



Atrocities on Dalits - A Gap Between Law and Practice

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KEYWORDS:

This article tries to analyse the increasing and perpetuating atrocities on the dalits which leads to gross violation of Human Rights in a larger context. An attempt is also made to identify the reasons for perpetuating atrocities despite the various safeguards provided under Constitution and legislations enacted by the Parliament in different period. It further seeks to analyse the 23 years of SCs & STs (Prevention of Atrocities) Act 1989 relating to atrocities, whether it has become successful in preventing atrocities, and if not, then what are the reasons for such failure. The paper comes to the conclusion that the hardship of Dalits and failure of the legislations which enacted to protect the interest of dalits are the result of the continuing belief and faith of the upper caste people in the sanctity of institution of caste system and untouchability, which is legitimized by Hindu religious scriptures.

The concern for protecting the rights and dignity of Dalits (Scheduled Castes) has been a major challenge even after India's independence. Despite special protective laws such as the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and their implementation for 23 years, the Scheduled Castes continue to be the victims of caste-based untouchability and atrocities. Though most of such incidents go often unreported, even the cases registered under these laws also end in acquittal. This scenario on the one hand raises doubts on the will and commitment of the state, particularly its law-enforcing machinery; on the other hand, it necessitates the need for understanding the various factors that lead to the barbaric situation of most exploited section of Indian society i.e. Dalits.

In this context, the article tries to analyse the increasing and perpetuating atrocities on the dalits which leads to gross violation of their Human Rights in a larger context. An attempt is also made to identify the reasons for perpetuating atrocities despite the various safeguards provided under Constitution and laws enacted by the Parliament in different year. It further seeks to analyse the 23 years of SCs & STs (Prevention of Atrocities) Act 1989 relating to atrocities, whether it has become successful in preventing atrocities, and if not, then what are the reasons for such failure. This article was prepared on the basis of both primary (Survey conducted in the District of Dakshina Kannada) and secondary sources.

The Scheduled Castes and Scheduled Tribes according 2001 census, constitutes 16% and 8.20% respectively of the total population of the country. The major concentration of Scheduled Castes population could be seen in the States of Himachal Pradesh (24.72%), Punjab (28.85%), Uttar Pradesh 21.15%, and West Bengal 23.02%. Punjab has the highest proportion whereas Karnataka is 16.20% of the All India Population. The term Dalit has been interchangeably used with term Scheduled Castes, and Scheduled Tribes, include all historically discriminated on the basis of caste, touch i.e. former Untouchables. Although identified with Hinduism in the past Dalits and similar groups are also found in Nepal, Pakistan, and Bangladesh. In addition, the Barakumin in Japan, Cagots and Roma in Europe, Al-Akhdam in Yemen, Baekjeong in Korea and Midgan in Somalia are excluded from the surrounding community in much the same manner as the Dalit.

The SCs and STs (Prevention Of Atrocities) Act 1989:

The term 'atrocities' was not defined until the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (SC/ST (POA) Act) was passed by the Parliament in 1989. In legal parlance, the Act understands the term to mean an offence punishable under sections 3(1) and (2). In specific terms:

- (i) Atrocity is "an expression commonly used to refer to crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India."
- (ii) It "denotes the quality of being shockingly cruel and inhumane, whereas the term 'crime' relates to an act punishable by law".
- (iii) It implies "any offence under the Indian Penal Code (IPC) committed against SCs by non-SC persons, or against STs by non-ST persons. Caste consideration as a motive is not necessary to make such an offence in case of atrocities"
- (iv) It signifies "crimes which have ingredients of infliction of suffering in one form or the other that should be included for reporting". This is based on the assumption that "where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime."
- (v) The Act lists 22 offences relating to various patterns of behaviours inflicting criminal offences for shattering the self-respect and esteem of SCs and STs, denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process, etc.

The POA Act was meant not only to prevent but also to eliminate atrocities against SCs and STs. With this in view, it formulated stringent measures for imposing heavy penalties on dominant caste perpetrators of atrocities as well as on those public servants wilfully neglecting their duties in implementing the POA Act & Rules. In particular, this Act consists of the following significant features:

- It addresses various offences/crimes committed against SCs/STs in the areas of social disabilities, encroachment or appropriation of property, malicious information or suit, political rights violations and economic exploitation.
- It establishes special procedures to prosecute the offenders booked for these offences.
- It mandates (i) investigation by D.Y.S.P; (ii) the designation of special courts and special public prosecutors for dealing with atrocities; (iii) the setting up of State and District Level Vigilance Committees and Monitoring Committees, Special Officers, Nodal Officers.
- It enjoins on the States and Union Territories to take specific preventive and punitive measures to protect Dalits and Adivasis.
- It makes provision for adequate relief and rehabilitation measures to the affected victims.

