

Access to Justice for Marginalized Dalit People in India: Analyzing the Challenges in Attaining the Sustainable Development Goals

E. Prema¹ *, V. Shyam Sundar², P.R.L.Rajavenkatesan¹

¹VIT School of Law- Vellore Institute of Technology Chennai, India

²Chennai Dr. Ambedkar Government Law College, Pudupakkam, India

*Corresponding author. Email: prema.e@vit.ac.in

ABSTRACT

Access to justice is a basic human right of all. Most of the human rights documents have discussed much on non-discrimination prevailed for marginalized *Dalit* People. Few social evils persist in modern society, such as racial discrimination and caste-based discrimination. India is a diverse society with multi-cultures, different languages, and religions. Caste-based discrimination is one of the ancient practices- a social evil, which could not be eradicated from India. The United Nations Sustainable Development Goal 16 provides access to justice for all, and all the member states have an obligation to achieve it. The *Dalit* community is the worst affected people in India on caste-based discrimination. The Indian Constitution provides special protection to the *Dalit* people to achieve the obligations to provide basic human rights. Since lack of education is a wider issue among the Dalits, it has confronted injustice and discrimination in all aspects of their lives. This paper will examine the existing laws in India to protect the *Dalits* and relevant judicial decisions for the same. As the methodology of the paper, landmark judgments will be utilized under case law analysis. The conclusion will bring out the existing lacunas in the Indian legal system and provide various recommendations to achieve the basic human rights of the *Dalits* of India.

Keywords: *Dalit, Indian Constitution, Human Rights, Sustainable Development Goals, United Nations.*

1. INTRODUCTION

The Indian legal system is firmly embedded in the common law tradition, as like other commonwealth nations. The concept of 'access to justice' is of great contemporary importance. The availability of justice is not an appropriate meaning for access to justice. It may be included with many aspects like quality of justice, accountability, and transparency in the judiciary, legal aid services, and public interest litigations. The word "access to justice" is not easy to define, but they focus on two basic principles/purposes of the legal system. One is the opportunity to people to vindicate their rights. Another approach is to settle people's problems under the State's auspices. The duty of the state is to provide access to justice speedily. Under Article 21 of the Indian Constitution, the right to free legal assistance and a speedy trial are guaranteed as fundamental rights. Art.39 A of the Constitution of

India has guaranteed free legal aid to the poor and weaker sections of the society and ensures justice for all. The United Nations have introduced the Sustainable development goal in the year 2015. In which, Sustainable development goal (SDG) 16 explains access to justice for all and build effective, accountable and inclusive institutions at all levels. Without peace, stability, human rights, and good governance based on the rule of law, we cannot hope for long-term progress. Nonetheless, our world is becoming increasingly divided. While some regions experience peace, security, and prosperity, others seem to be trapped in a never-ending cycle of strife and violence. It is not inevitable; it has to be addressed both at the national and international levels. The United Nations Sustainable Development Goals (SDGs) aim to drastically reduce all forms of violence and work with governments and communities to end conflict and insecurity.

Sustainable Development Goal 16 explains access to justice for all and builds effective, accountable, and inclusive institutions at all levels. SDG 16 is divided into four sections: aims for peaceful societies, access to justice; national efforts to develop effective, accountable, and inclusive institutions; and international collaboration to establish accountable institutions at all levels. Additionally, SDG 16 provides for protection against any violence against women and girls. To maintain these international standards, India also engaged in few initiatives to protect the marginalized communities. The Indian Government, in collaboration with United Nations Development Programme, worked on a project called Access to Justice for Marginalized People or A2J Project. The Department of Justice, Government of India submitted a report in 2018 suggested that Autonomous Commissions such as the National Commission for Women, the Disability Commission, the National Commission for the Protection of Child Rights, the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes that provide aid to certain vulnerable groups could be useful project partners. They have the ability to take suo moto action on issues such as conducting public hearings and have been granted the powers of a civil court. This could help resolve relevant issues in a decentralized manner and without burdening the judicial system. As an added advantage, the increase in the number of people approaching these bodies would activate those currently inactive and understaffed.

