



Full Length Review Article

ATROCITIES ON DALITS AND THEIR RIGHTS UNDER THE CONSTITUTION OF INDIA AND OTHER LAWS

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ABSTRACT

Dalits are the most neglected, marginalized, exploited and the most disadvantaged socio-economic group in India. The continuing atrocities on the Dalits, its nature and the response (or the lack of it) of the law and order machinery represents deep-rooted fault lines in our society and demands multi-faceted action as a nation. The scourge of untouchability was a blot on the Indian civilization. Despite the constitutional declaration of its abolition under Article 17 of the Constitution, progressive legislations, programmes and schemes for the development and empowerment of the dalits it persists in many subtle and not so subtle ways. It has been an unmitigated tale of prejudice, discrimination and exploitation. At stake, in the ultimate analysis, is the very integrity and survival of Indian society. Without transforming vertical inequality in society into horizontal equality, democracy will have no meaning. If the law is not in favour of disadvantaged, they will never achieve true equality of opportunity and freedom of choice. This Paper will analyze the various atrocities on Dalits & their Constitutional rights guaranteed in the Indian Constitution.

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INTRODUCTION

Dalit (SC's & ST's) class - An Unfinished National Agenda: Introduction

*"Ours is a battle not for wealth or for power.
It is a battle for freedom.
It is a battle of reclamation of human personality."*

Dr. B. R. Ambedkar

The continuing violence on the Scheduled Castes and Scheduled Tribes, its nature and the response (or the lack of it) of the law and order machinery represents deep-rooted fault lines in our society and demands multi-faceted action as a nation¹. Scheduled Castes and Scheduled Tribes have been, for centuries, the most neglected, marginalized, exploited and the most disadvantaged socio-economic groups in India. India attained independence and became a republic nation with the self-confidence of having a government of the people, by the people and for the people.

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¹ "20 Years Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act Report Card", Foreword by National Judicial Academy India, National Coalition For Strengthening SCs & STs (PoA) Act, New Delhi

But in reality a large section of its citizens, the Dalits and Adivasis were denied the full enjoyment of all the rights of citizenship assured by the Constitution. They still face subjugation, humiliation and exclusion on a daily basis from India's mainstream caste society.²

However, Dr. B.R. Ambedkar who himself came from one of the Scheduled Castes, did a herculean task and brought a miraculous change in the life of all Scheduled Castes in India. Dr. B. R. Ambedkar has rightly said that, .

"For a successful revolution it is not enough that there is discontent. What is required is a profound and thorough conviction of the justice, necessity and implementation of political and social rights."

Atrocities against Dalit (SC's/ST's): Rooted in Caste System

Caste systems divide people into unequal and hierarchical social groups. Caste discrimination affects an estimated 260 million people worldwide. It involves massive violations of civil, political, economic, social and cultural rights³. They are

² "Atrocities against Dalits and Adivasis", Scheduled Castes and Scheduled Tribes (PoA) Act, 1989 & Rules 1995, Proposed amendments For effective monitoring & implementation

Source: www.ncdhr.org.in(last accessed on 9 th May 2016).

³ <http://idsn.org/india-non-implementation-of-the-scheduled-castes-scheduled->

often forcibly assigned the most dirty, menial and hazardous jobs, and many are subjected to forced and bonded labour.⁴ Every 15 minutes 4 Dalits and Adivasis are subjected to atrocities. Every day 3 Dalit women are raped, 2 Dalits are murdered & 11 Dalits are beaten up. Every week 13 Dalits are murdered, 5 Dalits' houses are set on fire, 6 Dalits are kidnapped. In the last 20 years, A total of 5, 58, 103 cases of atrocities were registered. Around 1.5 cores of Dalits and Adivasis have been affected.⁵ Colin Gonsalves, senior Advocate in the Supreme Court and founder director of Human Rights Law Network told Shazia Nigar in an interview⁶ why this happens despite the SC's/ ST's (PoA) Act 1989 and how it can be redressed through an Amendment. A study conducted by the National Commission for SCs and STs in 1990 on *Atrocities on Scheduled Castes and Scheduled Tribes: Causes and Remedies* pointed out various causal factors for atrocities. The deep root for such atrocities is traceable to the caste system, which “encompasses a complete ordering of social groups on the basis of the so-called ritual purity. A person is considered a member of the caste into which s/he is born and remains within that caste until death....”⁷