The Act is expansive in its scope in many respects: in the list of offences, in constituting organizational mechanisms, in identifying officers for performing specific responsibilities, in defining their specific duties, in framing penalties for offences committed, and in assuring relief and rehabilitation measures to the victim-survivors. It has, indeed, promised to address the issue of discrimination and atrocities faced by Dalits and Adivasis. But has the POA Act truly lived out its promise to the SCs and STs, fulfilled their long cherished hopes, satisfied their legitimate expectations, and established a governance system founded on equity and social justice?

The primary obstacles to implementation are intended to be the primary enforcers of the Act—the lowest rungs of the police and bureaucracy that form the primary node of interaction between state and society in the rural areas. Policemen have displayed a consistent unwillingness to register offenses under the act. This reluctance stems partially from ignorance. During the last 15 years (1995-2010), a total of only 5, 58, 103 cases (4, 71,717 against SCs and 86,386 against STs) were registered in police stations. In 2010, only 11,682 (34.2%) out of 34,127 atrocity cases

were registered under the POA Act at all-India level. In Madhya Pradesh & Rajasthan over 95% of the cases were not registered under the POA Act, and instead were registered under IPC and other legal provisions. IN most cases, unwillingness to file a First Information Report (FIR) under the Act comes from caste-bias. Upper caste policemen are reluctant to file cases against fellow caste-members because of the severity of the penalties imposed by the Act; most offenses are non-bailable and carry minimum punishments of five years imprisonment.

Under reporting is another common phenomenon. NHRC (National Human Rights Commission) in its report on Atrocities against Scheduled Castes 2002 observes that “even in respect of heinous crimes the police machinery in many States has been deliberately avoiding SCs and STs (Prevention of Atrocities) Act, 1989”. The report further noted that “Police resort to various machinations to discourage Scheduled Castes/Scheduled Tribes from registering case, to dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence”. For serious crimes such as murder, rape, destruction of property, dispossession of land, making foul drinking water sources, etc., police are only citing sec.3(1)(x) from the Act, which relates to insulting or intimidating a SC/ST person with intent to humiliate him or her in public view. One of the reasons for police commonly citing this section is that this is the most minor offense under the Act and generally attracts the least punishment. In this way, they misuse the Act and allow the perpetrators, if convicted, to get away with lighter punishment. The non-registration of cases, apart from reflecting caste bias and corruption, has also been attributed to the pressure on the police to keep reported crime rates low in their jurisdiction. With a view to presenting lower crime rates in the district, under-reporting of information is done at the district headquarters, which gets further diluted at the State and National level”

A bigger obstacle faces victims who actually manage to lodge a complaint is failure to follow through with cases is alarmingly apparent at the lowest echelons of the judicial system. The statistics speak for themselves: with 1, 01,251 crimes against SCs/STs (80%) pending for trial by 2010-end. This showed no significant improvement since 2001, when the trial pendency rate was 82.5 percent. By 2010- end, many states had more than 80% of pending cases of atrocities against SCs: Gujarat (90.9%), West Bengal (89.2%), and Rajasthan (86.6%) Maharashtra (86.2%), Kerala (85.5%), Bihar (84.3%), Himachal Pradesh (82.9%), Delhi (81.7%), and Orissa (80.7%).

Such delay is endemic to the Indian judicial system. Although the POA mandated the creation of Special Courts precisely to circumvent this problem, it has been found that Special Courts are not setup in 133 districts/divisions out of the 612 districts in India. In other districts, existing session's courts have been designated as Special Courts. Since many different Acts require the creation of Special Courts, such session's courts are often overloaded with a number of different kinds of “priority” cases, virtually guaranteeing that none of these cases receive the attention they are mandated to receive.

Non- Implementation of Mandatory Provisions by State Governments:

Mandatory Provisions	State/UTs Implemented	States/UTs not Implemented
Precautionary and Preventive Measures	12	22
SC/St Protection Cell	17	17
Nodal Officer	29	5
Special Officer	14	20
State level Vigilance and Monitoring Committee	21	13
District Level Vigilance and Monitoring Committees	21	13
Contingency Plan	9	25

(Ministry of Social Justice and Empowerment, Annual Report 2008-09, New Delhi, All states except Jammu and Kashmir)

Rule 7(1) of the Act stipulates that cases registered under the Act an officer no lower than the rank of Deputy Supt. of Police should conduct the investigation. In many cases however, an officer of lower rank

conducts the investigation and the Deputy Supt. of Police simply sign off on it. This raises the suspicious that police deliberately subvert the rules of investigation in order to weaken the case in the courts. Besides these deficiencies, the above table shows that Mandatory Provisions like, Precautionary and preventive measures, SC/ST Protection Cell, State Vigilance and Monitoring Committee, District Level Vigilance and Monitoring Committee are not working/implemented properly under POA Rules 1995.

