



Constitutional And Legislative Safeguards For Women – A Viewpoint On Atrocities Against Dalit Women In India

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Abstract

Atrocities and violence against Dalit women are used as means to reinforce this systemic caste and gender discrimination as well as to punish them when they challenge caste and gender norms. Parliamentary Committee on the Welfare of Scheduled Caste and Scheduled Tribes, 4th Report, 2005, para 1.4 provides that since 2005, evidence has been involved in over 253 cases of violence against Dalit women. Observation of these cases shows that more than 70% of atrocities are committed as these women tried to assert their rights and challenge caste and gender norms. Their socio-economic vulnerability combined with being a woman and Dalit also increase the incidence of violence on them.

Keywords: Dalit women, Atrocities, caste and gender discrimination, India

Introduction

“Atrocities committed on the most under privileged segments of our society, i.e., Scheduled Castes and Scheduled Tribes is a Scourge which demands the formulation and articulation of our Nation's collective will and a determined effort to fight it and root it out of our society without any loss of further.”

---Former Prime Minister Manmohan Singh's address at 10th Meeting of Inter-State Council, New Delhi, 2006.

Indian state in the post-colonial period has assumed a role of an interventionist to bring about social transformation. It aims at eradicating feudal hierarchical social order based on Brahminical ideology and building an egalitarian secular modern society guided by liberal values. In the preamble of the Indian constitution, it is solemnly resolved to provide all its citizens: social, economic, and political justice; liberty of thought, expressions, beliefs, faith and worship; Equality of opportunity and status; Fraternity assuring of the dignity of the individual.¹ These objectives are the result of the struggles of the masses not only against the foreign rule but also against an exploitative and overwhelmingly dominant feudal class. Justice in Indian social context, according to Ambedkar, was served to validate societal stratification and perpetuate casteism. The

deprived communities perceived the state as a saviour to liberate them from the shackles of bondage and deprivation based on birth.

Dalit women due to their socio, economic and political vulnerability have been exposed to multiple forms of violence throughout history². They face caste and gender-based violence and discrimination as they are placed at the lowest strata of caste, gender and class hierarchies. In India, though we have constitutional and legislative safeguards to protect dalit women from discrimination and violence, they have been ineffective due to the deep-rooted caste and gender biases within the enforcement agencies. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Comments³ on India noted concern about “the ongoing atrocities committed against Dalit women and the culture of impunity for perpetrators of such atrocities”. Within the Dalit community, Dalit women face more burdens due to caste and gender discrimination. Dalit women are subjected to systematic oppression and structural violence both from the general community and from within their own community and their families⁴.

Research studies and other available data prove that violence against Dalit women is on rise. But the lesser number of registered cases and low level of conviction rates assert the fact that Dalit women are denied access to justice when they face violence. since 2005, EVIDENCE has been involved in over 253 cases of violence against Dalit women⁵

Meaning Of Dalits

The term Dalit is inclusive of all the oppressed and exploited sections of society. Etymologically the term is inclusive of meanings such as downtrodden, disadvantaged, underprivileged, dispossessed, deprived, handicapped, abused, humble, prostate etc. It is essentially a political category for assertion of identity and mobilization for collective action and connotes an ideology for fundamental change in social structure and relationships. Generally, the term “Dalit” includes, what is called in administrative parlance: Scheduled caste (SCs), Scheduled Tribes (STs) and other Backward Classes (OBCs). ⁶As we are all aware that the term Dalit is mean to skip from the negative connotations of the word “untouchable” and from the Gandhian framework⁷ of the word “Harijan”. Though the term Dalit is chiefly used for those who are untouchables, now Buddhists or lower castes, Dalits are really a part of Indian counterculture.

Meaning and definition of atrocity

In common parlance, the term ‘atrocity’ denotes an act of extreme heinous cruelty. The word “Atrocity” has not been defined in law. Even the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act has not defined this term. In the absence of any legal definition, its meaning has been derived from various instruments issued by Government of India from time to time. The State have tended to apply their own interpretations about the term “Atrocity”. Ministry of Home Affairs has clarified this term as “any offence under the Indian Penal Code committed against members of the Scheduled Castes by any non-Scheduled Caste person. In the first report of the Commission for Scheduled Castes and Scheduled Tribes, Atrocity mainly denoted grave offences like murder, rape, arson, and violence resulting in grievous hurt⁸. It appears that behind the selection of these four particular serious offences as atrocity, mensrea regarding Caste was an important factor. Otherwise, there appears to be no explanation as to why serious offences like dacoity have not been specifically mentioned. Whereas all cases of grievous hurt including the breaking of a tooth which affects a poor person much less than loss of property and the like were considered to be atrocities. It would have been better if all such cases in which Scheduled Castes and Scheduled Tribes were victims and the offenders non-Scheduled Castes or non-Scheduled Tribes and which were treated as specially reported cases were generally enumerated under the heading “atrocity.”. Thus, there has been controversy on the definition of “atrocity”. A Jurist examined, whether violation of the Protection of Civil Rights Act should be considered “atrocity.” He opined that the level of

punishments is very low but the civil Rights Protection Act deals with a specifically disadvantaged group for whom Constitution shows some special solicitude.