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is an Indian Act, which aims to eliminate atrocities that are occurring against members of the SCs and STs while at the same time providing protection, compensation and rehabilitation to victims. However, its implementation remains very weak and the conviction rates are shockingly low. A national-level process has therefore started in India to propose amendments and improve its enforcement under the name of The National Coalition for the Strengthening of the PoA Act⁸. The social inequalities and injustices, the cruelties of the social order have weakened the Indian society⁹. Clearly, from the perspective of Dalit victims, the Indian criminal justice system has failed to deliver. Yet the only recourse open to them seems to be the legal one.¹⁰

Rights of SC's & ST's under the Constitution of India & Other Laws¹¹

Therefore, In the light of abovementioned atrocities, the framers of the constitution had felt the need for special measures to uplift their status. This understanding is clearly reflected in the Constitution itself where a chapter under the title “Special provisions relating to certain classes” in Part-XVI has been incorporated. Special provisions have also been made for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution. The Constitution provides for protection

and promotion of their social, economic, educational, cultural and political interests to remove the disparities and to bring them on par with other sections of the society. In addition, many articles in Parts III, IV, IX, IX- A, Fifth and Sixth Schedule of the Constitution reinforce these arrangements. Article 14 provide that States shall not deny any person equality before law or the equal protection of laws within the territory of India. Article 15 operationalizes the concept of equality in a manner which specifically touches upon the conditions of the Scheduled Castes and Scheduled Tribes. It says:

- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to -
 - Access to shops, public restaurants, hotels and places of public entertainment; or
 - The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The Constitution also contains provisions which guarantee certain minimum rights for all its citizens and also specifies duties which the State should discharge for social and economic development of backward classes, especially Scheduled Castes and Scheduled Tribes. Article 46 under the Directive Principles of State Policy provides that “The State shall promote with special care, the educational and economic interest of weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”. Article 366 (24) defines Scheduled Castes and Article 341 identifies the process through which such groups will be identified. Similar provisions have been made for Scheduled Tribes in Article 366(25) and Article 342 respectively. The Constitution provides various Safeguards to implement objectives enshrined in the Preamble to the Constitution. These safeguards include social, economic, educational, cultural, political and service.

Social Safeguards

Social safeguards are contained in Article 17, 23, 24 and 25(2)(b) of the Constitution. As per Article 17, untouchability is abolished and its practice in any form is forbidden. Two important legislations have been enacted to give effect to contents of this article. The Protection of Civil Rights Act, 1955 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Article 23 prohibits traffic in human beings and ‘begar’ and forced labour in any form and contravention of this provision has been made an offence punishable in accordance with law. In pursuance of this Article, Bonded Labour System (Abolition) Act, 1976 has been enacted. Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. Accordingly, The Child Labour (Prohibition and Regulation) Act, 1986.

tribes-poa-act-1989(last accessed on 9th May 2016)

⁴ Ibid

⁵ “Atrocities against Dalits and Adivasis “Scheduled Castes and Scheduled Tribes (PoA) Act, 1989 & Rules 1995, Proposed amendments For effective monitoring & implementation, Source: www.ncdhr.org.in(last accessed on 9 th May 2016).

⁶ Interview with Colin Gonsalves, Tahelka, 15 th October, 2012 (last accessed on 9th may 2016).

⁷ *Parliamentary Committee on the Welfare of SCs & STs, 4th Report 2004-05*, New Delhi, 2005, para 1.2

⁸ <http://idsn.org/india-non-implementation-of-the-scheduled-castes-scheduled-tribes-poa-act-1989/> last accessed on 9th May 2016

⁹ Source : <http://lawmin.nic.in/ncrwc/finalreport/v2b1-2ch9.htm>(last accessed on 9th May 2016).

