether the delay should or should not be condoned in their cumulative and total effect would show that this is a fit case to take cognizance of the offence alleged against accused after expiry of the period of limitation, in the interest of justice. *State of Karnataka v. Laxminarayana Bhat*, 1991 Cri LJ 2126 : (1991) 2 Crimes 251 (Kant).

Where Harijans were stopped from taking water from the well on the ground of their being untouchables on threat of using gun, held, offence under Section 4 is made out. *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : 1994 SCC (Cri) 1762.

► **Sentence of imprisonment.**—Where person guilty of offence under Section 4, Court obliged to pass sentence of imprisonment and also of fine, not below the statutory minimum. There is no discretion in court to pass lesser sentence, *State of Karnataka v. Annappa*, ILR 1991 KAR 3220.

A Division Bench of the Karnataka High Court observed that prior to its amendment Section 4 of the Act did leave a discretion in the Court either to impose a substantive sentence or only to impose a fine or both. After the amendment, the section prescribes a statutory minimum period of sentence and also a statutory minimum quantum of fine, that is to say, the sentence of imprisonment shall not be less than Rs 100. *State of Karnataka v. Annappa*, 1992 Cri LJ 158 (Kant)(DB), distinguishing *Emperor v. Peter D' Souza*, (1949) 50 Cri LJ 137 (FB).

5. Punishment for refusing to admit persons to hospitals, etc.—Whoever on the ground of “untouchability”—

- (a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel ²⁴[* * *], if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or
- (b) does any act which discriminates against any such person after admission to any of the aforesaid institutions;

24. The words “attached thereto” omitted by Act 106 of 1976, S. 7 (w.e.f. 19-11-1976).

²⁵[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.]

CASE LAW ► Mens rea.—Section 5(b) does not speak of any mens rea or intention with which the act should be committed. *Ramchandran Pillai v. State of Kerala*, 1965 MJ (Cri) 32.

► **Segregation of Harijan students into a separate division.**—Under Section 5 of the Act even if the discrimination is not solely or only on the ground of untouchability and if untouchability is only one of the grounds of discrimination the person practising such discrimination would be guilty of offence. So if one of the reasons for the segregation of the Harijan students is on the ground of untouchability the offence is made out. *Ramchandran Pillai v. State of Kerala*, 1965 MJ (Cri) 32.

6. Punishment for refusing to sell goods or render services.—Whoever on the ground of “untouchability” refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business ²⁶[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees].

7. Punishment for other offences arising out of “untouchability”.—(1) Whoever—

- (a) prevents any person from exercising any right accruing to him by reason of the abolition of “untouchability” under Article 17 of the Constitution; or
- (b) molests, ~~injures~~, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or
- (c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practise “untouchability” in any form whatsoever; ²⁷[or]

²⁸[(d) insults or attempts to insult, on the ground of “untouchability”, a member of a Scheduled Caste;]

²⁹[shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees].

25. Subs. by Act 106 of 1976, S. 7 (w.e.f. 19-11-1976).

26. Subs. by Act 106 of 1976, S. 8 (w.e.f. 19-11-1976).

27. Ins. by Act 106 of 1976, S. 9 (w.e.f. 19-11-1976).

28. Ins. by Act 106 of 1976, S. 9 (w.e.f. 19-11-1976).

29. Subs. by Act 106 of 1976, S. 9 (w.e.f. 19-11-1976).

³⁰[*Explanation I*].—A person shall be deemed to boycott another person who—

- (a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or
- (b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

³¹[*Explanation II*].—For the purposes of clause (c), a person shall be deemed to incite or encourage the practice of “untouchability”—

- (i) if he, directly or indirectly, preaches “untouchability” or its practice in any form; or
- (ii) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of “untouchability” in any form.]

³²[(1-A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of “untouchability” under Article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.]

(2) Whoever—

- (i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or
- (ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practise “untouchability” or that such person has done any act in furtherance of the objects of this Act,

³³[shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.]

