Untouchability is an age-old problem in our country which is a direct outcome of the Hindu Social System. Though untouchability has been abolished and its practice in any form is forbidden under Article 17 of the Constitution, the enforcement of legislative measures for removal of untouchability have not yet brought the desired effect. In this Article efforts have been made to highlight the shortcomings of the P.C.R. Act and the pitfalls in implementation of the provisions of the Act which are responsible for its ineffectiveness.

Dr. (Miss) Lakshmi Devi is a Member of the Faculty of Social Work, Kashi Vidyapith, Varanasi-2.

Under Article 17 of the Constitution untouchability has been abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with Law. Article 25(2)(b) is also relevant for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. The Untouchability (Offences) Act, 1955 was enacted by Parliament under Article 35(a)(ii) of the Constitution.

This Act was amended by the Untouchability (Offences) Amendment and Miscellaneous Provision Bill, 1972, which was passed by the Parliament in September 1976 and enforced with effect from 19th November 1976, which has been renamed as Protection of Civil Rights Act, 1955.

Salient Features of the Protection of Civil Rights Act

The amended Act has considerably tightened the provisions to enable the eradication of untouchability. All untouchability offences which were cognizable will now be treated as non-compoundable and in cases where the punishment does not exceed three months imprisonment, these can be tried summarily. The punishment of untouchability offences has been enhanced and both fine and imprisonment will be awarded for such offences. For subsequent defaults the punishment has been enhanced. For instance, for the third and subsequent offences the punishment may range from one year imprisonment with a fine of Rs. 500 to two years imprisonment and a fine of Rs. 1000. Courts are empowered in addition to any other form of punishment, to cancel or suspend licences in respect of any profession, trade, employment, in relation to which the offence is committed for any length of time they may deem fit. One significant characteristic of the Act is that public servants who wilfully show negligence in the investigation of any offence punishable under the Act, shall be deemed to have committed an offence punishable under that Act. The Act contemplates surveys and studies for determining the areas where untouchability is practised, setting up of committees for implementing the Act and grant of adequate facilities to persons subjected to disabilities arising out of untouchability, to enable them to avail of their rights. Privately owned places of worship alongwith lands and subsidiary apartments to such privately owned places of worship which are allowed by the owner to be used as places of public worship have been brought within the purview of the Act. The direct and indirect preaching of untouchability or its justification on historical, phi-
losophical or religious grounds has been made an offence. Compelling any person to do scavenging or sweeping has also been made punishable. The State Governments, have been empowered to impose collective fines on the inhabitants of any area who are concerned in or abetting the Commission of untouchability offences. The Central Government issued a notification on 15-9-77 prescribing the manner of inquiry under sub-section (1) of Section 10A of the Act.

It has been provided that the Central Government shall coordinate the measures taken by the State Governments for implementation of the provisions of the Act and shall, every year, place on the table of each House of Parliament a Report on the measures taken by itself and the State Governments in pursuance of the provisions of the Act. The Government of India has asked the State Governments to furnish statistical and other information about the number of cases dealt with by them under the Act, along with detailed notes containing information regarding steps taken by them for the proper implementation of the provisions of the Act, contained in Section 15A(2), with particular reference to the provisions of adequate facilities including legal aid, appointment of Officers for initiating or exercising supervision and prosecutions for the contravention of the provisions of the Act, setting up of special courts for the trial of offences under the Act, setting up of committees at appropriate levels for formulating or implementing measures, undertaking periodic surveys regarding the working of the Act with a view to suggesting measures for its better implementation and identification of areas in respect of untouchability and adoption of measures for its removal. The Government of India have also notified the rules, viz., under the provisions of Section 16B of the Act.

The Act, conceived as one of the powerful legal instrument for effecting a healthy social change is aimed at eradicating the traditional, deep rooted social crime of untouchability from the soil of India and enables the so-called Scheduled Caste people to hope and share the human dignity of life along with the more fortunate and better placed higher castes of the country. But the widespread prevalence of untouchability in the countryside ruins these hopes.

