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Atrocities on Dalits and the scheduled castes and the scheduled tribes (Prevention of atrocities) Act, 1989

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Abstract

As per official statistics, every eighteen minutes a crime is being committed on a Dalit (Telumbde, 2008: 9). Every day three Dalit women are raped, two Dalits are murdered, two Dalit houses are burnt and eleven Dalits are beaten. Various reports of the National Crime Records Bureau and the National Commission for Scheduled Castes indicate an alarming increase in violence against Dalits. Violence against Dalits is not a new phenomenon. However, the reportage of violence against Dalits is a recent affair. This research primarily aims at analysing the historical, socio-cultural and legal context of violence against Dalits in contemporary India.

Keywords: Atrocities, scheduled castes, scheduled tribes

Introduction

On 2 April 2018, in an unprecedented show of solidarity, Dalits across India observed a Bharat Bandh to protest against the 20 March 2018 judgement of the Supreme Court that effectively took away whatever teeth the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been left with. On 20 March 2018, a judgment by Justice (now retired) A.K. Goel diluted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, to grant anticipatory bail to accused persons and directed that the police should conduct a preliminary enquiry on whether complaint under the 1989 law is “frivolous or motivated” before registering a case. It is worth noting that both conditions were not part of the original legislation. Justice Goel reasoned that the law was misused. Justice Goel had reasoned that it has found that members of the Scheduled Castes and Scheduled Tribes use the 1989 law to lodge false complaints, leading to the arrest of innocent persons ^[1].

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, when it was passed by Parliament in 1989, was hailed as the only legislation with teeth because of its bold provisions to act against the perpetrators of atrocities against Dalits. As per the original provisions of the Act, no preliminary enquiry or approval was required for registration of a First Information Report against any person against whom an accusation of having committed an offence under this Act has been made. Section 438 of the Code of Criminal Procedure, 1973 related to the grant of bail to person apprehending arrest also do not apply to persons committing an offence under the Act. Further, the provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) also do not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

However, reading through a single appeal of a senior government official who had already been given anticipatory bail by the Bombay High Court, the Supreme Court, in its 20 March 2018 verdict, significantly diluted the provision of the Act. As per the newly imposed condition, before the accused can be arrested under the Act, it will be necessary to obtain the prior approval of the appointing authority in case of a public servant and of Deputy Superintendent of Police in case of the general public. The Supreme Court had further stated that there is no absolute bar against grant of anticipatory bail in cases under the Atrocities

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¹ <https://www.thehindu.com/news/national/sc-recalls-its-2018-directions-virtually-diluting-provisions-of-arrest-under-scst-act/article29564466.ece>

Act, if no prima facie case is made out or where the complaint is found to be prima facie mala fide.

The 20 March 2018 verdict of the Supreme Court, as it was later justified, was supposedly based on the presumption of the rampant misuse of the stringent Act against government servants and private individuals and said there would be no immediate arrest on any complaint filed under the law. It had said on "several occasions", innocent citizens were being termed as accused and public servants deterred from performing their duties, which was never the intention of the legislature while enacting the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in 1989^[2]. The 20 March 2018 verdict of the Supreme Court had led to a massive outcry and protests by the members of scheduled castes and scheduled tribes across India after which Parliament passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, to neutralize the effects of the judgment. The newly amended Act received the assent of the President on 17 August 2018.

Dalit

Generally, the term 'Dalit' includes those termed in administrative parlance as Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs). However, in contemporary political discourse, the term is so far mainly confined to Scheduled Castes, the erstwhile untouchables in Indian society. In this paper too, the term Dalit is used to refer to Scheduled Castes in particular. In traditional Indian society, untouchables were historically most oppressed, underprivileged and deprived social group owing to their social, economic and political exclusion from the mainstream for centuries altogether (Shah, 2007: 18).