The term 'atrocities' was not defined until this Act was passed by the Parliament in 1989. In legal parlance, the Act understands the term to mean an offence punishable under sections 3(1) and 3(2).

In specific terms:

- Atrocities is a commonly used to refer crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India”.
- It “denotes the quality of being shockingly cruel and inhumane, whereas the term 'crime' relates to an act punishable by law⁹.
- It implies “any offence under the Indian Penal Code (IPC) committed against SCs by non-SC persons, or against STs by non-ST persons. Caste consideration as a motive is not necessary to make such an offence in case of atrocities¹⁰.
- It signifies “crimes which have ingredients of infliction of suffering in one form or the other that should be included for reporting. This is based on the assumption that “where the victims of crime are members of Scheduled Castes and the offenders do not belong to Scheduled Castes considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime¹¹.
- The Act lists 22 offences relating to various patterns of behaviours inflicting criminal offences for shattering the self-respect and esteem of SCs and STs, denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process, etc¹²
- Section 3 of the Act lists the criminal offences and the punishments. It contains:
 - 19 offences in their own right (Section 3(1) contains 15 subsections with an equal number of offences. Section 3(2) contains four subsections with offences) two derived offences (sections 3(2)(vi) and 3(2)(vii)). The derived offences are based on the offences given in the SC/ST Act. They only come in the picture provided that another offence under the SC/ST Act has been committed. one subsection that increases the punishment for certain offences under the IPC (Section 3(2)(v)).

These protections can be broadly divided into protection from

- Social disabilities (denial of access to certain places and to use customary passage and to get water from any spring, reservoir or any other source).
- Personal atrocities (forceful drinking or eating of inedible or obnoxious substance, against stripping, outrage of modesty, sexual exploitation, injury or annoyance).
- Atrocities affecting properties (land, residential premises, existing properties).
- Malicious prosecution.
- Political disabilities.
- Economic exploitation

Various aspect of atrocities

Personal aspect of Atrocity:

On commission of atrocity, the victim suffers not only of bodily and mental pain but also imminent feeling of insecurity, which is not present in the victim of any other crime. He thinks himself a very pitiable person. Even after recovery of bodily hurt he continues to suffer mental pain during rest of his life. Sense of insecurity impede him to leave his place of residence, village. He tries to locate any other secure habitable conceal it rather than to lodge a First Information Report in the police Station, thinking place, which he rarely finds. This everlasting process goes on, which result into deterioration of physical, mental, educational, social, economic and psychological status of victim of atrocity. In case atrocity is committed in the absence of others, he tries to that by doing so he will save his reputation. He thinks that if incident of atrocity is known by the public, particularly, his relatives and caste men, his reputation will be lowered in their eyes.

During the process of victimization, the role of the victim is learned through the interaction with the offender or with people in the social vicinity of the victim. The victim is pushed or "Socialised" in to his/her victim role land with time he/she grows accustomed to becoming a victim. The person concerned learns to define him/herself as a victim. And rather often it is the inappropriate reactive process following instances of primary victimization, the so-called Secondary victimization, which leads to a lasting internalization of the role of the victim. Such inappropriate reactions of authorities in the field of formal social control as well as of people in the victim's social vicinity may victimize the primary victim again. Once more he/she is made object. At the end of this process of degradation and stigmatization, the victim adopts a victim conception of him/herself¹³.

In explaining the process of learning the role of the victim, reference may also be taken to the theory of learned helplessness. According to this theory, human beings learn from experience that their action may have negative consequences upon which they cannot exert an influence; for if somebody realizes again and again that negative consequences cannot be averted, even by determined action, he/she will become passive. Such a person will then not even try to take promising counteraction against an impending disaster or danger. Persons of that sort tend to give up their resistance. They internalize their impression that even purposeful action will be of no use whatsoever¹⁴.

Physical aspect of Atrocity:

In atrocities, where the victim suffers physical injuries on his body, he undergoes bodily pain according to the nature of injuries. Acuteness and period of bodily pain varies according to grievousness of hurt caused on the body. In many cases of atrocity, even limbs of person are amputated which makes the Victim infirm. His physical strength deteriorated resulting into unfit or less fit in his profession and occupation.

Economic aspect of Atrocity:

Commission of atrocity also affects the economic position of victim. In some kind of atrocities, such as destruction and damage of properties, etc., victim suffers direct financial losses. In some other kind of atrocities such as bodily injuries, he has to spend lot of money on his treatment. Besides, he loses his earnings during the period of his illness. In addition to this, his wealth is wasted in litigation. Thus, his wealth is minimized which shatters his economic position and he becomes poorer.

