

PREVENTION OF ATROCITIES AGAINST VULNERABLE IN INDIA: A STUDY OF EXISTING LAWS AND POLICY

By

Yuvraj Mandhan Jagran School of Law, Dehradun

ABSTRACT

Dalits (SC) and Tribals (ST) are the most marginalized sections of Indian society. Many atrocities have been committed against them since time immemorial. The SC/ST Prevention of Atrocities Act protects them against discrimination and atrocities. However, the SC/ST act can never be called a successful legislation. Dalits and Tribals still face discrimination. On the other side, there is widespread concern over misuse of the provisions of the Act against innocent persons. As per the Supreme Court of India, the SC/ST act has become an instrument of “blackmail” and is being used by some to exact “vengeance” and satisfy vested interests.

Every passing day there will be one or other incidents of atrocities against SC/ST. In fact, everyday life of them is a struggle against entrenched atrocities, as they are facing discrimination from every facet of life, be it may be in the field of education, employment, in all the limbs of the state and institutions. Since Dalits are widespread and live in close vicinity to other castes, atrocities against them are more frequent and more visible. Tribals are concentrated in some areas and are more isolated from other sections of society.

KEYWORDS: Dalit, Tribals, Indian, Society, Supreme Court

1. INTRODUCTION

The status quo of inter-caste relations in villages faces major challenges as the Scheduled Castes and Scheduled Tribes (SC/STs), often known as Dalits, are utilizing the advantages of reservation and growing more aware of their rights. Unavoidable results include increased violence and increased reporting of violent incidents.

However, this increase in violence seems improbable given the incredible amount of attention that the Dalit cause has been receiving from international politics and civil society. Dalit NGOs and political organizations led a significant anti-racism action in 2001. Despite the fact that the campaign's strategies may have been an example of inept politicking, the UN Committee on the Elimination of Racial Discrimination (CERD) and the Special Reporter on Race have since made caste one of their top concerns. Governments have also brought up the issue on a bilateral basis with India.

Why then haven't these unforeseen, unexpected events affected the country? Although Dalit advocacy groups have been quite successful in drawing attention to their cause, they have consistently failed to hold the Indian governments responsible for upholding the law. The Prevention of Atrocities Act is a prime illustration.

The Indian government passed the Prevention of Atrocities Act (POA) in 1989, which categorizes certain offenses committed against members of the Scheduled Castes and Scheduled Tribes as atrocities and specifies remedies like techniques and penalties. Three significant efforts are made by the Act to discourage and legalize violence against Dalits. It begins by specifying the actions that constitute atrocities. Second, the Act mandates that each state convert an existing sessions court in each district into a Special Court to hear matters brought under the POA. Thirdly, the Act lays forth rules for states regarding how to identify areas with high levels of caste violence as atrocity-prone and how to appoint qualified officers to keep an eye on matters and enforce law and order.

In contrast to its predecessor, the 1955 Civil Rights Act, which merely addressed surface humiliations such verbal abuse of the lower castes, the POA is a tacit recognition by the government that caste relations are defined by violence, both incidental and structural. To combat this abuse, the POA offers Dalits an essential legal redress.

On paper, the POA is a potent and precise weapon, but in practice, the Act has largely failed. Ironically, the people who are expected to be the primary enforcers of the Act are the lowest levels of the police and bureaucracy, who act as the primary point of contact between the state and the public in rural areas. Police have consistently demonstrated a reluctance to report violations of the law. This hesitation is partially brought on by ignorance. According to a 1999 survey, roughly a quarter of the government workers responsible for upholding the Act are ignorant of its existence.

2. THE ACT'S PURPOSE

The Scheduled Castes and Tribes (Prevention of Atrocities) Act was passed by the Indian government in 1989 to stop atrocities against SC/STs. The Act was meant to put an end to atrocities and help Dalits integrate into society, but it hasn't lived upto expectations.