The following two important judgments have focused on the Dalit's plight and provided relief for the same. *Dr. Subhash Kashinath Mahajan v State of Maharashtra*: In 2018, a two-judge bench of the Supreme Court diluted the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), Act 1989 ("SC/ST Act"). Instead of focusing on the poor implementation of the Act, the bench said its very application was "perpetuating casteism," calling it an adversary of "constitutional values." Clearly, the Court did not have any understanding of the social protection needed by Dalits and tribals [2]. Particularly in rural areas, these communities have to face social barriers and institutional apathy even to get a complaint registered for an atrocity committed upon them by the upper castes. The judgment of the Court had added one more institutional barrier by endorsing a false stereotype against the Act – that it is misused and that complaints under it are questionable. This judgment was later overturned by an amendment in the law made by parliament due to political pressure from Dalits and tribals, and the Supreme Court had to

back off from its earlier position in a subsequent judgment upholding the validity of the amendment.

Chinnasamy & 7 others Vs. The DSP, Udumalpet Sub-division, Udumalpet [3] - This is the first case from the State of Tamil Nadu in the National Crime Records Bureau under honor killing of the year 2016. The incident happened in Udumalpet, Tiruppur District, Tamil Nadu State, in India. In this case, a lower caste- *Dalit* man married an upper-caste woman whose father and relatives murdered the Dalit man. Lower Court (Tiruppur Sessions Court) confirmed capital punishment for the Father and High Court of Madras acquitted the Father and others were marginally punished. The Court, based on insufficiency of witness, decided this case. Currently, the Appeal is pending before the Supreme Court. This judgment can be criticized by remembering the observations made by Justice Krishna Iyer on the Court's guiding notion in delivering justice "Court has a conscience, and it will always know the facts. In some cases, victims will have a disadvantage and the accused an advantage. But the courts will have to prod through that advantage enjoyed by the accused and walk that extra mile to mitigate the disadvantage of the victim to consciously render justice."

II. RESEARCH METHOD

This research is conducted as per existing judgments and legislations, which analyze both primary and secondary data. The primary data consist of national legislations and Reports of Law Commission of India concerned the rights of Scheduled Caste-*Dalit*. In addition, the documents from the United Nations and the relevant international agencies are referred to for the purpose of comparative analysis regarding *Dalit* as primary data. The secondary data consists of books, journals, and other relevant materials relating to the Dalit community.

III. FINDINGS AND DISCUSSION

The difficulty to get justice both within the judicial system as well as outside of it would undoubtedly reduce one's standard of life. The need for adjudicatory mechanisms, public awareness of their rights and the role of adjudicatory mechanisms, public access to these adjudicatory mechanisms in terms of physical distance, speedy adjudication, and affordability of the adjudication process are all important aspects of access to justice. In case of human rights violations, members of disadvantaged communities, like Dalits, are unable to receive justice and find themselves in risky circumstances to defend their rights. As a result, ensuring access to justice necessitates a greater focus on the marginalized in order for them to live free of violations and as equal

citizens, a dignified life. The socially and economically weaker sections are not in a position to approach the Court of law for solving their problems. There are various reasons such as cost too much, too difficult, too alien which they cannot understand, or too slow for the group or type shut out. In *Centre for Legal Research v. State of Kerala* [4], the Supreme Court emphasized the importance of social participation in the legal aid movement, "It is acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional or litigation oriented legal-aid programme but it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what we may make it clear that such voluntary organization or social action group shall not be under the control or direction or supervision of the State Government or the State Legal Aid and Advice Board because we take the view that voluntary organizations and social action groups operating these programmes should be totally free from any Governmental Control." As per the Criminal Procedure Code, 1973 under Section 304, the Sessions Court has the power to assign a pleader for the defense of the accused at the expenses of the State provided he is unrepresented and the Court is satisfied that he has no sufficient means to engage a pleader [5]. The right to legal aid to the accused is not limited to the stage of a trial. It arises the moment he is arrested in connection with a cognizable offense. But the said right is only for representing the accused in the court proceeding. It does not extend to his interrogation in police custody. There are certain crimes like caste-based violence which are punishable under legislation like The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. Crimes against the historically marginalized SC and ST by the upper castes in India represent an extreme form of prejudice and discrimination [6].

It is witnessed all over India that *Dalit* people have been forced to be manual scavengers and facing a lot of issues in reality. To protect them from these kinds of practices, India has enacted the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. It was enacted not only to abolish the evil practice of employing anyone as a manual scavenger but has provided the ways and means for rehabilitation of such workers. The sorry state of affairs is that it was not properly implemented in letter and spirit, and there is no conviction to anybody who had been book under this legislation. In

addition to that, it needs more funds for effectively imparting awareness to the people about this unacceptable practice. Further, police officials and executive officers need more sensitization on this, then only it can be eliminated from society. In *Union of India v. State of Maharashtra and Ors* [7], the court clearly mentioned about creating awareness to executive officer such as police regarding importance of legislation for the protection of people from any kinds of atrocities.

