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State and Violence against Dalits: Theory and Practice

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Abstract: This paper briefly examines some major laws made by the state for checking violence against Dalits in India since its independence. A critical examination of the effectiveness of such laws is followed by a study of response of the Dalits as well as non-Dalit communities against such violence in the context of the villages of Bulgarhi and Shabbirpur in Uttar Pradesh. It also highlights different forms of protests and strategies adopted by Dalits to avoid or counter violence committed against them in the respective context.

Keywords: State, Caste, Dalit, Violence, Law, Social Justice

On 15 August 1947, Jawaharlal Nehru, in his famous 'Tryst with Destiny' speech in the Constituent Assembly, stated

Long years ago, we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance (Torri, 2024: 448).

However, it is difficult to state if India has woken up to life (of dignity for the masses) and freedom (for the oppressed) even after 75 years of its independence. The alarming rise in the atrocities against Dalits indicates that the traditionally dominant feudal social groups are yet to step out 'from the old to the new' and 'an age' of suppression, exclusion, exploitation, discrimination, deprivation and oppression is yet to end.

India achieved its independence on 15th August 1947, and became a republic on 26th January, 1950. The founding father of the Indian Constitution, Dr. B.R. Ambedkar, had then remarked:

Because I feel, however good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot (Ambedkar, 2019: 1210).

The Indian state, as conceptualized and constitutionally defined by India, has come into existence after a long struggle of the Indian people against the oppressive colonial rule of the British. The independence of India and the coming into being of the Indian welfare state raised great hopes among the historically oppressed and weaker sections of the society.

Sociological Theories of State

The word 'state' derives from the Latin word *stare* (to stand) and more specifically from *status* (a standing or condition). In simple words, the state can be defined as "a political association that establishes sovereign jurisdiction within defined territorial borders and exercises authority through a set of permanent institutions" (Heywood, 2005: 39). Weber defined the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (Haralambos and Holborn, 2014: 580).

Although states that conform to Weber's definition have existed for a long time in human history, for example, in ancient Greece, Rome and Egypt, however, the state as a form of political organization is a comparatively new feature of many societies. Several social anthropologists have also researched upon a number of stateless 'simple' societies (also called as acephalous societies). E.E. Evans-Pritchard, for example, in 1930s, studied the Nuer society in Africa which consisted of some 40 separate tribes and none of which had a head or chief.

Important decisions appear to have been reached informally through discussions between members of each tribe. There was no government or other institution that claimed a monopoly of the legitimate use of force, and the society was not based upon a clearly defined territory. As such, Nuer society can be seen as stateless (Haralambos and Holborn, 2014: 581).

The modern centralized state, according to various scholars, is a relatively new feature of human societies that evolved after the collapse of feudalism in Europe.

Under feudalism the legitimate use of force was not concentrated in the hands of a central authority. While, in theory, the monarch ruled at the centre, in practice, military power and the control of territory were in the hands of feudal lords in each region. Furthermore, it was only in the 19th century that transport and communications developed sufficiently to allow the centralised state to exercise close control over the far-flung corners of its territory (Haralambos and Holborn, 2014: 581).

The idea of the modern state, in political science literature, could be traced back to the late medieval period. Many political philosophers credit Nicolo Machiavelli for first using the concept of state to refer to a territorial sovereign government in his work *The Prince*, which was published in 1532. Some scholars, however, argue that Machiavelli's usage of the term 'state' was different than what it implies in modern times.

When he used the word for the first time, it did not have the impersonal standing as it does now. Rather, the state then meant that it was *someone's* state: the prince's or the monarch's. Machiavelli's treatise was intended as a guide to the ruler for the maintenance of political power. It attained infamy for advising the prince to do whatever is necessary to maintain power. What is important for us here is that when Machiavelli talks about political power, he begins and ends with one individual: the prince, who is the sovereign. So, the state meant the prince's state. In Western political theory, it is with Hobbes that the theorization of power moves on to an abstract, non-human entity, the modern sovereign state (Bhargava and Acharya, 2008: 173).

The social contract theory offers the classic justification for the state. Scholars like Hobbes and Locke argued that in a stateless society, social life would be characterized by social chaos, conflict and violence. Hence, to avoid an unending civil war of each against all, people would feel compelled to enter into an agreement – a social contract. It is through this contract that people would sacrifice some part of their liberty in order to create an independent and sovereign body – state. It was realized that an orderly and stable existence would be possible only with the creation of an independent body called state. All members of the society would obey the state because it offers the only safeguard they have against social disorder and chaos (Heywood, 2005: 41).