**Shortcomings in the Act Itself**

The purpose of the Act has been mentioned in the very first two lines as "An Act to prescribe punishment for the preaching and practice of Untouchability, for the enforcement of any disability arising therefrom and for matters connected therewith. But the word 'Untouchability' is not defined in the Constitution and in the above Act. The word appears to have historical development and refers to the social disabilities imposed upon certain classes of people only by reason of their birth in certain castes which are considered by some people as low when compared to other castes. What is prohibited in the Act is 'practising untouchability in any form'. The word 'practice' is used in a larger sense like "procedure". To constitute "practice" there should be a number of instances though it need not necessarily amount to custom. Thus, the Act itself has not specifically indicated as to what is the practice of an untouchability offence and the exact basis on which an untouchability offence is to be viewed and decided by the court. This raised substantial problems in the proof of "mens rea" (or guilty mind) since all discriminatory practices against untouchables were not offences per se. It had to be proved that the discriminatory behaviour was based purely on the ground of untouchability though the law raised a presumption that when any prescribed activity was committed in relation
to a member of Scheduled Caste it will be presumed to have been "committed on the ground of untouchability". But the presumption was to hold sway "until the contrary is proved". In lawyers' parlance it was thus a "rebuttable presumption". Therefore, it was open to the accused to demonstrate that the action against a member of the Scheduled Castes was not done on the ground of untouchability but on other grounds which he can cite in multitude. If this was accepted then the burden of proof will shift to the prosecution that the action was committed on the ground of untouchability.

The Act also used formulations which made prosecution somewhat problematic. For instance the Act prohibited discriminatory access to facilities and resources only in "public" places. Similarly the requirement of access and use of premises (e.g. temples and other places of public worship is also qualified in the Act, an untouchable can have only such access to it as to other persons "professing the same religion or belonging to the same religious denomination or any section thereof". Accordingly the Courts have held that there is no offence committed under the Law if the untouchables are prevented from entering a Jain temple since it is not open to people professing the same religion (Hindus) and the untouchables may be excluded since they did not belong to the same denomination as those who had access to it.

Section 12 of the Act states that where any act constituting an offence under the 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. In the recent decision of the Bombay High Court, the Court held that Section 12 should not be read as to cast the burden of proof on the accused to show that the complainant was not a member of a Scheduled Caste. "It was for the prosecution to first show that the complainant was a member of a Scheduled Caste and that the act committed was in relation to him as a member of the Scheduled Caste. The presumption of Section 12 could arise only after the prosecution has discharged this burden. It may be fair to insist that the prosecution proves that a person against whom a Civil Rights Act Offence has been committed belongs to a Scheduled Caste. But once this is shown, the language of the Section is quite clear that unless contrary is proved the act should be presumed by the Court to have been committed on the ground of untouchability. By requiring the prosecution to initially show that the "act in question was committed in relation to him as a member of Scheduled Caste", the High Court nullifies both the language and the purpose of Section 12. Given the fact that there are no active legal service organisations to pursue these matters until the State takes up the matter in further appeal all Courts in Maharashtra will be bound by this ruling, thus restricting the scope of the already circumscribed Section 12.

This is a case in which, the complainant a Buddhist was abused, insulted and prevented from participating in a palanquin procession and the Lower Courts convicted the accused under Section 7 of the Civil Rights Act according to which "whoever denies a person any rights arising out of abolition of untouchability, commits an offence". Under Section 7, as it now stands, it is not necessary that a person seeking to exercise the rights accruing to him by reason of abolition of untouchability should himself be and remain an untouchable. What is necessary is that people seeking to prevent him in the exercise of such rights should do so on behalf of the ground of untouchability. This was clearly the case here.
**Pitfalls in Implementation of the Act**

Section 15-A of the Civil Rights Act is a general programme script for executive action. Under this, the State Government may appoint officers for initiating or exercising supervision over prosecution for contravention of the Act. The State may set up special courts for trial of Civil Rights Act Offences. They may provide for periodic survey and social audit of the Law in operation and for the identification of areas of disability with a view to taking such measures" as would ensure the removal of such disability from such areas". The Central and State Governments are required to take such measures as may be necessary to secure to the untouchables all "the rights accruing from the abolition of untouchability". The obligation is not merely to see that these rights are made available to them but they are in fact availed of by untouchables. But it is unfortunate that neither the Government of India nor the State Government have taken any executive measures as required in the Act. Also, in the absence of any well established Central Agency to enforce the Law in the first place, the requirement as per the Act, of placing the Annual Report of the Administration of the Act before the Parliament will not be of much avail.

The experience of the working of the Act for the period since its adoption, particularly after the revocation of the emergency, substantially belies the incremental strategy. Instead of declaration of the areas of disability as envisaged, even in the moderate form in the current section 15A, at least one State, Bihar, has found the situation so desperate as to announce plans for providing arms for untouchables to enable them to survive predate attacks from the Savarnas. Despite the announcement of the Janata policy for eradicating untouchability in a five year period, there exists no example of declaration of areas of disability or even the levy of collective fines as authorised by Section 10A of the Act.

Public servants can now be held guilty of abetment of offences under the Civil Rights Act if they wilfully neglect the investigation of any offence punishable under the Civil Rights Act. However, there is a "catch". Courts are not to take cognizence of the offence of abetment except with the previous permission of the concerned Government. Company officials are also now liable for prosecution for breach of the Civil Rights Act. The Probation of offenders Act will not apply to offenders against this Law if they are above fourteen years of age.

