

LEGAL BAN AGAINST CASTE DISCRIMINATIONS AND UNTOUCHABILITY PRACTICES

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ABSTRACT

Although India has made measurable progress in terms of the protections afforded to Dalits since independence, they still suffer invidious discrimination and mistreatment at the hands of upper caste members and law enforcement officials. Such mistreatment is inexcusable under both India's domestic laws and its obligations under international law. Although the Indian government denies the problem of mistreatment of Dalits and points to extensive legal protections evidencing compliance with international standards, the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people". Until the atrocities against Dalits end, the international community ought to continue to publicize the conditions of India's disenfranchised population and encourage India to live up to the standards established in its domestic laws and international obligations.

Keywords: *Backwardness, broken people, harassment, humiliation, untouchability*

INTRODUCTION

The caste-based atrocities are persisting in the world's largest democracy despite the legal safeguards, and the human rights of this group are under a cloud of danger, which quite often burst upon them making them vulnerable and denying them their right to be human. The caste-based discrimination is comfortably taking breath in a hierarchical society ruled by the principle of graded inequality thus challenging the constitutional mandate to establishing an egalitarian social order. The effective implementation of the anti-atrocities' laws, improper reporting of atrocities cases along with the inherent vested interests in maintaining the caste discrimination are the reasons for the perpetuating atrocities. Improper investigation in atrocities cases results in low conviction rates. The low rate of conviction is the result of varying factors like caste bias of the prosecutors as well as other organs of justice, including the judiciary and the law enforcement machinery's lack of familiarity with the provision of the relevant legislation. A check on the law enforcement machinery in this regard is much needed and requires legal scrutiny.

As the state has, to the large extent, failed to prevent the atrocities on Dalits, the role of the civil society becomes very important in the protection of their human rights. Many NGOs are working in this field and have done a lot of research in this regard but due to lack of any follow-up mechanism their efforts results in frustration. Human Rights Watch in its Report "Broken

People” has recommended the government to take measures to prevent further violence and prosecute state and non-state actors responsible for caste-motivated attacks. It has recommended the government to make adequate land reforms to resolve the caste based discrimination. Attention must be paid to the recommendations made by the human rights NGOs in this regard. Necessary mechanism must also be established for follow-up of the reports prepared by various human rights NGOs.

It is relevant to note that constitutional and other statutory provisions exist to prevent atrocities against dalits and there are international conventions also which upholding human dignity, but in spite of all the constitutional provision and other legislation, the atrocities against Dalits are increasing. It has to be noted that, it is considerably increasing in almost all parts of India. If we go through the newspapers and other media reports, we can find that every day they are facing number of incidents of beating, torture, arson, molestation, rape, killing etc. When we analyzing the reasons behind atrocities, it can be seen that atrocities are based as castes and sanctioned by the caste system. They are historic, traditional and deep-rooted. Educational backwardness, illiteracy, disputes based on land, poverty, economic dependence etc. are other reason to be noted. However, caste system is the main reason behind atrocities against Dalit community.

A legal ban against caste discriminations and untouchability practices became a reality only during the colonial rule. As early as 1850, the British India passed a law known as —The Caste Disabilities Removal Act XXI of 1850 to end caste based disabilities faced by the people of lower castes. Later, the British India also recognized them as scheduled castes (SCs) under a special Act known as *Government of India Act 1935* for extending special protection. In 1938, —The Madras Removal of Civil Disabilities Act 1938 (Madras Act XXI of 1938) came into operation. Between 1943 and 1950, different provinces of India enacted 17 such laws. However, none of these laws was of national level one. Enactment of such laws became a possibility only after India’s Independence.

Under Article 17 of the Indian Constitution, untouchability is abolished and its practice in any form is an offense punishable under law. The law especially enacted for the purpose was known as the —Untouchability (Offenses) Act, 1955, which was subsequently amended in 1976 and renamed as the —Protection of Civil Rights Act, 1955 (PCR Act) to make the provisions of the Act more stringent. In addition, to deal with the atrocities committed against them yet another law known as —The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) came into effect from January 30, 1990 and its rules came in to effect from March 31, 1995. Since the earlier legal measures taken were not found to be effective enough in curbing these incidents, the offences under the prevention of Atrocities Act carry stringent penalties than similar offences under the IPC. The offence of custodial rape, highway robbery and house breaking by night which carry a minimum punishment of ten years under the IPC and punishable with imprisonment for life and with fine under the Atrocities Act.

The Act has many features. It has created new types of offences, made provisions of forfeiture of property, removal of persons likely to commit offence, duty of the Government to ensure effective implementation of the Act, report to be placed before parliament etc. Moreover the Act has created special courts for the speedy disposal of cases and thus to give speedy redress to the victim. The Act denies anticipatory bail in order to protect the victim from further harassment and humiliation by the accused. These provisions are included for ensuring effective and speedy remedial measures.