CASE LAW ► Interpretation/construction.—The word “insult” in the legal parlance means to treat with offensive disrespect or to offer indignity to a person. The significance attached to the word used would depend on the facts and circumstances of each case, the occasion and the manner in which the words are used and person to whom they are addressed. Any act or speech meant to hurt the feelings or self-respect of

30. Renumbered by Act 106 of 1976, S. 9 (w.e.f. 19-11-1976).

31. Ins. by Act 106 of 1976, S. 9-B (w.e.f. 19-11-1976).

32. Ins. by Act 106 of 1976, S. 9-B (w.e.f. 19-11-1976).

33. Subs. by Act 106 of 1976, S. 9 (w.e.f. 19-11-1976).

another or treat a person with insolences or contempt by words or action would amount to an insult. *Baste Subrayalu v. Robert Mariadassou*, 1987 Cri LJ 272 (Mad).

The word “Mahardya” prima facie amounts to an insult. It is indicative of offensive disrespect and indignity. It is normally used to hurt the feelings and self-respect of the person to whom it is addressed. Such a person is treated with insolence and contempt. *Shantabai v. State of Maharashtra*, 1982 Cri LJ 872 (Bom) (DB), relying on *Patel Lilabhai Hirabhai v. State of Gujarat*, (1979) 20 Guj LR 154.

The use of the word “Mahardya” with reference to a member of Scheduled Caste, held, offence under Section 7(1)(d) stands proved. The prosecution need not further prove that such act was committed on the ground of untouchability. *Shantabai v. State of Maharashtra*, 1982 Cri LJ 872 (Bom)(DB). Overruling *Laxman v. State of Maharashtra*, 1980 Mah LJ 833 : 1981 Cri LJ 387 (Bom).

► **Conviction.**—Where the members of the Castribe Union were not joining the strike of government employees, the accused was annoyed and abused them as “Mahars” which were not in relation to any untouchability practised by him, held, the accused was not liable to be convicted under Section 7(1)(d). *Sugdeo Ramchandra Tayade v. State of Maharashtra*, 1994 Cri LJ 2150 (Bom).

► **Ground of untouchability.**—Calling a person belonging to “Chamar Caste” as a “Chamar” does not constitute an insult on the ground of untouchability. *Phulsingh v. State of M.P.*, 1991 Cri LJ 2954 (MP).

In view of Section 7(1)(d), the offence of preaching and practising untouchability is not made out when accused and complainant victim belong to same social group, falling in the list of the Scheduled Castes. *State of Karnataka v. N.K. Shanthappa*, 1997 Cri LJ 2802.

When the petitioner uttered some words mentioning specifically the caste of the complainant, there was no attempt to insult the complainant on the ground of untouchability nor words were uttered to encourage audience to practise untouchability, it was held that offence under Section 7(1)(d) was not made out, hence, criminal proceedings initiated against the petitioner under Section 7(1)(d) was not justified. *E. Krishnan Nayanar v. M.A. Kuttappan*, 1997 Cri LJ 2036 (Ker).

Words uttered by accused must be shown to have the effect of insulting the complainant on ground of “untouchability”, *M.A. Kuttappan v. E. Krishnan Nayanar*, (2004) 4 SCC 231 : 2004 SCC (Cri) 1073.

The offence arising out of untouchability is not compoundable without reference to State. *State v. Kudligere Hanumanthappa*, 1992 Cri LJ 832 (Kant)(DB), dissenting from *Dhanraj v. State*, 1986 Cri LJ 284 (Mad).

► **Imprisonment.**—An offence under Section 7(1)(d) of the Act is punishable with imprisonment of not less than one month and a fine of not less than Rs 100. It was held that the order of Sessions Judge sentencing accused to fine alone for offence under Section 7(1)(d) was erroneous and liable to be set aside. *State v. Ponnuvel*, 1984 Cri LJ 1075 : 1984 MLJ (Cri) 68.

► **Reversed of acquittal.**—The allegation in the complaint that all the seven accused stated that they would not take their meals at the house of the complainant where Harijans were also invited in connection with the wedding of complainant’s son. The evidence of complainant and eyewitnesses found to be of general nature and no specific role assigned to each of the seven accused. It was held, in the circumstances, the High Court was not justified in reversing the order of acquittal passed by the trial court under Section 7 of the Act. *Srinivas v. Duni Chand*, (1997) 7 SCC 522.

