

(18/35)

- (ii) a laundry and a hair-cutting saloon,
(iii) any other place where services are rendered to customers];

COMMENT

Scope and applicability.—The position emerging from the relevant provisions of the Protection of Civil Rights Act, and the Constitution as also the relevant provisions of the Constitution (Scheduled Castes) Order, is to the effect that it is only those persons, who profess the Hindu or the Sikh religion and who belong to the castes, races, or tribes therefrom or groups within castes, races or tribes therefrom and so notified by the President by virtue of his powers under Art. 341, who shall be deemed to be members of a scheduled caste or castes. A reference to the schedule attached to the aforesaid Constitution (Scheduled Castes) Order further shows that in no part of the country has the President under his aforesaid order notified Buddhist as a caste or race covered by the aforesaid order. The resultant position thus is that a Buddhist or one professing Buddhism does not belong to a scheduled caste within the meaning of the said Act. Consequently, the provisions of the Protection of Civil Rights Act, 1955, would not apply to a Buddhist or one professing Buddhism.

Uncontroverted and undisputed prosecution case itself thus all throughout being that the complainant is a Buddhist, it is extremely difficult to see how any presumption in relation to a member of a scheduled caste under Sec. 12 of the Act can at all arise in this case which relates to a Buddhist and consequently not a member of any scheduled caste.¹

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

(a) from entering any place of public worship which is open to other persons professing the same religion² [* * *] 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 watercourse³ [river or lake or bathing at any ghat of such tank, watercourse, river or lake] in the same manner and to the same extent as is permissible to the other persons professing the same religion² [* * *] or any section thereof, as such person;

⁴[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 hundred rupees and not more than five hundred rupees].

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

1. *Mangala Parashram Kelkar v. State of Maharashtra*, 1979 Mah. L.J. 599 at pp. 601, 602.
2. The words "or belonging to the same religious denomination" omitted by Act 106 of 1976, Sec. 5 (w.e.f. 19th November, 1976).
3. *Ins. by ibid.*, Sec. 5 (w.e.f. 19th November, 1976).
4. *Subs. by ibid.*, Sec. 5, for certain words (w.e.f. 19th November, 1976).

COMMENT

The section prescribes the punishment for the acts of untouchability with regard to religious activities, viz. worshipping, offering prayer, and bathing in sacred river, etc.

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, dharmashala, sarai or musafirkhana for the use of the general public or of¹ [any section thereof]; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business¹ [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, or¹ [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 or¹ [any section thereof]; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of¹ [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 dharmashala, sarai or musafirkhana, which is open to the general public, or to¹ [any section thereof]; or

(x) the observance of any social or religious custom, usage or ceremony or² [taking part in, or taking out any religious, social or cultural procession]; or

(xi) the use of jewellery and finery;

³[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].

⁴[Explanation.—For the purposes of this section, "enforcement of any disability" includes any discrimination on the ground of "untouchability".]

COMMENTS

The section prescribes the punishment for enforcing social disabilities on the ground of untouchability under the circumstances enumerated therein.

1. *Subs. by Act 106 of 1976 Sec. 6, for certain words (w.e.f. 19th November, 1976).*
2. *Subs. by Sec. 6, ibid., for "taking part in any religious procession" (w.e.f. 19th November, 1976).*
3. *Subs. by Sec. 7, ibid., for certain words (w.e.f. 19th November, 1976).*
4. *Ins. by ibid., Sec. 6 (w.e.f. 19th November, 1976).*