The law went into effect on January 30, 1990. This act aims to prevent those who are not a part of these groups from committing crimes against the scheduled castes and scheduled tribes. The Act makes atrocities committed against Scheduled Castes and Scheduled Tribes criminal. The Comprehensive Rules under the Act that were announced in 1995 contain requirements for relief and rehabilitation. The Act is applicable across India, with the exception of Jammu and Kashmir. The implementation of the Act's requirements falls under the purview of the respective State Governments and Union Territory Administrations, who get the required governmental assistance under the Centrally Sponsored Scheme.

3. OFFENSES RELATED TO ACTS, OFFENDERS, AND VICTIMS

Anyone who commits one of the acts listed in the Act against a person who belongs to a scheduled caste or scheduled tribe while not being a member of one of these groups is deemed to be guilty of the offense.

Additionally, the Act's Section 2 mandates that anyone who is not a member of a Scheduled Caste or Scheduled tribe:

(i) gives or fabricates false evidence with the intent to cause, or knowing that it is likely that he will cause, any Scheduled Caste or Scheduled Tribe member to be found guilty of an offense that is capital under the law currently in effect shall be sentenced to life in prison and a fine;

(ii) provides or creates false evidence with the intent to convict any Scheduled Caste or Scheduled Tribe member of a crime that carries a sentence of seven years or more in prison as well as a fine; this crime carries a sentence of at least six months in jail but up to seven years or more;

(iii) is punishable by imprisonment for a term that must not be less than six months but may not exceed seven years, as well as by fine, for engaging in mischief by fire or any explosive substance with the intent to cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, or knowing that such damage is likely to occur;

(iv) commits mischief by fire or any explosive substance with the intent to destroy any structure typically used as a house of worship, a place of human habitation, or as a location for the custody of property by a member of a Scheduled Caste or a Scheduled Tribe, or with knowledge that it is likely that he will do so;

(v) who commits any offense under the Indian Penal Code that is punishable by a term of imprisonment of ten years or more and is a member of a Scheduled Caste or Scheduled Tribe, or who owns property that is owned by one of these groups, will be sentenced to life in prison and a fine;

(vi) conceals any evidence of an offense committed under this Chapter with the intent to avoid punishment, or with that intent divulges any information about the offense that he knows or has a good faith belief is false, shall be punished in accordance with the law;

(vii) is subject to imprisonment for a term that must not be less than one year and may go as far as the punishment stated for that offense if they violate any of the provisions of this section while employed by the government.

The Definition And Penalties Of An Offense All of the violations listed in the Act are punishable by law. The police are able to detain the perpetrator without a warrant and launch an investigation right away.

Both a minimum and a maximum punishment are laid out in the Act. In most cases, the maximum sentence is five years in prison plus a fine with a minimum sentence of six months. The maximum punishment could be a life sentence or perhaps the death penalty, while the minimum punishment is periodically extended to a year.

Section 4 of the legislation outlines the consequences for public employees who fail to perform their duties. A public employee who is not a member of a Scheduled Caste or Scheduled Tribe who intentionally disregards his duty under the Act may be penalised with up to six months in jail, according to this section.

A second conviction is subject to a heavier sentence under Section 5. Anyone who has previously been found guilty of a violation of this Chapter and is found guilty of a subsequent violation or a violation that occurs after the second violation shall be sentenced to a term of imprisonment that must not be less than one year but may go as far as the punishment specified for that violation.

4. ESTABLISHMENT OF SPECIAL COURTS

The act further stipulates that for the purpose of handling cases in each Special Court, the State Government shall designate a Special Public Prosecutor or appoint an advocate who has been in practice as an advocate for at least seven years as a Special Public Prosecutor by notification in the Official Gazette.

P.S. Krishnan, a former member and secretary of the National Commission for Backward Classes, suggests that the State Government designate a Police Officer as the Investigating Officer for each Special Court solely for the purpose of conducting investigations into cases of offenses under this Act. This recommendation must be published in the official gazette.