► **Applicability of CrPC.**—The Code of Criminal Procedure, 1973 is not applicable to the schedule areas and that the Code of Criminal Procedure, 1988 is still applicable to such areas. It is true that Section 15 of the Act has empowered the Judicial Magistrate of First Class to try summarily offence punishable with imprisonment for a minimum term exceeding 3 months in accordance with Code of Criminal Procedure, 1973. But the said provision cannot be made applicable for offences committed in schedule areas even under the Act, since the Code of Criminal Procedure, 1898 is the only Code applicable to all the offences committed in the schedule areas in view of Article 244 of the Constitution of India. *K. Bojji Reddy v. State of A.P.*, (1995) 1 ALT (Cri) 43; *Palla Kasiviswanadham v. State Rep. by the Public Prosecutor*, (1996) 1 Crimes 68 : 1996 Cri LJ 2035 (AP).

► **Applicability of Section 6.**—When S went to take water from the public water-tap she was prevented from doing so by B on the ground that she happened to be the daughter of a Scheduled Caste. It was held that B's action amounted to an annoyance and obstruction within the meaning of Section 7(1)(b). Section 6 was inapplicable. *Behari Lal v. State*, AIR 1967 All 130 : 1967 Cri LJ 307.

► **Wrongful confinement.**—The complainant, a Harijan, gave water to a high caste Thakur which was disliked by the accused persons with the result that a panchayat was held and the complainant was asked to pay fine. On his failure to do so he was beaten by the accused persons and was kept under wrongful confinement. It was held that the accused were guilty under Section 7(1)(c) of the Act. *Bisheshwar Prasad v. State of U.P.*, 1967 Cri LJ 1102.

► **SC & ST Act.**—When FIR registered not disclosing offence under Section 3(1)(x) of Atrocities Act but disclosing offence punishable under Section 7(1)(d) of the Protection of Civil Rights Act then only FIR relating to Atrocities Act could be quashed and not one under Section 7(1)(d) of Civil Act, *V.P. Shetty v. Sr. Inspector of Police*, (2005) 3 Mah LJ 1006.

► **Explanations to Section 7.**—Explanations to Section 7 clarifies the scope of substantive section, it must be read in the backdrop of substantive provisions, *Bharatinath Namdeo Gavand v. Lakhsman Mali*, (2007) 3 Mah LJ 210.

► **Untouchability.**—Abusing a person by mentioning or referring to his caste not connected with preaching or practice of untouchability not an offence under Section 7(1)(d) of the Act, *Laxman Jayram Shant v. State of Maharashtra*, 1980 Mah LJ 833.

► **Marriage to person belonging to forward caste.**—A woman who is born into a Scheduled Caste or a Scheduled Tribe, on marriage with a person belonging to a forward caste, is not automatically transplanted into the caste of husband by virtue of her marriage and, therefore, she cannot be said to belong to her husband's caste, *Rajendra Shrivastava v. State of Maharashtra*, (2010) 2 Mah LJ 198 (FB).

³⁴[7-A. **Unlawful compulsory labour when to be deemed to be a practice of untouchability.**—(1) Whoever compels any person, on the ground of “untouchability”, to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of “untouchability”.

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation.—For the purposes of this section, "compulsion" includes a threat of social or economic boycott.]

8. Cancellation or suspension of licences in certain cases.—When a person who is convicted of an offence under Section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so cancelling or suspending a licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

Explanation.—In this section, "licence" includes a permit or a permission.

9. Resumption or suspension of grants made by Government.—Where the manager or trustee of a place of public worship ³⁵[or any educational institution or hostel] which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

10. Abetment of offence.—Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.

³⁶[*Explanation.*—A public servant who wilfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishable under this Act.]

³⁷[**10-A. Power of State Government to impose collective fine.**—(1) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in, or abetting the commission of, any offence punishable under this Act, or harbouring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government's judgment of the respective means of such inhabitants and in making any such apportionment the

35. Ins. by Act 106 of 1976, S. 11 (w.e.f. 19-11-1976).

36. Ins. by Act 106 of 1976, S. 12 (w.e.f. 19-11-1976).

37. Ins. by Act 106 of 1976, S. 13 (w.e.f. 19-11-1976).

State Government may assign a portion of such fine to a Hindu Undivided Family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realised until the petition, if any, filed by him under sub-section (3) is disposed of.

(2) The notification made under sub-section (1) shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3) (a) Any person aggrieved by the imposition of the collective fine under sub-section (1) or by the order of apportionment, may, within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment:

Provided that no fee shall be charged for filing such petition.

(b) The State Government or the authority specified by it shall, after giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realisable from any person, and the total fine imposed on the inhabitants of an area under sub-section (1) shall be deemed to have been reduced to that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (1), from the liability to pay the collective fine imposed under sub-section (1) or any portion thereof.