Sociologists such as Emile Durkheim and Talcott Parsons also offered their perspectives on the role of the state. For Durkheim, as societies became large and more complex, the distinction between governing and governed emerged resulting in the formation of the state. Further, Durkheim argues that state derives its legitimacy from the conscience collective and becomes its directive organ and symbol. Talcott Parsons, on the other hand, argues that 'value consensus' is essential for the stability of social systems. For Parsons, the power exercised by the state serves as 'a generalized facility or resource in the society' which is used for the attainment of collective goals of the society (Haralambos and Heald, 2006: 99). On the other hand, Karl Marx, a conflict theorist, argued that state only represents the interests of the ownership (ruling) class. According to Marx, the state, a part of the superstructure, mirrors the prevailing power relations in society. Thus, state policies and actions tend to serve the interests of the dominant (ownership) class. In this sense, the state functions as an instrument of the ruling ownership class, and its claims to neutrality and impartiality are therefore doubtful.

Now, after examining some of the key theoretical perspectives regarding the state, let us examine the role played by the state in relation to the Dalits especially after India's independence. The Indian constitution provides for several measures for safeguarding and advancing the interests of the weaker sections of the society, including Dalits. For example, Article 17 of the constitution declares the abolition of untouchability in any form. Since independence, the Indian state has passed several stringent laws to prevent atrocities against Dalits. A close study of these laws would enable us to examine their efficacy in dealing with atrocities committed against Dalits.

State and Prevention of Violence against Dalits

With the promulgation of the Constitution of India in 26 January 1950, the structure of Indian society changed drastically, although only on paper. In a single stroke, the traditional Indian society with its hierarchical, ascriptive, and purity-pollution values was replaced by a society whose value system now constituted the concepts of equality, achievement, and the rule of law. Social justice, incorporated in the preamble of the constitution, was to emerge as one of the important principles of the welfare state.

Dr. B.R. Ambedkar, on 25 November 1949, in his speech in the Constituent Assembly had cautioned about the existing contradictions between the values on which our political and social system were based. He stated, "On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. [...] We must remove this contradiction at the earliest moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up" (Ambedkar, 2019: 1216).

Several legislations have been passed by the Indian government against Untouchability from time to time, with the objective of preventing violence against Dalits in India. Galanter, in his book "Law and Society in Modern India" (1989) states that "It is a common place observation that the law in action does not correspond to the law in the books. This is especially so with laws favorable to 'have not' groups" (Galanter, 1992: 208). Before the Constitution of India came into force on 26th January 1950, several State Civil Disabilities Acts enacted across India made it an offence to discriminate against Untouchables. The Madras legislature passed the first comprehensive penal act to remove social disabilities in 1938 known as the Madras Removal of Civil Disabilities Act, 1938. In exercise of the powers vested by Article 35, after independence, the Parliament of India passed the Untouchability (Offences) Act (UOA) in 1955.

The UOA, according to Galanter, was a stronger and more stringent Act compared to the then existing State Civil Disabilities Acts. Galanter claims that the UOA was a stricter Act compared to other prevailing State Civil Disabilities Acts. Wide ranging offenses were punishable under this Act and all the offenses were cognizable under it. Furthermore, this Act carried heavier punishments and was prevalent

throughout the nation. Also, there was extensive publicity for this Act. Yet surprisingly, it did not receive any more usage than its predecessor State Acts. According to Galanter, this was because despite being a stricter Act, its frequency of usage was low. Another surprising factor was that the percentage of convictions under this Act also fell sharply. Galanter states

In the early 1950s the conviction rate in anti-disabilities cases was close to the average rate of convictions for all criminal trials in India. But, by the early 1960s, the convictions in anti-disabilities cases fell to less than half of the former rate (Galanter, 1992: 210).

On the basis of official statistics, Galanter observed that in the early 1950s the conviction rate under the various State Civil Disabilities Acts stood at about 70.9 per cent. However, this figure, fell sharply to 42.8 per cent during the period from June 1955 to December 1959, and declined further to 31.1 per cent between 1960 and 1963. Some important factors, identified by Galanter, responsible for the less frequent use of the Act by Dalits and the overall low conviction rate under it were: (a) the absence of a separate central enforcement agency for this Act, (b) the complex character of caste system itself wherein prosecutions largely depend on the initiative of the local police and magistrates who are usually disinclined to antagonize the dominant elements of the local community, (c) the economic and social dependency of victims of caste violence on the dominant castes of the village, and (d) last but not the least, the time-consuming and costly judicial process also acts as deterrent for the victims to approach the law.