¹⁰ G. SAMPATH, “*Children of a different law*”*The Hindu*, dated: August 23, 2015(last accessed on 9th May 2016)

¹¹ Sixth Report of the National Commission for SCs/STs, op. cit., Chapter II, pp 8-17 may be seen for more details on the Constitutional provisions

Economic Safeguards

The provisions of Articles 23, 24 [referred to above] and 46 form part of economic safeguards for Scheduled Castes and the Scheduled Tribes. Article 46 provides that State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, Scheduled Castes/Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

Educational and cultural safeguards

Article 15(4) empowers the State to make special provisions for advancement of any socially and economically backward classes or citizens and for Scheduled Castes/ Scheduled Tribes. Article 29(1) provides that "Any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to conserve the same". Article 350(a) provides for adequate facilities for instructions in the mother tongue at the primary stage of education for children belonging to linguistic minority groups. The above Articles have relevance for Scheduled Tribes as some of them have a distinct language/dialect.

Political Safeguards

Article 164(1) provides that in the specific States there shall be a Minister in charge of tribal welfare who may, in addition be in charge of welfare of Scheduled Castes, Backward Classes or any other work. Article 330 provides for reservation of seats for Scheduled Castes/Scheduled Tribes in Lok Sabha. Article 332 provides for reservation of seats for Scheduled Castes/Scheduled Tribes in State Vidhan Sabhas. Under Article 243(D), reservation of seats in Village Panchayats, Zila Parishads has been made for Scheduled Castes / Scheduled Tribes in proportion to their population at respective level in direct election. Under Article 243-T, reservation of seats for Scheduled Castes / Scheduled Tribes in proportion to their population has been made in municipal bodies at each level. Out of these reserved seats for Scheduled Castes/Scheduled Tribes, at least 1/3rd has been reserved for SC/ST women. Articles 371, 371(b), 371(c), 371(f),371(g) and 371(h) deal with special provisions in respect of North Eastern States.

Service Safeguards

Article 16, which provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any or all of them, has made a very special provision which permits Parliament to make any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Under Article 16(4)(a), this benefit of reservation in the matter of promotion has been extended to Scheduled Castes and Scheduled Tribes to overrule the judgment of the Supreme Court. Article 16(4)(b) has further made provisions to permit backlog vacancies as a separate category in any year for determining the ceiling of 50% reservation on total number of vacancies that year. Article 335 provides that the reservation provisions shall be made taking into consideration efficiency of administration.

Article 244 provides for legislation for special problems for Scheduled areas. 5th Schedule to the Constitution, under Article 244(1) authorizes the Governor to direct that a particular law or notification passed by Parliament or Legislative Assembly shall not apply to the scheduled area or any part thereof or shall apply subject to certain exceptions and modifications. Article 275(1) provides that specific allocations may be made from the Consolidated Funds of India to give as grant-in aid for each such area for meeting the cost of schemes of development and for promoting the welfare of Scheduled Tribes in the State. Article 338 of the Constitution provides for a National Commission for Scheduled Castes and Scheduled Tribes.

For Enforcing Equality and Removing Disability

Untouchability Offences Act, 1955

Through Article 17 of the Constitution, untouchability was abolished and its practice in any form had been abolished. Within 5 years of adoption of Constitution of India, the Untouchability (Offences) Act, 1955 was enacted by the Parliament.

For Creating Deterrence against Physical Violence

Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989

It was realized that even the amended Protection of Civil Rights Act, 1955 and normal provisions of IPC did not provide deterrence in preventing violence on scheduled castes and scheduled tribes especially offences committed on caste grounds¹². Accordingly, Parliament passed another law called "Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989". The Rules under the Act were framed in 1995 to prevent commission of atrocities against members of the Schedules Castes and Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected there with or incidental thereto.

For Elimination of Degrading & Humiliating Customary Practices

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

The most degrading of all occupations and forms of labour thrust upon untouchables by the caste based social order is that of manual scavenging.¹³ The practice of manual scavenging has been prohibited by law under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Act makes violation of the law an offence punishable with imprisonment for a term which may extend to one year or with fine or with both¹⁴.

