

**Devarajiah Vs. B. Padmanna**

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**Court :** Karnataka

**Decided On :** Sep-10-1957

**Reported in :** AIR1958Kant84; AIR1958Mys84; (1958)36MysLJ88

**Judge :** N. Sreenivasa Rau, J.

**Acts :** Untouchability Offences Act, 1955 - Sections 3, 4, 7 and 10; [Constitution of India](#) - Article 17; [Indian Penal Code \(IPC\), 1860](#) - Sections 500; [Madras Removal of Civil Disabilities Act, 1938](#); The Coorg Schedule Castes (Removal of Social Disabilities) Act, 1940; Government of India (Schedule Castes) Order, 1936

**Appeal No. :** Criminal Revn. Petn. No. 95 of 1957

**Appellant :** Devarajiah

**Respondent :** B. Padmanna

**Advocate for Def. :** B. Vedantha Iyengar, Adv.

**Advocate for Pet/Ap. :** S. Gundappa, Adv.

**Judgement :**

ORDER

1. The petitioner has lodged a complaint with the City Magistrate, Bangalore, against the Respondent alleging that the latter had issued a printed pamphlet according to the contents of which the complainant had no right to worship or enter

into any Jain temple and the Complainant should be prevented from entering such places of public worship belonging to the Jain community and offering prayers and religious services in those places.

He also alleged that the accused was encouraging untouchability by instigating the Jains not to have social or religious intercourse with others of the same religion like the Complainant. According to the Complainant, the accused has contravened Sections 3, 7 and 10 of the Untouchability Offences (1955) Act by such conduct and he prays that the matter be enquired into and that the accused be punished according to law.

The learned Magistrate took the case on file in respect of an offence under Section 500 of the Indian Penal Code. The complainant went up in revision to this Court. The Revision Petition was dismissed with the observation that the Petitioner might urge before the learned Magistrate his contention that the case should be registered for offences under the Untouchability Offences Act, 1955, and obtain a decision. The learned Magistrate after hearing arguments made an order holding that no offence under that Act was disclosed. This petition is directed against that order.

2. If the pamphlet is left out of account, there is no specific averment about the allegation against the accused that he was instigating the members of the Jain community to practise untouchability. The pamphlet itself consists of twelve closely printed pages and appears generally to deal with the way in which three temples of the Jain community are being managed and the way in which the Jain Mathadhipathies associated with those temples are functioning.

The substance of the accused's grievance appears to be that the rigid rules of Jaina religion & practice are being infringed, that heterodoxy is being encouraged & that non Jains are admitted to food and worship contrary to the tenets and practice of Jain religion. There is also a narration of a particular incident alleged to have occurred on 24-3-1955 in a Jain temple in Bangalore.

There are also suggestions in regard to the action to be taken for the general benefit of the Jain community. So far as the present Complainant is concerned,

the only part of the pamphlet which refers to him says that he and two other persons were not Jains and were not fit to associate themselves with any Jain temple or the Jain community.

3. It is urged by the learned Advocate for the petitioner that the tendency of the pamphlet is to promote untouchability in the Jain community by suggesting that particular persons who were not conducting themselves in a manner that commended itself to the Complainant should be excluded from worship, religious services, food etc.

The learned Magistrate has taken the view that the provisions of the Act apply only in the context of untouchability practised by imposing disqualifications and disabilities on a person by reason of his birth.

4. It appears to me that the Petitioner's contention has no force. The Untouchability Offences Act, 1955, does not define the word 'untouchability'. This Act is obviously a law passed by Parliament in accordance with the provisions of Article 17 of the [Constitution of India](#), which abolishes 'untouchability' and forbids its practice in any form and provides for punishment, according to law, of the enforcement of any disability arising out of 'untouchability'.

There is no definition of the word 'Untouchability' in the Constitution also. It is to be noticed that that word occurs only in Article 17 and is enclosed in inverted commas. This clearly indicates that the subject-matter of that Article is not untouchability in its literal or grammatical sense but the practice as it had developed historically in this country.

The existence and practice of untouchability in this country and the efforts made for its eradication during the past several decades are matters of common knowledge and can be taken judicial notice of. The framers of the Constitution dealt with this feature, which in their view constituted a blot on Indian Society, in two ways. They provided for withholding legal recognition to this form of social discrimination and for punishing such discrimination as an offence.

This is Article 17 of the Constitution. They also enacted special provisions for the amelioration of the 'untouchables'. These are to be found in Part 15, which deals mainly with special measures for securing adequate representation for this class of people, in the Legislatures of the Country, for recognising their special claim to services and posts and for their uplift.

In that context they are described as 'Scheduled Castes', which term is defined in terms of Article 341, which in turn authorises the President to specify the castes, races or tribes, etc., which shall be deemed to be 'Scheduled Castes' and also enables Parliament to make appropriate modifications. It was obviously necessary to make such a provision to facilitate the preparation of electoral rolls and to implement other matters relating to election as also to facilitate the undertaking of the ameliorative measures dealt with in that part of the Constitution.

But Art. 17 which was intended to give effect to the decision to abolish the practice of untouchability, as mentioned above, does not define that term, nor is a definition contained anywhere else in the Constitution. This omission would appear to be deliberate as the intention presumably was to leave no room or scope for the continuance of the practice in any shape or form.

5. In the Act in question also the same term 'untouchability' i.e., in inverted commas, is employed. The effect of this device is the same as using the phrase 'the practice known as untouchability', which necessarily refers to the meaning of the term in the context of the historical development of the practice and does not connote its literal meaning. It may be mentioned that prior to the promulgation of the Constitution several enactments had been passed by various Legislatures for the removal of the disabilities from which the untouchables suffered.

For example, the Madras Removal of Civil Disabilities Act 1938 refers to them as 'any particular community or class known as Harijans, Untouchables, Depressed Classes or the like. The Coorg Schedule Castes (Removal of Social Disabilities) Act, 1940, as the title indicates refers to them as Scheduled Castes, which term is defined not only with reference to the Government of India (Schedule Castes) Order, 1936, but also includes Yerravas or any class or community known as Harijans, Untouchables and Depressed Classes.

It is thus seen the Madras and Coorg enactments also leave the classes to be gathered from the prevailing practice as the Act in question does.

6. Comprehensive as the word 'untouchability' in the Act is intended to be, it can only refer to those regarded as untouchables in the course of historical development. A literal construction of the term would include persons who are treated as untouchables either temporarily or otherwise for various reasons, such as their suffering from an epidemic or contagious disease or on account of social observances such as are associated with birth or death or on account of social boycott resulting from caste or Other disputes.

The imposition of untouchability in such circumstances has no relation to the causes which relegated certain classes of people beyond the pale of the caste system. Such relegation has always been based on the ground of birth in certain classes.

7. The acts and conduct referred to in the complaint petition may, at the utmost, amount to an instigation to social boycott in relation to a particular community and with reference to the conduct of those persons from the point of view of the religious or social observances of that community and has no relation solely to their origin in a particular class. It cannot therefore be said that such conduct can come within the mischief of the Act.

8. The petition has thus no substance and is dismissed.

9. Petition dismissed.