Besides the above pitfalls in the implementation of the Act, the problem of workload and arrears of the subordinate Judiciary also has to be taken into consideration. The rate of pendency of Civil Rights Act cases is quite substantial and has been growing alarmingly in recent years. This is due to the fact that the overall workload of the Courts for several years has been on the increase.

The Lower Judiciary by training in temperament treats any accused innocent unless guilt is proved beyond any shade of doubt. It applies the same yardstick in the case of offences under the Protection of Civil Rights which is against the spirit of the provisions contained in Section 12 of the Protection of Civil Rights Act, 1955.

The reason for the large scale acquittal of cases is that the investigating machinery is not all serious about these Offences and shows a perfunctory attitude during investigation making the prosecution side very weak. They are required to investigate and collect details in such a way as if it is required under Section 302 of the Cr. P. C. It is observed that about 70 per cent to 80 per cent cases under the Act are registered under Section 7(c). The Courts in most of
the cases have either acquitted the accused prosecuted under the Section or adversely commented on the presentation of such offences.

The Study Report prepared by the Police Research Centre, Gujarat State, on the basis of 281 judgements of the cases acquitted under the Act in the State during the years 1975-76 and 1977 is an illustration in this regard. The scrutiny of these judgements has disclosed that the main reasons for the acquittal of cases are as under:

(i) the complainants and witnesses turned hostile.
(ii) exaggeration/concoction of complaints
(iii) delay in lodging complaints
(iv) want of independent evidence
(v) compromise between the parties
(vi) witnesses were found disinterested
(vii) previous enmity /dispute between the parties and contradictions in the depositions of witnesses.

The following are some of the important observations made by the Courts while acquitting cases under the Act.

Previous Enmity: The Courts were of the view that the real causes of the complainants were the previous enmity and instigation to wreak vengeance. The complainants and their associates have tried to exploit their status of being untouchables by caste.

Interested Witnesses: The defence advocates argued that the witnesses were interested and related to the complainants. Witnesses belonging to same caste and same locality were branded as "Interested witnesses" and the court disbelieved the version of the witnesses, due to which the prosecution failed to establish the guilt beyond reasonable doubt.

Independent Corroborations: The Magistrate agreed that if the incident took place on a public road having thick human traffic some persons from public could have been examined by way of independent corroborations. Thus in the absence of independent evidence the Magistrate did not consider it safe to rely upon the words of the complainant and his father/close relative and acquitted the accused by giving him benefit of doubt. Thus the Courts are very much reluctant to convict the accused in the absence of independent corroboration.

Delay in Lodging Complaints: Delay caused in submission of the complaints to the Police created doubts about the genuineness of the complaints in the minds of Courts which viewed it adversely and acquitted the accused. Delay caused was treated as planned and viewed with suspicion by the Courts.

Acquittal on Account of Compromise: Under Section 15(b) of the old Act it is laid down that "every such offence may, with the permission of the Court be compounded". However, according to the amended Civil Rights Act, though not clearly mentioned under Section 15(A), the offences are made non-compoundable. In view of the fact that there is no clear mention in the Act to this effect, and according to Section 15(1) every offence punishable under the 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 First Class. The courts taking recourse to the provisions of the old Act are allowing compromise with their permission on the ground that the peace between the two parties would be preserved.

Though it is not necessary to mention the word non-compoundable in the Act under Section 15, the Courts in general are taking shelter behind non-mention of the word
"non-compoundable" in Protection of Civil Rights Act, and allow the compounding of offences.

In addition to the above reasons, the Gujarat High Court had observed in criminal appeal No. 1192 of 63 that "when a person who is 'DHED' by caste is called Dhed it is not an offence under the Act.

The judgement of the District Sessions Court, Surat, upheld by the Gujarat High Court and the decisions taken on the provisions of the Act by the Bombay High Court are important to indicate that these sections are found to be ineffective and difficult to prove on the basis of evidence produced by the investigating authorities. To overcome these shortcomings in the provisions of the Act, necessary remedial measures should be taken up even if it requires amendment in the Act.

Although a great deal has been accomplished and the Constitution has abolished untouchability, it still persists in various forms, particularly in rural areas. Men cannot be made moral by legislation alone. If this evil is to be eradicated completely, the task of educating public opinion has to be continued. The creation of healthy public opinion to support legislative efforts is necessary. It is considered necessary especially to educate Revenue Patwaris, Lower Police Officials in rural areas and village Patels to shed their own caste prejudice and enforce legislative measures with energy and enthusiasm.