The provision dealt with in the Act is specially designed and concentrates to protect the Dalit community from humiliations and harassment and ensure them a life with honor and dignity. There are provisions protecting them against offences against human dignity, properties, economic exploitation, political disabilities, fraudulent litigation, sexual exploitation, social disabilities, destruction of evidence etc. It seems that the provision are enacted by taking into consideration of the socio economic condition of SCs and STs in India.

In 1995, the Government of India enacted accompanying rules for the Atrocities Act. The rules set out the amounts of the timetables for state – allotted compensations for victims of various crimes defined under the Act. But, the Act has many drawbacks. The provisions of the Act are widely misused by its beneficiaries itself, lack of special courts and special public prosecutors, lack of awareness on the part of the public etc. are some problems faced by the Act. More over very recently, On September 11, 2013, the government made an amendment in Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and make penal provisions extremely tough to deter people committing crime against the SC, ST community.

Regarding the approach of the judiciary by this, 22 years after the enactment of the Act, Judiciary has intervened in almost all aspects of the Act. The courts have decided upon the constitutionality of the Act, Bail, creation of special court and its jurisdiction, insult or humiliation, sexual exploitation, neglect of duty competent authority to investigate the case, false implication of cases. Dispossession from land, delay in filing FIR appointment of special public prosecutors etc. Regarding the attitude of the judiciary, it seems that judiciary has understood and has taken into consideration the true spirit of the legislation. Only problem is with regard to the less conviction rate of accused. That may be due to the incompetency of the investigatory officers and prosecuting agencies.

Although India has made measurable progress in terms of the protections afforded to Dalits since independence, they still suffer invidious discrimination and mistreatment at the hands of upper caste members and law enforcement officials. Such mistreatment is inexcusable under both India's domestic laws and its obligations under international law. Although the Indian government denies the problem of mistreatment of Dalits and points to extensive legal protections evidencing compliance with international standards, the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people".

Despite implementation of these laws and also exclusive special commissions (national commission for scheduled castes and its state level commission in almost every state), to monitor the working of these special laws and other provisions meant for the protection and development of the Dalits, caste discriminations and caste based crimes against the SCs/Dalits, continue to be a day-to-day reality throughout India. They are subjected to various offences, indignities, humiliations and harassment. There have been numerous brutal incidents involving varied forms of atrocities on the Dalits, often revealing a highly perverted social behaviour such as forcing persons to drink or eat inedible substances such as human excreta, dumping carcasses or other waste matters in their premises polluting drinking water sources used by them, and implicating them in false cases etc.

Until the atrocities against Dalits end, the international community ought to continue to publicize the conditions of India's disenfranchised population and encourage India to live up to the standards established in its domestic laws and international obligations.

There are 260 million Dalit people around the world, 166,635,700 of whom live in India. In Asian countries where a caste system operates, Dalit people are born at the very bottom of a hierarchical system. Caste is determined by birth and whilst national law outlaws discrimination against people of low castes, in reality there is still widespread oppression and violence against Dalit people.¹

Dalit problem is at once an old question and a new challenge. The struggle for emancipation of Dalits from the thralldom of casteism and untouchability has been present for a long time.² Atrocities on the members of the Scheduled Castes and Scheduled Tribes (Dalits) have been committed from time immemorial due to various reasons. The commission and continuation of atrocities on them is creating inequalities in political, social, economic, educational, religious, cultural and all other possible spheres of human activities amongst the inhabitants of our country.³ The founding fathers of our Constitution enshrined in Preamble- fraternity, dignity of person and equality of status etc. to remove these inequalities and to abolish the practice of untouchability to prevent the atrocities on them and to protect their human rights. However, the desired object could not be achieved even after 60 years, since coming into force of our Constitution and International Conventions. Despite this and various other measures taken to improve the socioeconomic conditions of the Dalit community, they remained vulnerable. They are denied number of civil rights and are subjected to various indignities, humiliations etc. Therefore, using law as an instrument of social change and to prevent commission of atrocities on the Dalits, a special legislation, namely The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was enacted.

¹<http://women.overcomingviolence.org> (Accessed on 25-01-2014)

² Chinna Rao Yagati, *Dalits Struggle for Identity* (2012), p.1.

