

Dalits : Law as Paper Tiger!

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[What to the American slave is your Fourth of July? I answer, a day that reveals to him, more than all other days in the year, the gross injustice and cruelty to which he is the constant victim. To him, your celebration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciations of tyrants, brass-fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all your religious parade and solemnity, are to him mere bombast, fraud, deception, impiety, and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages. There is not a nation on the earth guilty of practices more shocking and bloody, than are the people of these United States, at this very hour.]

(Frederick Douglass, former slave, 1852)

Does the cost of a 'goat' equals that of a human being? Whether drinking water from a public lake where even animals are free to visit should lead to a riot like situation or the very interpersonal decision to marry a girl/boy of one's own choice should culminate in the killings of the couple at the behest of the community elders?

Any person who bears humane sensibilities and sensitivities would rather decry these 'medieval' style responses towards fellow human beings.

S/he would rather find her/himself at wits end if s/he probes further and discovers that people affected by Tsunami engaged themselves in systematic discrimination against dalits who were similar victims. S/he would be aghast to know that the upper caste perpetrators of the Killevenamani massacre (1969) of 35 plus Dalits were allowed to go scot free by the judiciary on the spacious plea that the 'Upper Caste Gentry would not have gone walking to the place'.

In any democratic country, all such exposures in the media would at least lead to uproar at the national level, lead to fresh stirrings within the nation's conscience, culminating in a process of self-introspection and possibly self-correction. But India presents itself as a peculiar case in the comity of nations. Here all such covert and overt violence against a part of the citizenry has received not only legitimacy, thanks to the purity and pollution based caste order, but has been sanctified by the religious scriptures also. One still remembers how one of the top leaders of the VHP had rationalised killings of five dalits in Jhajjar four years ago emphasising that the Puranas—the religious scriptures of the Hindu accord precedence to a bovine vis-a-vis a human being.

Thus India, a country of one billion plus people, which is itching to get a superpower status, which takes pride in its ancient tradition and culture and whose elite goes gaga over the booming sensex, rather presents a strange spectacle of a nation. If one decides to go by economic indices alone then one may

get a rosy picture, but a close look at the goings on within the society makes it clear that there is a disjunction between the world of economics and the lifeworlds of its people. The core of the society bears its encounter with barbarism in abundance.

NOT PLAYING A GOAT !

“Lucknow : A teenaged dalit named Mukesh was beaten to death in Ferozabad district for daring to participate in Bhagwat Paath organised by the local Lodh Rajput community. The victim’s brother and some relatives who came to the rescue of the teenager were also assaulted.

Though the police confirmed that the provocation behind the murder was caste bias, the accused alleged that they had caught the victim while stealing a goat. The police could arrest only two of the twelve named accused.

The above news appeared in the 15th June 2006 Lucknow edition of *Times of India*. Of course there was no followup of the incident in the print or the electronic media. Rather it received the same fate as scores of other news items, which are considered unimportant.

The Lodh Rajputs, who come under the resurgent OBCs and who form backbone of local power structure in different areas, would be hell-bent upon proving the ‘crime’ of the deceased. Perhaps to garner further community support to the inhuman act committed by their own caste men, they may present a fresh slew of charges against him and would also vouch that he also harassed ladies of the community. They would be loathe to listen to any counterview to their argument which would try to raise the issue of ‘punishment’ commensurate with ‘crime’ and the role of the institutions of justice delivery established by the republic more than 56 years ago to do the same.

The hapless dalits would share the way in which they came to know about the tragic death of one of their dear ones, the way the police adopted a dilly dallying tactics in this particular case and how it itself became a party in the stigmatisation of the whole dalit community. It does not require much of a genius to pro-pherise that unless and until some powerful voice join the grief of the dalits, the brutal murder of Mukesh by the Lodh Rajputs would slowly lead to the blind alley of a ‘closed file.’

The tragic prognosis of this incident may appear disturbing to any civilised person but the fact of the matter is that the way the troika of state-judiciary-(rest of) civil society unfolds itself in any of such cases of dalit atrocities, the fate is not dissimilar. May it be the case of ‘traditional’ atrocities where the dalits are denied any rights whatsoever in the Hindu society or may it be the case of ‘modern’ forms of resistance put in by the dalits or a caste hindu res-ponse to the changing situation of the dalits, the picture is same everywhere.