(5) The portion of collective fine payable by any person (including a Hindu Undivided Family) may be recovered in the manner provided by the Code of Criminal Procedure, 1973 (2 of 1974), for the recovery of fines imposed by a court as if such portion were a fine imposed by a Magistrate.]

11. Enhanced penalty on subsequent conviction.—Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, ³⁸[shall, on conviction, be punishable—

- (a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;
- (b) for the third offence or any offence subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees].

38. Subs. by Act 106 of 1976, S. 14 (w.e.f. 19-11-1976).

12. Presumption by courts in certain cases.—Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste³⁹[* * *], the court shall presume, unless the contrary is proved, that such act was committed on the ground of “untouchability”.

CASE LAW ▶ Nature and scope.—A careful reading of Section 12 shows that the presumption is not as regards commission of the act of insult or attempt to insult, but is restricted to one of the ingredients of the offence only. If a proof of this ingredient is also insisted upon, then Section 12 of the Protection of Civil Rights Act will become redundant. An act of insult or attempt to insult in relation to a member of Scheduled Caste is presumed to be on the ground of untouchability unless the contrary is proved. The presumption under Section 12 of the Act is a rebuttable presumption. If the prosecution succeeds in proving that the act constituting an offence has been committed in relation to a member of Scheduled Caste and the words used or the insult offered has a nexus with the caste which is a Scheduled Caste, then the Court is obliged to presume, until the contrary is proved, that the said act was committed on the ground of untouchability. *Baste Subrayalu v. Robert Mariadassou*, 1987 Cri LJ 272 (Mad).

▶ **Constitutional validity.**—Section 12 is not violative of Article 14 of the Constitution. *Shanmugasundaram Pillai v. State*, 1983 Cri LJ 115 (Mad).

▶ **Presumption.**—Presumption under Section 12 is available only when it is proved that the act alleged was committed on the ground of untouchability. *State of Orissa v. Rengsa*, 1985 Cri LJ 1917.

Buddhist does not belong to a Scheduled Caste. Presumption under Section 12 does not arise where complainant, *Buddhist Mangala Parashram Kelkar v. State of Maharashtra*, 1979 Mah LJ 599.

▶ **Burden on presumption.**—Scope of initial burden on presumption as to insult on the ground of untouchability. Accused can discharge presumption while cross-examining prosecution witness, *Laxman Jayram Shant v. State of Maharashtra*, 1980 Mah LJ 833.

13. Limitation of jurisdiction of civil courts.—(1) No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of “untouchability”.

14. Offences by companies.—(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed

39. The words “as defined in clause (24) of Article 366 of Constitution” omitted by Act 106 of 1976, S. 15 (w.e.f. 19-11-1976).

without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

⁴⁰[14-A. **Protection of action taken in good faith.**—(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.]

⁴¹[15. **Offences to be cognizable and triable summarily.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence of abetment except with the previous sanction—

(a) of the Central Government, in the case of a person employed in connection with the affairs of the Union; and

(b) of the State Government, in the case of a person employed in connection with the affairs of a State.

CASE LAW ► Effect of amendment.—After the amendment of Section 15 of the Protection of Civil Rights Act, 1955 by the Untouchability (Offences) Amendment and Miscellaneous Provisions Act, 1976 which came into force on 19-11-1976, there is no provision for compounding of offences. The offence under Section 4 read with Section 7 of the Protection of Civil Rights Act, 1955 is therefore not compoundable. The offence also does not fall within Section 320 of the Criminal Procedure Code, 1973 and is therefore not compoundable thereunder also, *State of M.P. v. Kapoore Phulli Ghossee*, 1982 MP LJ 587.

40. Ins. by Act 106 of 1976, S. 16 (w.e.f. 19-11-1976).

41. Subs. by Act 106 of 1976, S. 17 (w.e.f. 19-11-1976).

► **Cognizance of offences.**—Under Section 15(1) of the Act, the First Class Magistrate can take cognizance of all offences under the Act and his jurisdiction is not restricted only to cases triable summarily. Held, cognizance of offence and trial of same by the Second Class Magistrate was void as being without jurisdiction and warranted interference under Section 397(2), CrPC. *Shanmugasundaram Pillai v. State*, 1983 Cri LJ 115 (Mad), *dissented from* the Judgment in Criminal M.P. 6925 of 1979 (Mad).