Devdasi System Abolition Acts

Devdasis originally had only religious functions, but the practice subsequently degenerated into sexual abuse of these

¹² Statement of Objects and Reasons for Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Also see Naval, op. cit., p. 24

¹³ 7 Human Rights Watch, op. cit., p. 141

¹⁴ Section 14 of the Act - See National Commission for Safai Karamcharis - A Hand Book - 2000, p. 2

women by high priests and royal patrons and, later, by landed gentry and other powerful persons¹⁵. The practice is prevalent largely in Karnataka, Andhra Pradesh, Maharashtra and Orissa. There is no national legislation outlawing the practice of Devdasi system. However, Andhra Pradesh and Karnataka Govt. has enacted a law called "Andhra Pradesh Devdasi (Prohibition of Dedication) Act, 1988 & Karnataka Devdasi (Prohibition of Dedication) Act, 1992 respectively.

For Preventing Control over Fruits of Labour

Bonded Labour System (Abolition) Act, 1976

Due to their illiteracy, lack of bargaining power and extremely low wages, creditors manage to create a situation where the debt is never liquidated and consequently the debtor has to render labour in lieu thereof. The Bonded Labour System (Abolition) Act, 1976 abolished all agreements and obligations, including customary sanctions which permit bonded labour system in various forms.

The Minimum Wages Act, 1948

This Act provides for fixing of minimum rates of wages in different employments and appointment of Committees or Subcommittees for this purpose.

Equal Remuneration Act, 1976

The Act mandates that there shall be no discrimination in the payment of wages to women workers performing same or similar nature of work as men.

Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the engagement of children in certain employments and regulates the conditions of work of children. It outlines severe penalties for those violating its provisions.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The Act, as the title suggests, lays down the conditions of employment of migrant labour to protect them from exploitation by contractors, middlemen and employers. Violation of the provisions of the Act has been made punishable.

For Curbing Unequal Distribution of Economic Assets

Land Reform Laws

Land Reforms Policy, introduced in the country after independence, introduced a five fold programme to check the concentration of economic power. Land reforms laws were enacted and other regulatory arrangements were made giving effect to this policy by all States.

Debt Relief Legislations

Indebtedness is a chronic problem of all poor persons but it affects SCs/STs more severely. Indebtedness arises because of their poverty. Due to their inability to pay back, the borrowers are enmeshed in a vicious cycle of debt-bondage. Several

States have enacted legislation to regulate money lending activity, impose limit on gross rate of interest and nullifying loans given by unlicensed money lenders, discharging debt incurred before a specified date, etc.

For Positioning Watchdog Arrangements

National Commission for SCs and STs

In view of their weak social position, it had been realized at the time of framing the Constitution itself, that safeguards provided for SCs/STs in its provisions and also other laws, regulatory arrangements and policy measures, may not get implemented due to apathy or bias of the implementing agencies or pressures mounted by vested interests in the civil society who stood to lose from them. Accordingly, a permanent institutional arrangement called the Special Officer for SCs and STs incorporated under Article 338 of the Constitution served this purpose.

National Human Rights Commission

The Human Rights Act, 1993 seeks to provide regulatory framework for protection of rights related to life, liberty, equality, dignity of individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. It takes up the cases regarding human rights violations addressed to it and through its own initiative. As atrocities on SCs are violation of Human Rights, it intervenes in complaints relating to them also.

National Commission for Women

National Commission for Women takes up complaints of women referred to it for redressal irrespective of caste. Accordingly, problems of SC women including those of physical violence against them are also dealt with by it.

National Commission for Safai Karamcharis

This Commission was set up under the National Commission for Safai Karamcharis Act, 1993 on 12th August, 1994 for a period of three years to look after a specific programme of liberation and rehabilitation of scavengers and may be wound up after this programme is completed.

International Standards Applicable to India

Various International Human Rights covenants and conventions applicable to India, include:

- Universal Declaration of Human Rights 1948,
- International Covenant on Civil and Political Rights 1966,
- International Covenant on Economic, Social and Cultural Rights 1966,
- International Convention on Elimination of all forms of Racial Discrimination 1965,
- Convention on Elimination of all forms of Discrimination against Women 1979,
- Convention on Rights of the Child 1989,
- ILO Convention No. 29 - Forced Labour Convention 1930,
- ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention 1958,

¹⁵ Quoted in Human Rights Watch, Broken People, op. cit., 15

- ILO Convention No. 107 - Indigenous Peoples Convention 1957.

All the above have been signed and ratified by the Government of India. In addition, the Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984) has also been signed but not yet ratified¹⁶.