It was only last year that a dalit basti situated in Gohana (a town, which is hardly 100 km from New Delhi) was attacked by a few hundred strong mob of mostly *Jat* youths. The marauders burnt down scores of their houses and looted their property in daytime in the presence of two hundred strong police force posted near the basti with senior officers in attendance. The immediate provocation for the attack was the murder of a *Jat* youth allegedly by a few dalits who felt agitated when the murdered man alongwith his friends had passed obscene remarks against dalit women.

Another specificity of the attack was that the *Jat* youths were just 'implementing' the decision of the 'caste council' (caste panchayat) which had given an ultimatum to the police to hand over the 'culprits' to them or face reprisal attack on the basti. To rub salt on the wound, when the marauders left, the seniormost boss of the police in the region, not only minimised the extent of plunder but also expressed satisfaction that there was no loss of lives from either side.

It was clear to any impartial observer that the main 'grievance' of the *Jats* against the dalits was the way many among them had refused to follow the 'community profession' of *safai* and had charted an alternate path of life and were now refusing to tolerate humiliation any more.

Recently when a group of human rights activists visited the basti, they found to their dismay that out of 23 upper caste accused in the case, (while the actual number was in hundreds) till date only three could be apprehended and they were also released on bail immediately. The CBI enquiry ordered into the case is moving at a snail's pace and seven dalits were still languishing in jail without any sign of bail supposedly for being party to the death of the *Jat* youth.

WAY TO INJUSTICE

Social justice minister Meira Kumar pointed out that the conviction rate in cases registered under the Protection of Civil Rights Act is a mere 3.75 percent. Besides, 75 to 77 percent cases of crimes against Dalits remain pending despite the existence of special and designated courts. Union home minister Shivraj Patil, who was also present at the conference, acknowledged that the system was not delivering justice and existing laws safeguarding the rights of backward classes may have to be changed or tightened.

—January 12, 2005, The Telegraph

The first Prime Minister of India Jawaharlal Nehru always sang paens to the Unity and Diversity of the country. But he forgot to add that the institution which 'unites' the Indian people who are spread over a subcontinent is their strict adherence to the age-old 'caste system'. It is a system based on exclusion and graded hierarchy and the only 'diversity' which it allows is the nature of violence which is unleashed against the people who are considered at the bottom of the Caste Matrix.

Perhaps the plight of the dalits in Gohana or in Ferozabad would lead one to a query about the presence/absence of appropriate laws to curb such offences against them. A person unaware of the way Indian polity functions may presume that spurt in atrocities against dalits is mainly due to absence of laws. This is not really the case.

The founding fathers of the Constitution had solemnly resolved to secure to all citizens Justice: Social, Economic and Political, Liberty of thought, expression, belief, faith and worship. And equality of status and of opportunity, and to promote among them all fraternity, assuring the dignity of individual and unity. It also emphasised that : The state shall not discriminate against any citizen on grounds of religion, race, caste, place and birth or any form. The Directive Principles of the Constitution underlined : The State shall promote with special care the educational and economic interest of the scheduled castes/tribes and shall protect them from social injustice and all forms of exploitation.

It is worth noting that in accordance with these Constitutional provisions a number of measures have been initiated by the government for providing protection to untouchable (Scheduled Castes) and the tribals. These measures can be categorised into two broad themes : protective and developmental. Under the 'protective' sphere untouchability was legally abolished and its practice in any form forbidden by the Protection of Civil Rights (Anti-Untouch-ability) Act of 1955.