The word 'Dalit' as such was first used as far back as 1931 in journalistic writings. Following this, the Dalit Panther Movement of Maharashtra in the early 1970s, gave currency to the concept to highlight the sufferings and struggles of the untouchables. To be an untouchable in the Indian caste system is to be very low in, and partially excluded from, an elaborate hierarchical social order. Untouchables are persons of a discrete set of low castes, excluded on account of their extreme collective impurity from particular relations with higher beings, both human and divine (Michael, 2007: 16). They make up about 16 per cent of the Indian population and number about 166 million according to the Census of India 2011

The word Dalit particularly emphasises the dehumanising 'caste oppression' that makes them outcastes and untouchables (a degradation not shared by the other lower castes, backward classes and tribals), within the context of the Hindu caste system with its religio-social organising principle of 'purity and pollution'. However, the term is now being used by the low castes in a spirit of pride and militancy. The term Dalit is not merely a rejection of the very idea of pollution or impurity or untouchability, it reveals a sense of a unified class, of a movement toward equality. It speaks of a new stage in the movement of India's untouchables which is now a century old.

Dalits have waged a long, arduous, and often bitter struggle against oppressive caste discrimination, economic exploitation, marginalized political participation and an

unjust social order. Although the protests against untouchability and the other evils of the rigid caste system, in the form of various socio-religious movements, could be traced as early as since the time of Buddhism, but it was only with the introduction of secular education, representative administrative and democratic structures by the British in the early twentieth century that the Dalit movement acquired a political character.

Nature and Forms of Atrocities against Dalits in India

Atrocities against Dalits are not a new phenomenon. However, the reportage of violence against Dalits is a recent affair. Annual Reports of National Commission for Scheduled Castes indicate an alarming increase in violence against Dalits. Mendelsohn and Vicziany in their book *The Untouchables: Subordination, Poverty and the State in Modern India* (2007) classify the nature of violence against Dalits into two broad categories: first, 'traditional violence'; and second, 'the violence which flows from modern forms of resistance on the part of Untouchables or is a caste Hindu response to the changing situation of Untouchables'.

Traditional violence against Dalits in caste-based Indian society could be primarily explained and understood on account of two factors. First, the sheer vulnerability of Dalits arose from their utter dependence on their masters. Having been placed outside the *chaturvarna* system, Dalits occupied the lowest position in the social hierarchy of traditional caste structure. Since the ritual notions of purity and pollution constituted the axial principle of caste hierarchy, Dalits, thus, came to be identified as the most polluted, the untouchables, the *achhuts*. Subjected to centuries of strict exclusion from public places, education and means of subsistence, Dalits became utterly dependent on other social groups for their survival. Dalits had no choice but to accept whatever little was offered to them. Their mere intention of resistance was brutally dealt with. Dalit women, in particular, were easy sexual prey.

The second factor responsible for extreme humiliation and violence against Dalits is the traditional caste belief that regards dalits as inauspicious. Not only their touch but even their shadow is treated as polluting. It is assumed that they embody and have power over evil spirits. For example, in one village in Gujarat, caste Hindus believed that the Untouchables were the cause of disease suffered by cattle of the village. Hence, a Dalit woman and her daughter were forced to go to the cattle and 'remove the curse upon them by stretching their hands over the beasts and eating an offering of coconut' (Mendelsohn and Vicziany, 2007: 46). It is quite ironical that the believers in witchcraft attribute malevolent power to the most marginal and powerless members of society – Dalit women.

According to Mendelsohn and Vicziany, it is highly likely that the incidence of violence involving Untouchables has indeed increased significantly over the post-Independence period. They conclude that most contemporary acts of violence against Untouchables should not be classified as 'traditional'. Rather, they should be seen in the context of the new and still emerging identity of the Dalits. The social, economic and political conditions of Dalits is changing on account of various benefits from the State in terms of educational, occupational and political reservations. The increase in violence against Dalits is largely seen in retaliation against new assertive behaviour and claims by Dalits.