5. INVESTIGATION AND RECONSTRUCTION

Under Section 23 of the Act, the Central Government is authorized to create regulations for carrying out the Act's goals. This section served as the model for the 1995 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules. According to Rule 7(1), a police officer who is not a Deputy Superintendent of Police (DSP) or higher is not allowed to look into a crime committed under the SC/ST Act. Several High Courts have nullified the trial in this case and overturned the conviction order based on the aforementioned standard.

The Andhra Pradesh High Court declared in *D. Ramlinga Reddy v. State of AP* that Rule 7's prerequisites must be observed and that only an officer with at least the level of DSP may undertake an investigation under the SC/St Act. It is possible to reverse an investigation completed and a charge sheet filed by a clumsy officer.

Similar to this, the Madras High Court rendered a decision in *M. According to Kathiresam v. State of Tamil Nadu*, any investigation conducted by a DSP or other officer is prohibited by law and is therefore unconstitutional. Any proceedings based on such investigations must be thrown out. The courts have penalized SC/STs for the same without taking into account the faults of the State. Member of Parliament Shri Pravin Rashtrapal accurately remarked that we lacked personnel at that level. His assertion is supported by the Ministry of Home Affairs Annual Report for 2005–2006. Out of the entire number of positions permitted by the government, it asserts that more than 15% of the openings in the Indian Police Service (IPS) are vacant. This basically means that there are 77,000 SC/ST individuals for every IPS officer. This rule has to be amended as a result.

According to the preamble of the SC/ST Act, its goals are to outlaw acts involving atrocities against SC/STs, create Special Courts to try such crimes, and offer assistance and rehabilitation to people who have been harmed.

In the case of *Dr. Ram Krishna Balothia v. Union of India*, the Madhya Pradesh High Court agreed and stated that the overall purpose of the SC/ST Act is to protect members of the scheduled castes and scheduled tribes by establishing a Special Court and guaranteeing a prompt trial of any charges brought against them. The Act enacts positive measures to end the atrocities that have deprived SC/STs their fundamental civil rights. The Act has addressed the subject of justice administration, but it has not addressed the question of rehabilitation.

Section 21(2)(iii) makes reference to rehabilitation, but no measures are provided that deal with it directly. As was previously said, atrocity victims receive different treatment than victims of other crimes, hence special preparations ought to be created for them. In order to become economically independent and avoid having to seek out wage work from their actual oppressors or classes of oppressors, victims of atrocities and their families should receive full financial and other support, according to the National Commission for Review and Working of the Constitution's report. The State would also be compelled to immediately take over the educational needs of the kids of such victims and pay for their upkeep and nutrition. SC/STs make up 68% of the population in rural areas.

A decrease in cultivators is being brought on by SC/STs, who make up more marginal farmers than any other group in the population, according to the 1991 Agricultural Census. In other words, the rate of landlessness is rising more quickly among the SC/ST population. Contrary to other social categories, the number of SC/ST people working as agricultural laborers is simultaneously increasing more swiftly. In essence, this means that SC/ST farmers who lost their land holdings are now working in the agricultural sector. On the one hand, crimes against humanity increase vulnerability, which causes a loss of territory. Atrocities and untouchability are further encouraged and fueled by this. Marginalization is among the hardest forms of oppression. It prevents a large group of people from making useful contributions to society, putting them in risk of material ruin and even extinction. Furthermore, this leads to a state known as powerlessness, which is perhaps best described negatively; persons who are powerless lack status, influence, and a sense of identity.

Additionally, each right has three distinct types of obligations:

- Responsibilities to avoid deprivation. • Responsibilities to prevent deprivation
- Duty to assist people in need.

The SC/ST Act covers the first two requirements, but the third obligation—to aid the underprivileged—is utterly ignored. Therefore, it's crucial to give SC/STs the tools they need to support themselves.