To protect the category of SC and ST in a more effective and com-prehensive manner a few other legislations were introduced. Policies of reservation and representation were adopted to improve the access and participation of these sections in the economic, educational and political spheres. The enactment of the Bonded Labour (Abolition) Act, 1976 or laws to curb child labour were part of the other major measures taken to make the protection for these sections more stringent and effective. The year 1989 witnessed the government enacting another act, namely the Scheduled Castes and Tribes (Prevention of Atrocities) Act to prevent atrocities against SCs/STs. The necessity for enactment of this act had arisen because under the existing circumstances the Protection of Civil Rights Act (1955) and normal provisions of the Indian Penal Code were found to be inadequate to provide safeguards. The SC and ST (POA) Act, 1989 was pioneer in many ways. It provides for not only appointment of special courts, punishment for neglect of duties to officials, forfeiture of property of the perpetrators, confiscation of arms from the dominant castes in the area, declaration of a particular area atrocity prone, and even asks for distribution of arms to the downtrodden etc.

But as Justice V K Krishna Iyer, the legendary human rights activist and a former Supreme Court Judge puts it, all such 'half hearted legislation has proved to be impotent and ineffectual in practice'. He also added that the aim behind these attempts was to have a 'more effective, more comprehensive and more punitive provisions of law'. However the ruling classes saw to it that, at the

functional level, the legislations were 'paper tigers' (All quotes from 'Forward' by Justice Iyer to a book *'Dalit Utpidan aur Vidhik Upchar'*, by P L Mimroth, Nov 2000, Delhi)

There have been innumerable reports detailing how the local police in connivance with the perpetrators themselves, sabotages implementation of laws basically meant to protect the dalits and the tribals. It is noticed that instead of filing cases under the POA act, it prefers filing cases under normal provisions of Indian Penal Code, which facilitates release of the accused on bail easily. It also facilitates filing of 'counter cases' against the victims, so that a compromise could be reached. The Third Report of the NPC (New Delhi, GOI, 1980- p.31) had rightly underlined how " [f]alse criminal cases are sometimes engineered merely for the sake of making arrests to humiliate and embarrass some specified enemies of the complainant, in league with the police for corrupt reasons."

A related phenomenon is the way in which the powers that be take steps to deter enlightened people to fight for constitutionally granted rights of the dalits and the tribals. Human Rights Watch Report (Vol 4, no. 15, June 1992) shares details of how Criminalisation of Social Activism in India takes place. In its much acclaimed report *Broken People—Caste Violence against India's "Untouch-ables"* (1999) Human Rights Watch repeats how 'State agents have acted directly and forcefully against those attempting to claim their rights. Dalit activists throughout the country face charges as "terrorists", "threats to national security" and "habitual offenders." (Page 153)

The 'Report on Prevention of Atrocities against Scheduled Castes' (NHRC, 2004, Delhi) rightly underlined the way the 'state has failed in this respect' on 'several fronts'. According to the conclusions of the report the state has failed on 'several fronts'. These are 'failure to effectively implement the laws relating to atrocities against SCs and STs' which is 'reflected both in respect of preventing violence from taking place' as well as in the 'inability to punish perpetrators of violence after the crime is committed'; 'failure to act against its own agencies involved in the commission of violence;' failure to strengthen the watchdog institutions' etc. 'The failure of the state vis-a-vis mobilisation of caste Hindus in favour of social democracy embedded in the constitution and various laws and state policies' can also be considered palpable which has 'created ambivalence in its intentions and contradictions in its actions'.

The Sixth Report of the National Commission for SCs and STs (1999-2000 and 2000-2001) had expressed its deep sense of dissatisfaction over the way all these measures are implemented. While commenting that "...the number of cases registered under Prevention of Civil Rights Act and SC and ST (Prevention of Atrocities) Act has been showing downward trend., as a healthy development" it exposes the way this reduction in no of cases is achieved. According to the preface, " But from its reviews with various state governments the commission is of the view that a large number of cases go unregistered, mainly because of the reluctance on part of the police officers to register the cases and also because of

lack of awareness among the members of these communities about the provisions of these acts.”

In addition, there are delays in investigation, collusion with offenders and manipulation of witnesses and evidence which all contribute to reduce the effectiveness of these protective legislations.” (See Preface Page II) In the same vein it tells us that in most of the states neither the meetings of the monitoring and vigilance committees are held regularly nor any special courts are set up to deal with cases of dalit atrocities.