In light of the reported deficiencies of the UOA, the Act was amended and renamed in 1976 as the Protection of Civil Rights (PCRA) Act, 1955. The new title of the Act suggested that the practice of untouchability would now be treated as a violation of 'civil rights'. The PCRA came into effect on November 19, 1976. However, over time, and in response to the steady rise in atrocities against Dalits, it became evident that the PCRA was an inadequate tool for curbing such violence. As a result, in order to demonstrate its commitment to social justice and to ensure stronger protection of Dalit rights, the government enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter the PoA Act), which came into force in 1990.

Official records indicate that more than three atrocities are committed against Dalits registered every hour during the period 1990 to 2000. There are at least three Dalit women raped and one Dalit killed every day. It is quite evident that these figures are just a tip of the iceberg. The actual cases of atrocities are many more because the victims do not approach the authorities due to fear or threat of the dominant castes. The problem gets even worse due to the complicated, expensive and time-consuming judicial process. The huge pendency in such cases and the low conviction rate of the perpetrators of atrocities against Dalits completely destroy the idea of social justice which is guaranteed in the Constitution of India. If 'Justice Delayed is Justice Denied', then it can be said that Dalits in India have been denied of justice in every possible aspect of life.

Nicolas Jaoul, in his paper "A Strong Law for the Weak: Dalit Activism in a District Court of Uttar Pradesh" (2015), offers deeper insights into the operational aspect of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act 1989. Based on his research of Kanpur District Court, in 2014, Jaoul observes that on account of lack of political will and appropriate methods available for implementing the Act, the symbolic efficacy of the Act was highly restricted. The Act of 1989 had made provisions for establishing special courts and special prosecutors, yet in practice, these provisions were overlooked by the state authorities which should have implemented them. Thus, in light of the stated reasons, it is no surprise that despite several radical and stringent laws, Dalits continue to suffer from systemic discrimination and injustice even today.

Practices of the State and Dalits of Bul Garhi and Shabbirpur

Bul Garhi village, in the district of Hathras, Uttar Pradesh, stands as a testament to the apathy of the state where the body of the victim of Hathras gang rape was hurriedly and forcibly cremated without her family's consent and proper rituals. The victim was a 19-year-old Dalit girl, who was gang raped by the locally dominant Thakur community of the same village on September 14, 2020. Unfortunately, on September 29, 2020, she died at Safdarjung hospital in New Delhi.

The victim's family alleged that the body was cremated in a clandestine manner without even showing the face of the victim to the family members for one last time. This is probably the first time in modern Indian history where the body of a young Dalit girl was disposed-off in such an insensitive and cruel manner by the state agencies due to the fear of the backlash from the masses. State enforcement agencies openly flouted all legal norms amid media attention in this particular incident. Another example that points towards the disparity between what is prescribed in the law and what is being practiced in the real world was that of the District Magistrate threatening the victim's family to change their statement. In a video which went viral, one can hear the District Magistrate saying that "Do not ruin your credibility. Only today these media people are here but they will all leave tomorrow. We will stay."

Dalits of Shabbirpur too, unfortunately, shared similar story of insensitivity and discriminatory attitude of the state agencies. In May 2017, several innocent and vulnerable Dalit residents of the village were brutally assaulted by a mob of upper castes Thakurs, numbering approximately 3,000 people. According to the respondents, they were surrounded from all sides and subjected to violent attacks. Not even women and young children were spared. Houses, vehicles, cattle and other property were set ablaze, resulting in widespread devastation and destruction.

In an interview with a group (of mixed age, all men) from Chamar community, respondents strongly criticized the state administration and police. "*Jab humne subah hi SDM or police ko itallah de di thi ki yahan kuch badi gadbad ho sakti hai, to unhone jyada police bal kyun nahi bheja*" asked Deepak (name changed, age 30 years) [When he had already informed the SDM and the local police in the morning itself about the possibility of social unrest and violence, then, why adequate police force was not deputed in the area]. Dalit respondents also questioned the impartiality of the state administration and police. "*Prashashan nishpaksh nahi tha, Ji. Agar woh nishpaksh hote to humare logon par jhoote case kyun karte?*" replied Babloo (name changed), a young man in his early thirties (The state administration was not impartial. Had they been impartial, then, why they lodged false cases against our men after incident?).

Conclusion

These observations regarding the treatment of the weaker and marginalized sections of Indian society by the state agencies appear to corroborate the findings of Galanter and Jaoul. They also shed light on the widening trust deficit between Dalit communities and the state, particularly the Dalit youth. In conclusion, it can be argued that as long as the state fails to fulfil its constitutional commitments and promises, contradictions and conflicts within society are likely to persist. As Thomas Jefferson has famously observed, "When injustice becomes law, resistance becomes duty." Ensuring peace and social harmony in social life therefore requires the effective implementation of constitutional principles of equality, social justice, and secularism—not merely in letter, but in their true spirit.

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