² <https://economictimes.indiatimes.com/news/politics-and-nation/sc/st-act-supreme-court-recalls-directions-of-mar-2018-verdict/articleshow/71391987.cms?from=mdr>

Law and Atrocities against Dalits

Marc Galanter in his book *Competing Equalities: Law and the Backward Classes in India* (1984) highlights some serious problems related to the protection as well as the promotion of interests of Scheduled Castes. Lack of awareness among the Scheduled Castes about their rights and apathy on behalf of the administration are some of the important reasons for the failure of various schemes designed for the welfare of Scheduled Castes (Galanter, 1984: 69) ^[1].

Galanter, in his yet another masterpiece *Law and Society in Modern India* (1989) investigates the dialectics of law designed to address the atrocities against Scheduled Castes. He begins with a common place observation that the law in action does not correspond to the law in the books and this especially so with the laws favourable to 'have not' groups. He states that before the Constitution of India came into force on 26th January 1950, several State Civil Disabilities Acts covered most of the India making it an offence to discriminate against Untouchables. In 1938, the Madras legislature passed the first comprehensive penal act to remove social disabilities. It was known as the Madras Removal of Civil Disabilities Act, 1938 (Galanter, 1989: 208).

The Constitution of India abolished the practice of untouchability in any form. Article 17 not only forbids the practice of 'untouchability' but declares that 'enforcement of disabilities arising out of 'Untouchability' shall be an offence punishable in accordance with law'. In exercise of the powers vested by Article 35, Parliament passed the Untouchability (Offences) Act (UOA) in 1955. This Act was later amended in 1976 and renamed Protection of the Civil Rights Act. This Act had even stringent measures to curb untouchability. It made the wilful negligence of complaints related to untouchability by investigating officers as tantamount to abetment. However, the provisions of the existing laws (such as the Protection of Civil Rights Act 1955 and Indian Penal Code) were found to be inadequate to check these crimes (defined as 'atrocities' in the Act). Recognizing the continuing gross indignities and offences against Scheduled Castes and Tribes, the Parliament passed the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act 1989.

The UOA outlaws the enforcement of disabilities 'on the ground of untouchability' in regard to, inter alia, entrance and worship at temples, access to shops and restaurants, the practice of occupations and trades, use of water resources, places of public resort and accommodation, public conveyances, hospitals, educational institutions, constructions and occupation of residential premises, holding of religious ceremonies and processions, use of jewellery and finery. The imposition of disabilities is made a crime punishable by fine of up to Rs. 500, imprisonment for up to six months, cancellation or suspension of licenses and of public grants (Ibid.: 209).

Galanter observes that the UOA was more a stronger and stringent Act compared to existing State Civil Disabilities Acts. It made more things punishable, levied heavier penalties and extended throughout India. Yet, contrary to expectations, the UOA did not have significantly higher level of use than did the predecessor State Acts. Not only was this new, stronger and more comprehensive statute used less frequently, but the percentage of cases ending in conviction also dropped dramatically. Galanter observes that

In the early 1950s the conviction rate in anti-disabilities cases was close to the average rate of convictions for all criminal trials in India. But, by the early 1960s, the convictions in anti-disabilities cases fell to less than half of the former rate (Ibid.: 209).

The rate of convictions during the two years 1978 and 1979 fell to a mere 18 percent—very low indeed for any offence in India' (Ibid.: 220).