It also adds: “The question of setting up exclusive special courts, particularly in the states having large pendency, needs serious consideration of the government. The rate of convictions in various states ranges from 5 to 10 percent and it is necessary to examine the reasons for such low convictions rates and for taking urgent corrective action.” (ibid) According to the commission, “The apex court has held that the Special courts cannot directly entertain the cases under these acts, without following committal proceedings. It is, therefore, necessary to amend these acts suitably to authorise the special courts to admit cases under these acts directly.” (ibid).

One can go on mentioning the various schemes or the affirmative action programmes run by the government supposedly for the empowerment of the dalits and also give details about the systematic manner in which a conscious attempt is on to deny what is due to them. One would be surprised to know that not only thousands of posts which are meant for them especially from the upper class category have been lying vacant for years together but there are thousands and thousands of people belonging to the non-dalit category who have manipulated jobs meant for these sections by procuring ‘false certificates’ and the concerned authorities are sitting over this despite repeated complaints by the aggrieved people. The seriousness of the phenomenon of false certificates can be gauged from the fact that the last two annual reports of the National SC and ST Commission (since bifurcated) have devoted a chapter each to discuss the gravity of the situation arising out of this.

This makes it crystalclear that the state has to show firm political will, get ready to make amends to ameliorate the situation and move beyond pious rhetoric if it is serious about the commitments it made with the ‘other people’ exactly 54 years back while promulgating the constitution. But one cannot expect that there would be any radical departure from the way in which the state has been functioning.

Of course before moving on to the unholy alliance between the state and (a section of) civil society it would be opportune to take a close look at the Gujarat experience.

GUJARAT EXPERIENCE

The Gujarat Earthquake in the year 2001 and the consequent relief and rehabilitation programme was an eyeopener to the outside world regarding the deep-seated caste bias in the Gujarati community apart from the much talked about bias against the minorities. There were reports that at places the relief and rehabilitation work bypassed the dalits and the Muslims. There were also reports about the siphoning of the relief material to the relief camps inhabited by the non-dalit or upper caste hindus and how consciously the dalits as well as the Muslims were deliberately left out in many cases.

The organised genocide of Muslims in the year 2002 at the behest of the Sangh Parivar organisations which was aided and abetted by the Modi government was another occasion when the travails and tribulations of the dalits came under further scrutiny. While the dalits' cooption in the Hindutva agenda and their metamorphosis as foot soldiers of the Hindutva brigade was duly reported, the Varna dominated media did not deem it necessary to emphasise some related facts. The genocide in Gujarat had also a little dalit blood accompanying it. The dalits lost 108 lives in Gujarat, 38 alone in the city of Ahmedabad. Quite a few of these deaths occurred due to the dalits resisting the Hindutva goons by siding with hapless Muslims.

Of course when one comes to the way the Atrocities Act unfolds itself in the state, then one comes across the same shocking pattern which is evident at the national level. A conclusion of a detailed and systematic study of 400 judgements done by Vajibhai Patel, Secretary of Council for Social Justice corroborates this. It says that utterly negligent police investigation at both the higher and lower levels coupled with a distinctly hostile role played by the public prosecutors is the main reason for the collapse of cases filed under the atrocities act. It is worth noting that he has meticulously documented these judgements delivered under this act since April 1, 1995 in the Special Atrocity Courts set up in 16 districts of the state. The study also blasts the common perception that the inefficacy of this law is due to false complaints being lodged or compromises between the parties, in actuality it is a complicit State that has rendered the Act toothless.

A writeup in the '*Communalism Combat*' (March 2005) by Teesta Setalvad presents in a nutshell the main findings of the study :

- # In over 95 percent of the cases, acquittals have resulted due to technical lapses by the investigation and prosecution, and in the remaining five percent, court directives are being flouted by the government. Often while crimes under the IPC against the accused have been proved, offences under the Atrocities Act have not, suggesting a systemic bias against recording and establishing crimes under this law.
- # As a result of the attitude of the state police and the state public prosecutors, those accused under the Act for criminal acts like murder (for which life imprisonment is the sentence) and rape are being allowed to go scot-free.