³*Id*, p.3

SCHEDULED CASTE AND SCHEDULED TRIBE

The SCs and STs may differ in many respects and have different problems today. Though as *Avarnas*, the caste-less anti *Shudras* of SCs and STs, specifically denied castes by the Brahmanism scriptures and forced to live outside the Brahmanism caste system of *Chatter Varna Vyavastha*, do not belong to the Brahmanic Society, they share a lot many things with the caste enclosed *Shudras*. While the SCs and STs are brothers and sisters separated by both, the Shudras within the caste system are in fact their cousins who had gone to the other side, to be with their enemies and exploiters.⁴

The scheduled of 'Scheduled Caste' and Scheduled Tribe' refers to official list of caste names, Schedules attached to legislation. These lists were drawn up in order to establish entitlements to benefits. Each state of the Indian Union has a list, containing on an average fifty or sixty names. Each in principle represents a group, the membership of which is hereditary and exclusive.⁵The term 'Scheduled Caste and Scheduled Tribe' is defined in clause (b) of Section 2 of the Protection of Civil Right Act,1955 and clause (e) of Section 2 of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989.⁶

The term 'Tribe' commonly signifies a group of people speaking a common language, observing uniform rules of social organization and working together for common purposes.⁷ Anthropologically, a Tribe is social groups, the members of which live in a common territory have a common dialect, uniform social organization and possess cultural homogeneity having a common ancestor, political organization and religious pattern. The Government recognizes a number of tribal groups and they are the STs. Thus, the Act has not been defined the term SCs and STs. The term has given the meaning assigned to it under the Constitution. As per the Constitution, the President shall notify after consultation with the Governor of the State or the

⁴www.dalitinda.com

⁵Simon R. Charsley, G.K. Karanth, "*Challenging Untouchability*" (1998), p 20.

⁶ The extract of the clauses are:-"Scheduled Castes" and "Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of Art.366 of the Constitution. Clause 24 of Art.366 of the Constitution of India defines the terms SCs as under. "Scheduled Caste" means such castes, races, tribes, parts of, or groups within such castes, races or tribes as are deemed under Art.341 to be SCs for the purpose of the Constitution. Art. 341 of the Constitution of India as under. Art 341 SCs: (1). The President may with respect to any state or union territory, and where it is a state after consultation with the Governor there of, by public notification specify the castes, races, or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be SCs in relation to that state or union territory, as the case may be.

(2) Parliament may by law include in or exclude form the list of SCs specified in a notification issued under clause (1) any caste race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification".

⁷Dr. Devendra Thakur, "*Socio-economic Development of Tribes in India*" (2009), p.1

Union Territory, the castes, races or tribes or parts of or groups within castes, races or tribes and they shall be treated as Dalits.

However, the language used in Article 341 is self-explanatory to the effect that castes, races or tribes notified according to the Presidential Order in accordance with the provisions in Art. 341(1) can only be regarded as SCs and caste not finding place in the list notified as per the Presidential order cannot be regarded as SC. Any modification in that list by addition and deletion can only be made by following the provisions of law in Art. 341(2).⁸Scheduled castes are not independent castes in the Hindu fold but it is 'mosaic' of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowest and need of massive state aid notified as such by the President.⁹ Therefore, in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf.¹⁰

SUGGESTIONS

1. The Government should fully implement the provisions of the SC and ST Act, and SC/ST Rules 1995. In particular it should ensure that states constitute and oversee, state and District-level Vigilance and Monitoring Committees, as required by Rules 16 and 17 of SC/ST Rules for the purpose of properly implementing the Act of 1989.

2. The Act should be implemented strictly. Each police station should have a SCs and STs Atrocities Cell to handle investigations of abuses and alleged violation of the Atrocities Act. Each revenue district should also have a special Deputy Superintendent of Police charged with investigating atrocities under the Act. In keeping with the Atrocities Rules, police who refuse to register cases under the Act should be punished accordingly. The Cells should work closely with the Vigilance and Monitoring Committees established under the Atrocities Rules to ensure full enforcement.

3. The District Administration should pay the immediate and full compensation to the victims of atrocities as per the Atrocities Rules. The value of property destroyed and crops damaged should be included in the compensation schedule.

4. Implement the recommendation made by the National Police Commission in 1980, specifically those that call for a mandatory judicial inquiry in cases of rape, death or grievances injury of people in police custody and the establishment of investigative bodies whose members should include civilians as well as police and Judicial Authorities.

⁸*Narayan Sahoo v State* (1999)1 Cri.L.J.605, p. 609

⁹*State of Kerala v N.M.Thomas*, AIR 1976 SC 490, p. 534

¹⁰*Bhaiya Lal v Harikishan Singh* AIR 1965 SC 1557, p.1559

CONCLUSION

Launch a nationwide public awareness campaign regarding the legal prohibition of untouchability, atrocities and other forms of discrimination and violence against Dalits. This campaign should explain in simple terms what actions are legally prohibited, what recourse is available to Dalits and their families, and what the procedure are filing FIR. It should also include a program of public service announcements in all states aimed at sensitizing the population in Dalit issues and creating an awareness of Dalit Rights.