Galanter identifies some important reasons responsible for the less frequent use of the Act by Dalits and the overall low conviction rate under it. One of the primary reasons, according to Galanter, is the absence of a separate central enforcement agency for this Act. Although the UOA is a central law, responsibility for its enforcement, like that of virtually all central laws, lies with the states. This is further compounded by a minuscule allocation of funds on anti-disabilities enforcement out of the total expenditure on law enforcement resources. Secondly, the complex character of caste system also acts as a hindrance in the implementation of the Act in its spirit. Galanter argues that anti-disabilities prosecutions depend on the initiative of the local police and the sympathy of local magistrates. However, both of them are usually disinclined to antagonize the dominant elements of the local community. The result is that a vast majority of potential cases that come to the attention of police are either ignored or at best 'compromised' without being registered. Thirdly, since the victims are largely poor and economically dependent on the dominant castes, both the complainants as well as the witnesses are extremely vulnerable to intimidation and reprisal. Such reactions and reprisals from the dominant castes may range from social boycott, eviction, denial of grazing rights, physical violence, destruction of property, etc. Last but not the least, the costly and time-consuming judicial process also acts as deterrent for the victims to approach the law.

It is not unawareness of its existence that inhibits its use, but awareness of its hazards and weaknesses. Untouchables are, quite sensibly, more deterred by the formidable difficulties of using the UOA than caste Hindus are deterred by the remote and mild penalties that it threatens them with (Ibid.: 215).

Galanter is thus critical of the method of addressing the untouchability issue through legalistic means for generating a counterproductive process. On the one hand, he argues, judges display cultural tolerance toward the practice of untouchability by hesitating to apply severe punishment to upper-caste perpetrators, who are treated complacently for 'merely following' their social and religious customs. On the other hand, the law's strong punitive measures make it imperative for the accused to fight cases actively and to avoid punishment by hiring competent lawyers, even relying on illegal judicial strategies 'by marshalling witnesses, intimidating or suborning prosecution witnesses, and all those familiar tricks'. Therefore, according to Galanter, 'by raising the stakes the new act has created more determined and resourceful opponents, but it has done nothing to upgrade the performance of the law' (Galanter 1989: 220-1). Nicolas Jaoul ^[3] in his paper *A Strong Law for the Weak* adds deeper insights into the operational aspect of the Scheduled Castes and Schedule Tribes (Prevention of

³https://www.academia.edu/35969155/_A_Strong_Law_for_the_Weak_Dalit_Activism_in_a_District_Court_of_Uttar_Pradesh_in_D_Berti_and_D_Bordia_Regimes_of_Legality_Ethnography_of_Criminal_Cases_in_South_Asia_New_Delhi_Oxford_University_Press_2015_171_201

Atrocities) Act 1989. In his ethnographic study of Kanpur District Court (2014), Jaoul observes that the law's symbolic efficacy proved severely limited due to the combined absence of political will and compelling mechanisms regarding its implementation. Though the Act of 1989 comprised an institutional implementation mechanism, including judicial measures such as the setting up of the special courts and prosecutors, yet, in reality, such institutional arrangements remained largely ignored by the very state agencies on whom laid the onus of their implementation.

Jaoul, in his study, observes that the judiciary itself is the site of resistance against the anti-untouchability legislation it is supposed to implement. He argues that the use of the judiciary system seems to be favoured by Dalit activists only – and, initially at least, by the victims – while the judiciary itself seems committed to extra-judicial means of conflict resolution like compromise.

Conclusion

The official statistics for the decade 1990-2000 indicate that every hour more than three cases of atrocities against Dalits are registered, and every day three cases of rape and at least one murder are reported. The official statistics, however, only capture the tip of the iceberg. The actual incidence of atrocities is much larger in magnitude since many incidents are not reported to the police either out of fear or threat of the dominant castes and hence remain unrecorded (Shah, 2012) ^[4]. The gravity of the situation gets further accentuated with the extremely complex, slow and tiring judicial process. High pendency of such cases in courts and low conviction rates of the perpetrators of atrocities against Dalits undermine the very promise of social justice that the Constitution of India proudly boasts of. If 'Justice Delayed is Justice Denied', then, Dalits in India are the ones who have been betrayed repeatedly for centuries by denial of justice across every possible sphere of life.

The Constitution of India has several provisions for the protection and empowerment of Dalits. However, such formal provisions would achieve little unless each citizen can overcome the disadvantages of caste, class, gender and religion to pursue opportunities equally.

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