In 2009, the conviction rate for SC/ST atrocity cases was abysmally low in the following states: Maharashtra (0.5%), Gujarat (0.9%), Karnataka (1.1), Orissa (1.5%), Bihar (1.7%), Andhra Pradesh (4.1%), Rajasthan (4.8%), Tamilnadu (5.2), and Madhya Pradesh (8%). The conviction rate in overall ranged from 0.5% to the 8%. It is shocking that conviction rate for cases of atrocities against SCs and STs is less than 30% against the average of 42% for all cognizable offences under IPC.” said, Prime Minister Man Mohan Singh, in the Inaugural of Conference of State Ministers of Welfare and Social Justice, New Delhi, 07/09/2009.

Among the other major deficiencies in the Act are omission of social and economic boycott as a crime, non-provision of death penalty as in the Indian Penal Code, non-availability of protection for the victims by way of the externment of possible perpetrators, and the failure to cover converts to Christianity (Dalit Christians and Dalit Muslims). Although the Prevention of Atrocities Act (POA) is a powerful and precise weapon on paper, in practice the Act has suffered from a near- failure in implementation.

Gap between various legislations and Practice:

In the end the question is that why do higher caste persons continue to practice untouchability, and discrimination? What are the major reasons for the non- implementation of Constitutional legislations enacted to protect the interests of Dalits? Why do Non dalits resort to physical and other violence whenever the dalits try to gain a lawful access to Human Rights and equal participation in social, political, religious, cultural and economic sphere of community life? The reasons for the wide spread practice of untouchability, atrocities, other violent reaction by the higher caste as well as non-implementation of the various provisions of the constitution as well as legislations are to be found in continuing belief and faith of the high caste Hindus in the sanctity of institution of caste system and untouchability. On the one hand Dalits are being still excluded from the day to day communitarian interactional relationship based on the caste hierarchy and on the other hand some sectarian interests are forcing them, directly or indirectly to remain within the fold of the Hindu Society to present this society as a “homogenised Hindu Whole” and thereby ensuring their majority status.

Secondly, as argued by Ambedkar, most of the Dalits—being illiterate, ignorant and god-fearing—themselves believe in caste system and practice caste discrimination among themselves, probably not to the extent the upper caste do. They, therefore, remain divided and are unable to take a collective action against caste oppression (Ambedkar, 1989: 266).

Third, although the SCs/Dalits alone account for over 16% of total Indian population, they constitute too small a number in each village to muster enough courage for taking the support of law and going to the police and the judiciary to punish the caste Hindus violating their rights (Ambedkar, 2003: 350; Ramaiah, 2007).

Fourth, most of the Dalits are landless and depend on the very castes that violate their rights and dignity to earn their living. So, though there are laws to their support, they would not dare using them to protect their source of living.

Fifth, seeking justice through the special laws is not an easy task, since it demands adherence to number of procedures on the part of the victims, accused, police, the special public prosecutor and others concerned at every stage of the case, which is often turn out to be very costly, tiresome and time-consuming, particularly for the victims. Invariably, it is during this time the accused indulges in number of mischievous activities including bribing the police, tampering the evidences, pursuing the victims for an out of court settlement of the case’

and threatening the victims and their witnesses etc. And if they have to pursue the case despite all these, it would be at cost of their means of sustenance, dignity, peaceful living, and sometimes their life itself (Ramaiah, 2007; Ram, 1986).

Sixth, overwhelming caste loyalties and sentiments often influence the decisions of the police and judiciary. The explanation of Ambedkar regarding why most cases of caste discrimination and violence end in acquittal is true even in the present context. When the law enforcement agency, the police and the judiciary, does not seem to be free from caste prejudice—since they are very much part of the same caste-ridden society—expecting law to ensure justice to victims of caste crimes is rather an impractical solution to this perennial social problem.

Conclusion:

The present time is an historic moment, not only for Dalits, but for all those committed to protect basic human rights and principles of justice, equality, liberty, fraternity. India, a rising star and increasingly important player on the world stage, must not be allowed to ignore the injustice and oppression within its own borders any longer. Together, we must unite, nationally and internationally, to force the Indian government to rise above an entrenched caste-mentality and to properly enforce its laws, implement its policies, and fulfil its responsibility to protect the basic human rights of ALL of its citizens. Among the Dalit community and its supporters & sympathizers, Dr. Ambedkar's statement resounds louder today than ever:

“My final words of advice to you are educate, agitate and organize; have faith in yourself. For ours is a battle not for wealth or for power. It is battle for freedom. It is the battle of reclamation of human personality.

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