Role of Judiciary in Safeguarding the Interest of the SC's & ST's

The legal regime also confronts us with paradoxes. Laws and legal processes are not self executing; they depend on the players such as the administrative structure and its processes, the judiciary with the anticipation that the social attitudes are driven by enlightened notions - equity, social justice, fair play. In implementation and in interpretation of the Constitution and law, distortion and denial of the rights have crept in¹⁷. That's why, Dr. Justice A.S. Anand, Chairperson of National Human Rights Commission has called on the Government to adopt a *Rights based approach* and not a welfare one in addressing the conditions of SC's & ST's.¹⁸

As Dr. B. R. Ambedkar said,

"History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them."

The Supreme Court in safeguarding the interest of the SC's & ST's has rightly said¹⁹ *"The offences of atrocities are committed to humiliate and subjugate the SCs and STs with a view to keep them in a state of servitude. Hence, they constitute a separate class of offences and cannot be compared with offences under the Indian Penal Code."*

In interpreting the Act, the judge should be cognisant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act, and interpret the Act in this light...to annihilate untouchability, to accord to the Dalits and the Tribals the right to equality, make social integration a fruition, and fraternity a reality.²⁰

Recommendation

The Indian State as a whole, at both the Central and State Government levels, should give priority concern to the ever increasing, as well as continuance of, atrocities against SCs and STs. This should prompt urgent government measures to ensure thorough and effective implementation of the SC/ST (PoA) Act and Rules.

Other recommendation made by the NHRC in its "Report on Atrocities against SCs"²¹ as follows:

- Identify atrocity and untouchability prone areas and prepare a plan of action;
- Appointment of exclusive special courts where volume of atrocity cases is large and appoint competent and committed special prosecutors.
- A 3-tier Training programme for police and civil functionaries;
- An annual workshop of District Magistrates and Superintendents of Police on implementation of laws in this regard;
- Women officers should be assigned to all atrocity prone areas, with cells established to entertain complaints;
- Self-help groups of Scheduled Caste women should be given elementary legal training along with sessions on confidence building;
- Identify in each district a NGO which can be approached in case of custodial violence or any other atrocity;
- Panchayats may be sensitized about the issues concerning the Scheduled Castes and various De-Notified Tribes;
- Institute annual awards for the police stations and districts, which emerge as the most responsive to the complaints of the Scheduled Castes.

Above all, the mindset of the society should be changed.

Conclusion

According to Dr. B. R. Ambedkar,

*"We want our own people,
people who will fight tooth and nail for our interest
and secure privilege for the under-privileged;
people who will undo the wrongs done to our people;
people who will voice our grievances fearlessly;
people who can think, lead and act;
people with principles and character...
We must send such people to Legislatures
who will be slaves to none but remain free to
their conscience and get our grievances redressed."*

Thus, rights of the SC's & ST's under the Indian legislation & role of the judiciary in safeguarding their interest as illustrated above has been an unmitigated tale of prejudice, discrimination and exploitation. At stake, in the ultimate analysis, is the very integrity and survival of Indian society. Without transforming vertical inequality in society into horizontal equality, democracy will have no meaning. For the entire nation, therefore, the need of the hour is to match words with action, Constitutional promises with compliance practices, thereby providing a safe and secure environment for SCs/STs. This is necessary for their advancement in life as citizens equal to all in rights and entitlements, and lesser to none in dignity.²²

¹⁶ Sakshi, Dalit Human Rights Monitor-2000, Andhra Pradesh, p. 152

¹⁷ source: <http://lawmin.nic.in/ncrcw/finalreport/v2b1-2ch9.htm>(last accessed on 9th May, 2016)

¹⁸ Source: <http://www.nhrc.nic.in/dispArchive.asp?fno=837>(last accessed on 9th May, 2016)

¹⁹ *State of Madhya Pradesh and Anr vs. Ram Krishna Balothia and Anr* (1995 (2) SCC 221

²⁰ *State of Karnataka vs. Appa Balu Ingale* (Criminal Appeal No. 164 of 1983, D/-1-12-1992)

²¹Source:<http://www.nhrc.nic.in/dispArchive.asp?fno=837> (last accessed on 9th May, 2016)

²² supra