Even in the present society, an invisible wall divides the Lower caste people from the upper caste people. This type of discrimination continues against the SC/ST people, particularly in rural areas. It is very disgusting to mention, but it is a painful reality that the entire system in the State is operating in the lines of caste. Even the candidates in the elections are selected based on their caste in the locality [8]. They are vulnerable to problems such as rape of women, abuse by police personnel, harassment of lower caste village council heads, illegal land encroachments forced evictions, and so on [9]. The Act as mentioned above is only applicable to the specific caste mentioned. But there are also such kinds of discrimination that exist between the upper caste and the other castes that are lower (by practice). This can also be brought under hate crimes because this discrimination is practiced out of intolerance of people who eat meat, fish and who don't eat them. Nonetheless, the hatred on the women of lower caste has many reasons like when they marry upper caste men out of mutual love, the opportunity to work with other upper caste people, live beside the house of upper-caste people while accessing public services-water, transport, etc. These attitudes towards the women will make them feel discouraged, unempowered and shun them more than physical suffering. Provided, it requires not only punishment but a realization that helps the offender not to continue with such a disgusting attitude towards his fellow human being. And restorative justice in such cases should also concentrate on offenders' well-being or creating awareness but must effectively function in empowering and encouraging the victims for their social well-being, which will psychologically strengthen. There is always a practical difficulty in India approaching law enforcement agencies, like a woman approaching a police station for lodging a complaint. India must adhere to international obligations such as the Sustainable Development Goal 5.2 provides for eliminating all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation. The Indicators and a Monitoring Framework [10], a monitoring mechanism of SDGs, had proposed (Indicator on women and peace and security) three stages under which how violence against women and children are managed by police

and justice system process are significant in protecting them. Monitoring, investing, and sentencing are very vital and interconnected. It is also important to note the recent case namely *Khuman Singh v. State of Madhya Pradesh* [11] in which the Supreme Court held that Section 3(2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is applicable if the offense was committed only on the ground that the victim was a member of the Scheduled Caste. This observation is nothing but Supreme Court has gone beyond its mandate of interpreting the law. The Ministry of Home Affairs of the Government of India has acknowledged that atrocities/crimes against scheduled caste and scheduled tribes are increasing day by day despite the deterrent provisions in the Act. Though there are cases where the Indian judiciary has stressed the importance of preventing atrocities against Dalits, it is still not reached fully in reality. It is pertinent to note here the difficulties faced by the Dalit people for ensuring access to justice; 1. They are not economically sound and strong for bearing the expenses 2. Caste Hindu may threaten them for various reasons 3. There is no guarantee for safety and security for their life resulted in turning into hostile witnesses/ not revealing what had happened to them during the trial.

IV. CONCLUSION

It is pertinent to note here that poverty and inequality are inherent in the Indian Social Structure of India. Even to date, it has not changed as upper classes are enormously wealthy, and lower classes are miserably poor. It is happening everywhere in the world. All human beings are equal before the law and have equal opportunities without regard to religion, race, language, sex, social groups, etc. Poor people do not have access to justice, and they need to protect and promote their rights and interest. Legal aid is undergoing profound changes around the globe.

There are many marginalized *Dalits* who cannot afford one meal a day. It is impossible for such marginalized *Dalits* to pay the court charges or pay an advocate to get justice. Justice Venkatachaliah observed that the court fee as a limitation on 'access to justice' is inextricably intertwined with a 'highly emotional and even evocative subject stimulative of visions of a social order in which justice will be brought within the reach of all citizens of all ranks in society, both those blessed with affluence and those depressed with poverty.' [12] These issues are already criticized and highly condemned by jurists and scholars. But in vain, the basic requirements to access justice are not looked upon. Social Justice is given to Schedule Caste and Schedule Tribe people in society through the constitution is only for reservation. But they need it for their whole life and not for their education and job. The main issue is that

they need to join the mainstream of society's development as well as their personal. But, the domination of upper caste people not giving any chance to Schedule Caste and Schedule Tribe people to develop in the present society. The Scheduled Caste and Scheduled Tribe people are most vulnerable in the society from the ancient days. Still, they are facing lots and lots of trouble from the others. To attain social justice for these people, the society itself gets into transformation. The transformation cannot happen in a single day or a single move. The whole society itself is ready to accept the empowerment of these people positively. The positive in a sense is to give more chances to them. The chances must be in affirmative action, not on the other side. They must be given empowerment in social life, Political life, and Economic life.