► **Applicability of CrPC.**—Section 15 of the Act making the provisions of Criminal Procedure Code, 1973 applicable to the offences committed in scheduled areas is illegal. Provisions contained in Criminal Procedure Code, 1898 are only applicable for offences committed in scheduled areas, *P. Kasiviswanatham v. State*, (1995) 2 AP LJ 55 (SN).

15-A. Duty of State Government to ensure that the rights accruing from the abolition of “untouchability” may be availed of by the concerned persons.—(1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of “untouchability” are made available to, and are availed of by, the persons subjected to any disability arising out of “untouchability”.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include—

- (i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of “untouchability” to enable them to avail themselves of such rights;
- (ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
- (iii) the setting up of special courts for the trial of offences under this Act;
- (iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;
- (v) provision for periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;
- (vi) the identification of the areas where persons are under any disability arising out of “untouchability” and adoption of such measures as would ensure the removal of such disability from such areas.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1).

(4) The Central Government shall, every year, place on the Table of each House of Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.]

16. Act to override other laws.—Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any

custom or usage or any instrument having effect by virtue of any such law or any decree or order of any court or other authority.

⁴²[**16-A. Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years.**—The provisions of the Probation of Offenders Act, 1958 (20 of 1958), shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

CASE LAW ► Scope.—Section 16-A of the Protection of Civil Rights Act exempts application of the Probation of Offenders Act to persons above 14 years of age found guilty of offence under this Act. Probation of Offenders Act is inapplicable in the circumstances, *Phulsingh Bhaguntsingh Lodhi v. State of M.P.*, 1991 MP LJ 956.

16-B. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

17. Repeal.—The enactments specified in the Schedule are hereby repealed to the extent to which they or any or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

THE SCHEDULE

(See Section 17)

1. The Bihar Harijan (Removal of Civil Disabilities) Act, 1949 (Bihar Act XIX of 1949).
2. The Bombay Harijan (Removal of Social Disabilities) Act, 1946 (Bombay Act X of 1947).
3. The Bombay Harijan Temple Entry Act, 1947 (Bombay Act XXXV of 1947).
4. The Central Provinces and Berar Scheduled Castes (Removal of Civil Disabilities) Act, 1947 (Central Provinces and Berar Act XXIV of 1947).
5. The Central Provinces and Berar Temple Entry Authorisation Act, 1947 (Central Provinces and Berar Act XLI of 1947).
6. The East Punjab (Removal of Religious and Social Disabilities) Act, 1948 (East Punjab Act XVI of 1948).

42. *Ins. by Act 106 of 1976, S. 18 (w.e.f. 19-11-1976).*

7. The Madras Removal of Civil Disabilities Act, 1938 (Madras Act XXI of 1938).
 8. The Orissa Removal of Civil Disabilities Act, 1946 (Orissa Act XI of 1946).
 9. The Orissa Temple Entry Authorisation Act, 1948 (Orissa Act XI of 1948).
 10. The United Provinces Removal of Social Disabilities Act, 1947 (U.P. Act XIV of 1947).
 11. The West Bengal Hindu Social Disabilities Removal Act, 1948 (West Bengal Act XXXVII of 1948).
 12. The Hyderabad Harijan Temple Entry Regulation, 1358F (No. LV of 1358 Fasli).
 13. The Hyderabad Harijan (Removal of Social Disabilities) Regulation, 1358F (No. LVI of 1358 Fasli).
 14. The Madhya Bharat Harijan Ayogta Nivaran Vidhan, Samvat 2005 (Madhya Bharat Act 15 of 1949).
 15. The Removal of Civil Disabilities Act, 1943 (Mysore Act XLII of 1943).
 16. The Mysore Temple Entry Authorisation Act, 1948 (Mysore Act XIV of 1948).
 17. The Saurashtra Harijan (Removal of Social Disabilities) Ordinance (No. XL of 1948).
 18. The Travancore-Cochin Removal of Social Disabilities Act, 1125K (Travancore-Cochin Act VIII of 1125).
 19. The Travancore-Cochin Temple Entry (Removal of Disabilities) Act, 1950 (Travancore-Cochin Act XXVII of 1950).
 20. The Coorg Scheduled Castes (Removal of Civil and Social Disabilities) Act, 1949 (Coorg Act I of 1949).
 21. The Coorg Temple Entry Authorisation Act, 1949 (Coorg Act II of 1949).
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