9. WHAT PROBLEMS DOES THE ACT ADDRESS, AND HOW EFFECTIVE IS IT?

Dr. Jogan Shankar claims that although The Act has teeth, it rarely bites. The Prevention of Atrocities Act (POA), while on paper a powerful and precise tool, has been applied with little to no success in actual practice. Ironically, the people who are expected to be the primary enforcers of the Act are the lowest levels of the police and bureaucracy, who act as the primary point of contact between the state and the public in rural areas. Police have regularly demonstrated a reluctance to file reports of legal breaches. This hesitation is partially brought on by ignorance. According to a 1999 survey, roughly a quarter of the government workers responsible for upholding the Act are ignorant of its existence.

The most frequent reason for failing to submit a First Information Report (FIR) as required by the Act is prejudice based on caste. Upper caste police personnel are reluctant to file investigations against fellow caste members due to the Act's harsh penalties, which often carry minimum prison terms of five years. Advocates for human rights have been working hard to progressively diminish this problem. However, because to the astounding scope of the issue, government help is required before complaints can be properly submitted under the Act.

The difficulty is greater for victims who actually make a complaint. The alarming lack of case completion at the lowest levels of the legal system. Just 31, 011 of the 147,000 POA cases that were pending in the courts in 1998 proceeded to trial. The numbers speak for themselves. Indian courts are infamous for their backlogs. Despite the fact that the POA specifically called for the establishment of separate Special Courts to deal with this matter, just two states have done so. While still requiring them to manage their regular caseloads, other states have designated existing sessions courts as Special Courts. Since the creation of Special Courts is required by a number of different Acts, these courts are typically overloaded with a variety of high-priority cases, essentially insuring that none of these cases receive the attention they need to.

10. CONCLUSION

The POA has shockingly low conviction rates, even when cases get to trial. 29,334 of the 31,011 cases tried under the POA in 1998 ended in acquittals, resulting in a conviction rate of just 1,677, or 5.4%. When cases were tried under the Indian Penal Code, the conviction rate was 39.4% in 1999 and 41.8% in 2000. A contributing factor in this low conviction rate is the length of the legal process; during this time, witnesses—who are sometimes coerced and afforded no legal protection—often become hostile and the evidence becomes insufficient to get a conviction. The lengthy waiting period causes a lot of litigants to lose interest. Judicial bias against Dalits is pervasive and unchecked, and it frequently shows itself in court decisions.

In addition to these, Section 14(2) of the Act only mandates the State governments to name a Sessions Court as a special court to try offenses for each district, which goes against the law's stated objective of "providing for a speedy trial." Simply designating an existing court as a special court won't speed up a trial. A special court for atrocity cases should have been formed under the statute in each district, together with an exclusive special public prosecutor, a designated investigating officer, and other provisions. This discrepancy establishes the circumstances for crime with no repercussions. The Act also excludes social and economic boycott from the definition of a crime, does not include the death penalty as it does in the Indian Penal Code, does not offer victims' protection through the expulsion of potential offenders, and does not offer protection to Christian converts (Dalit Christians).

BIBLIOGRAPHY

Ahuja Ram, Crimes Against Women 1987, Rawat Publications Jaipur, India.

Alexander E-Myrl, Jail Administration, Charles, C themas, Publishers,

Bannerstone House, 301- 327, East Lawrence Avenue, Spring Field, Illinois U.S.A.

Amnesty International Report, Human Rights in India : 1993, Vastar Publications M-32, Greater Kailash Market, New Delhi 110048.

Antony M.J., Women's Rights : 1989, Clarion Books C-36, Canaught Place Roboprinters, Delhi-110032.

Awasthi & Kataria, Law Relating to protection of human rights (millennium edition) 2002, Oriental publishing company. 9, Lowther Road, Darbhaga Colony, Allahabad-211002.

Bakshi P.M., The Civil procedure code : Delhi Law House Publishers Delhi -110054 (India.)

Chakraborty Dipaneshu, Atrocities on Indian Women : A.P.H. Publishing Corporation 5, Ansari Raod, Darya Ganj, New Delhi- 110002.

Chandha Kamukamu, The Indian Jail (A contemporary document), 1983, Vikash Publication house Private Ltd. 5, Ansari Road, New Delhi 110002,
H.O. Vikas House 20/4,