The Constitution of India, 1950, already provides certain fundamental and legal rights to these vulnerable people, but these rights are written only on paper, and the reality of Indian society is atypical. The empowerment in social life has to be framed to accept inter-caste marriages. In recent years, the Indian social society saw more numbers of honor killings for inter-caste marriage. The Schedule caste men are mostly affected by this social killing. The upper caste people are not ready to accept the schedule caste men as their sons-in-law even they are in a good economic status and well educated. The main concern is they belong to a scheduled caste, and the upper caste people are not ready to be accepted by Indian society.

The political life of these people in India is worse. The current President of India also belongs to the lower community, but the political life of Dalit people is a very pathetic situation since Independence. The People Representation Act, 1951 paved the way for 24% of constituencies to be reserved for the SC/ST community. But the political parties are not ready to draw more than the said numbers in the elections. Only very few political parties that belong to lower caste parties draw their candidates from the general constituency. Even the traditional and old parties in India also are not ready to draw their candidates from the general constituency.

The Scheduled Caste people are more affected by the Economic Justice in India. The 'caste-based job'- a system from the ancient days, is still followed in India. The difference in paying wages among lower caste people and upper caste people is still in practice. The economic justice to the SC/ST people is "shattered." Even, a minimal margin of SC/ST people developed through reservation which is envisaged in the Indian Constitution. But their development is only limited to their family and not beyond.

The SC/ST people are denied justice, at all levels in society. In order to develop their access to justice and attain the Sustainable Development Goals, the state has to develop the empowerment on women, empowerment on transgender, empowerment of children, empowerment on social life, empowerment on political life, and empowerment on economic life Dalit community. Society will develop only when 50% of participation/opportunities are given to women in all aspects. Free education at all levels and that education system should be similar throughout the entire country. It is the primary weapon to eradicate the caste barrier in society and attain Sustainable Development Goals. The lack of comprehensive and disaggregated data is one of the most significant issues faced in achieving SDG 16 targets. Apart from the data challenge, adequate reporting of incidences of violence and other rights violations remains a challenge. Therefore, it is essential to strive for greater initiatives to improve the availability of comprehensive and updated data on various types of offenses and reporting on crimes against women, children, and other vulnerable groups. Conclusively, along with the judiciary, law-enforcing mechanisms like the police department also have a significant role in attaining the objective of access to justice. A proactive and perceptive police department can accomplish a lot. A review of their training and sensitization programs would be beneficial in order to better appreciate the issues they encounter in protecting law and order and their role in meeting specific requirements such as managing First Information Reports, organizing bail work, and handling evidence.

REFERENCES

- [1] Access to Justice for Marginalized Persons- Evaluation and Documentation. Final Report, 18th May 2017,p.61. DOI: https://doj.gov.in/sites/default/files/UNDP%20Final%20report_18May2017.pdf
- [2] <https://lawtimesjournal.in/dr-subhash-kashinath-mahajan-vs-the-state-of-maharashtra/>.
- [3] RT.No.3/2017 & CrI.A.Nos.162 to 165 & 183/2018. High Court of Madras.
- [4] *Centre for Legal Research v. State of Kerala* AIR 1986 SC 2195.
- [5] Ratanlal and Dhirajlal, *The Code of Criminal Procedure*, 2013.
- [6] Smriti S. Caste-based crimes and economic status: Evidence from India. *J Comparat Econ.* 2015; 43:204–26.
- [7] Review Petition (Crl.) No.228 Of 2018 In Criminal Appeal No.416 Of 2018, Supreme Court of India. DOI:<https://www.indianemployees.com/judgments/details/union-of-india-versus-state-of-maharashtra-and-ors>.
- [8] *Dr. A. Ganapathi v. State of Tamil Nadu & others* (Crl.OP No.24410 of 2017 and CrI.MP. Nos.14117 of 2017 & 1792 of 2018).
- [9] file:///C:/Users/Welcome/Downloads/Caste-based_Crimes_and_Economic_Status_fr.pdf.
- [10] Indicators and a Monitoring Framework- Launching a data revolution for the Sustainable Development Goals. DOI: <https://indicators.report/indicators/i-39/>.
- [11] Criminal Appeal No of 1283 of 2019. Supreme Court of India.
- [12] 189th Law Commission Report on Revision of Court Fees Structure, 2004.DOI: <https://lawcommissionofindia.nic.in/reports/189th%20Report%20on%20Revision%20of%20Court%20fee.pdf>.