- # Numerous judgements of the special courts set up under the Atrocities Act in Gujarat — which due to lapses in investigation and prosecution, have led to the acquittals of the accused — have passed strictures against the negligence demonstrated by both the police and the public prosecutors and even summoned time-bound ‘action taken’ reports. Often policemen have even resorted to giving false evidence to protect the accused while prosecutors have attempted to mislead the courts by arguing that the provisions of the Atrocities Act are not mandatory.
- # Under section 4 of the Atrocities Act, “Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe wilfully neglects duties required to be performed by him under this Act, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year.” In 95 percent of the judgements studied by the CSJ, courts have passed strictures against errant police officials invoking provisions of section 4 under the Atrocities Act, but the government of Gujarat, instead of taking action against the erring officers, has honoured them with promotions.

The deliberate manner in which the state machinery connives with the perpetrators of the crime is evident in very many ways:

Acquittal due to investigation by a lower officer : The atrocity rules of the 1995 make it mandatory that investigations of an offence should be carried either by a Dy SP or an officer above his rank, who is supposed to send his report directly to the state DGP. In 95 percent of the cases it is observed that the accused are acquitted merely on the ground that the investigation of the offence was done by an officer below the rank of Dy SP

Acquittal due to non-inclusion of caste certificate by the police : The act makes it clear that the caste certificate of the complainant issued by a competent authority be annexed to the complaint and produced by the police before the court. There have been several judgements when rape accused were allowed to go scot free merely because the investigating officer did not annexe the caste certificate of the complainant.

Negligence by public prosecutors : The appointment of special public prosecutors to try cases is mandatory under the act but the hostile role played by such SPPs to prosecute cases destroys the case. It takes years to reach the stage of trial and when the victim/complainant enters the witness box to depose, s/he does not know who the PP is. The CSJ has studied several judgements in which the courts have passed severe strictures against deliberate attempts by the special public prosecutors to avoid implementing the special provisions under the Act thereby vitiating the prosecution case itself.

The CSJ study rightly notes that ‘an utter lack of commitment to this legislation and lack of political will by state governments to prosecute the atrocities committed under this Act have rendered this legislation meaningless.’ It also tells that ‘the Scheduled Caste Welfare department, of the state

government, created with the objective of providing social justice to Dalits and Adivasis, has glaring vacancies in key posts making the implementation of social justice measures even more difficult. There are over 300 vacancies in this state department, from the rank of district officer downwards in Gujarat alone.'

Civil Society And Its Silence

It is possible that all these details where the state comes out in rather unflattering terms could be brushed aside as a story repeated *ad nauseam*. All the talk of dalit atrocities could be presented as another extension of the way in which 'state in the third world' unfolds itself. But the key point worth emphasising is that caste atrocities much like gender oppression or racial atrocities have a specificity which transcends the binary of 'state as perpetrator' and 'people as victims'. In fact they implicate the partisan role played by the people themselves.

The 'Report on Prevention of Atrocities against SCs ' prepared by NHRC (2004) presents details of the way in which the civil society presents itself:

- civil society becomes a distinct beneficiary of caste based order and how it helps perpetuate the existing unequal social reactions and frustrates attempts to democratise the society because through the customary arrangements the dominant classes are assured of social control over people who can continue to abide by their commands without any protest.
- In fact it represents the deep divide in social values, where people themselves wish to enjoy all rights and privileges which a democratic liberal society offers them but are vehemently opposed to their being granted to the scheduled castes.
- Civil society effectively undermines the authority of the state by obstructing the effectuation of rights and entitlements to all citizens and attempting to perpetuate caste based inequalities, indignities and violence against SCs.
 - Civil society reflects a deep seated ambivalence between obscurantism and modernity

As inequality is accepted both in theory and practice, a legal constitution has no bearing on the ethical foundation of caste-based societies.

It was a manifestation of this real hiatus that when Bhanwari, a Saathin from Women's Development Programme, Rajasthan was raped by the villagers, the trial judge acquitted the accused on the reasoning that "rape is usual" and 'upper-caste man could not have defiled himself by raping a lower-caste woman.' ❄❄❄❄