Social aspect of Atrocity:

Not only the victim of atrocity but also society at large, particularly, the persons who are caste men of victim do suffer both by mental pain and sense of insecurity. The status and reputation of the victim is lowered in the society. His caste men also feel insulted and humiliated. Their reputation also goes down in the society. This generates caste feelings, which disintegrate the society and divide them on caste lines.

According to the social structural victimization theory, the social structure and distribution of power within a given society are to be seen as responsible for the extent of victimization as well as for its patterns and reasons. The social structure constitutes the framework and the basis of all interactions between victims and offenders, which take place within the society in question, and which prove to be failures. If minorities are being pushed away or marginalized in society, their people tend to be victims of social structural and cultural victimization, which results from customs, tradition, religion and ideology¹⁵.

Examples of social structural victimization are the so-called hate crimes which depict the symbolic status of the crime victim. The victim belongs to a social out-group the members of which symbolize what the respective in-group, to which the offenders belong do not want to be criminal offences in this contest serve the feeling of solidarity and identity within the in-group and, equally, strengthen the in-group's self-esteem.

Grave aspect of Atrocity:

Police is the protector of law, and it is one of the duties of the police to save the SCs & STs from commission of atrocities upon them by others. But if police, instead of saving them from atrocities, commit atrocities on them, then the position of atrocity becomes grave.

UN, Constitutional and Legislative protection

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. CERD, Article 5–States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction in the enjoyment of the rights.

The constitution of India under article 17 prohibits untouchability and provides reservations through 73rd and 74th Amendments to contest and take part in administration.

Article 14 declares that the 'State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India' Equality before law and Equal protection of law 16.

Under the Indian Constitution the first clause of Article 15 directs the state not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth. The second clause prohibits citizens as well as the states from making such discrimination with regard to access to shops, hotels, etc. opportunity. The third clause empowers State to make any special provision in favour of women and children (Article 15)¹⁷

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

- The Crimes Identified Under the Indian Penal Code (IPC)
- Rape (Sec. 376 IPC)¹⁸
- Kidnapping & Abduction for different purposes (Sec. 363-373)¹⁹
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)²⁰
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)²¹
- Sexual Harassment (Sec. 509 IPC)²²

Judicial Approach

Judicial Approach on the basis of Social Justice can be classified through four pillars which are as follows:

- Social justice through the Public Interest Litigation
- Social justices through the Judicial Activism.
- Social justices through the Judicial Review.
- Social justices through the Curative Petition.

“If I was asked to name any particular article in the Indian constitution as the most important- an article without which this constitution would be a nullity- i could not refer to any other article except this one...It is the very soul of the Constitution and the very heart of it.”- Dr. BR.Ambedkar.

In the case of Kailas & Others v state of Maharashtra TR; this appeal has been filed against the final judgment and order dated 10.03.2010 in Criminal Appeal No. 62 of 1998 passed by the Aurangabad Bench of Bombay High Court.

The victim in the present case is a young woman Nandabai 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after tearing her blouse and brassieres and then got paraded in naked condition on the road of a village while being beaten and abused by the accused herein. 6. The four accused were convicted by the Additional Sessions Judge, Ahmednagar on 05.02.1998 under Sections 452, 354, 323, 506(2) read with Section 34 IPC and sentenced to suffer RI for six months and to pay a fine of Rs. 100/-. They were also sentenced to suffer RI for one year and to pay a fine of Rs. 100/- for the offence punishable under Sections 354/34 IPC. They were also sentenced under Section 323/34 IPC and sentenced to three months RI and to pay a fine of Rs. 100/-. The appellants were further convicted under Section 3 of the Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to suffer RI for one year and to pay a fine of Rs. 100/-

In Samatha vs. State of Andhra Pradesh and Ors. AIR 1997 SC 3297, It is for this reason that special provisions have been made in our Constitution in Articles 15(4), 15(5), 16(4), 16(4A), 46, etc. for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalized in India are the Adivasis (STs), who, as already mentioned, are the descendants of the original inhabitants of India, and are the most marginalized and living in terrible poverty with high rates of illiteracy, disease, early mortality etc.

Their plight has been described by this Court. Hence, it is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimized for thousands of years by terrible oppression and atrocities. The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India.

Conclusion

Dalit women are considered as easily available for all forms of violence.

.It is the foremost duty to provide the society and all its organs to provide justice and correct institutional and human errors affecting basic needs, dignity and liberty of human beings ,It can be thus be aspired that in the times ahead people's right to live as a true human beings will further be strew .But in the absence of well formulated action plan and time frame certain equality clauses are still a dream. Unless some strong and immediate steps are taken to translate these rights into action mere availability of all these rights on the Statutes carries no meaning.

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