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REVIEW ARTICLE

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JUSTICE TO DALIT AND PREVENTION OF ATROCITIES ACT: A CRITICAL REVIEW

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ABSTRACT

The egalitarianism of their dream is utopia but anyhow a statute under Article 14 of the constitution which states that all person irrespective of any factor is equal before the law. This paper, though in its limited word frame, will deal with the Dalit atrocities as they face in getting justice and how far has the Indian legal system being an up-to-the-mark in providing for the atrocity and equality in the society. The Prevention of Atrocities act will also be discussed, as it is the prima facie factor for the prevention of inequality in the eyes of law.

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INTRODUCTION

The Dalits in India face a looming charge of caste by birth which it carries till death. The rebirth or any such theory of Vedas does not apply to Dalit. Dalit crimes are either not reported on time or are not registered considering the caste inequality or the idea of justice, as it is, looks like a sword upon her, itself. The idea of the burden of proof in proving the crime done upon him is on the Dalit itself. The justice system is too weak to address the Dalit atrocity in a manner it does to the higher-order caste, that the case of Dalit being faced with a crime lags the judicial recognition.

Article 17 of the Indian Constitution states that there shall be no untouchability being in practice. But, the point looms to the extent it has been applicable? And also, to the point where the law intervenes for the punishment for the practicing untouchability?

The matter does not suffice itself to the practice of untouchability or exploitation of right to equality; India is a vast ocean of irregularities in the legal framework where often seen is that Dalit is drowned under the constitutional guidelines. On the pretext of getting justice from the courts which are indeed the temples of law, Dalits have just been exploited for what their past is or are seen with a vision of derogatory stances in which they are either at the lower bottom level to get justice or are not even entertained. As per National Crime Records Bureau (NCRB) data, a total of 1, 88,991 crimes against SCs were registered under different laws from 2011 to 2014.

The year 2014 witnessed an increase by 19.4% from the previous year, in terms of crimes committed against SCs under the crime heads of 'Dacoity', 'rape', 'kidnapping & abduction' and 'hurt' in general, and 'SC/ST (Prevention of Atrocities) Act' specifically. Uttar Pradesh, sharing 20.5% of the SC population, accounted for 17.2% of the total such cases reported in the country, followed by Rajasthan (17.1%), Bihar (16.8%), Madhya Pradesh (8.8%), and Andhra Pradesh (8.7%).

Addressing to what and how?

Constitutional statutes and various articles of the constitution which provide for equality amongst society have been read thoroughly and then the idea has been tried to be applied. Several reports, based on deep studies and research are referred to a great extent. Though keep in mind, the limited words frame of the paper, maximum care has been taken to include the relevant and subjective study prospects related to Dalit atrocities have been included. We hope that this paper standby by the title and the narrative approach followed for the readers.

Judicial Approaches considering Dalit's atrocities prevention acts: Article 17 of the Indian constitution is one such article that abolishes untouchability. It is specifically about the Human Rights Declaration of the UN. The Supreme Court in *State of Karnataka v. AppaBalulingale*, the first case before the court upon untouchability held by K. Ramaswamy j "the thrust of Article 17 is to liberate the society from blind and ritualistic adherence and traditional beliefs

which lost all legal or moral base. It seeks to establish a new ideal for social equality to the Dalits as par with the general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities, and a sense of being a participant in the mainstream National life". The main idea behind guaranteeing Article 17 is to provide with egalitarianism. Though the idea is hard to achieve SC in its landmark judgments has provided justice to it. On public interest litigation, Nathdwara Temple Act was passed, where the honorable court declared that banning of entry of so-called Untouchables or Harijans is against Articles 14, 15, and 17 of the Indian Constitution. The constitution Article 14, which provides for equality before the law is one of the main facets of the Indian constitution. It embodies every citizen an equal right before the law and makes the vision of the law go beyond caste or creed or any inequality. The SC held in *Dalmia Cement (Bharat) Ltd. v. Union of India* held that the concept of equality and equal protection of laws guaranteed by Article 14 in its proper spectrum encompasses social and economic justice in political democracy and equality before the law is co-relative to the concept of rule of law for all-around evaluation of healthy social order. A basic postulate of the rule of law is that "Justice should not only be done but it must also seem to be done". A healthy social order is only possible in India if the members of Scheduled Castes and Scheduled Tribes are brought at par with other members of Indian communities.

Education that makes one a complete human was critically denied to Dalit students. Despite their being Article 17, 14, and 15, education was a preliminary matter denied to the Dalit students. Either the process of admission was made so rigid that SC/ST or Dalit cannot pass through it or there was discrimination based on caste. The egalitarian ideal of constitutional makers seems to be failing until the first amendment in which clause 4 was added to Article 15, which specifies that there will be reservations for Dalits, SC/ST, and backward classes.

The atrocities for the Dalits are no less in getting legal support and justice. Most often the class factor of Dalits comes from a poor financial or monetary background. So, even if a case for their atrocities comes up in the courts, they do not have financial aid or money to sponsor it to get justice delivered. Thereby forty-second amendment to the Indian Constitution explicitly proclaims through Article 39-A, free legal aid to the person who cannot sponsor it themselves. This act has created a balance in the attainment of justice, as in, now the Dalit or poor will not restrict themselves from registering a crime against him or her, as he or she knows that the legal aid system will follow the practice of providing him or her justice at no extra costs.

Prevention of Atrocities Act: There has been an alarming rate of atrocities against Dalits, SC/ST, and other backward classes. Many cases against their dignity and self-respect go unchecked and unreported. Even if a Dalit community member tries to fight for justice, the prejudice is so that court views it from the blind eyes of caste and caste-based nature of the case. Cases such as gang rape of Dalit women have either not been reported or if reported went uncharged. The fear of cross-examination in such cases and proof of witnesses, all in one an ordeal it becomes for the Dalits to entertain the case. This all is happening despite the presence of constitutional mandates present in the law. The law, though provides for the safeguards for Dalits and equal protection before the law but the stringent thought process for such a community is so deeply entrenched in-to the minds of Judges, lawyers, or the legislature that, they make no effort for creating an equal balance amongst them. But rather create a separate category for Dalits and their related cases to be viewed from an unequal standpoint. Despite the presence of constitutional provisions like Article 14, 15, and 17 and Prevention of Atrocities Act, which the people of India have with roar proclaimed to remove the inequalities and create an unprejudiced and equal society for all the members of it. The time is now ripe for the people of India to view the constitutional measures as safeguards and guidelines for them to follow in the treatment of the caste-biased communities. Prevention of Atrocities act, 1976 created by the

constitution explicitly makes provisions for the punishment and other relevant provisions for safeguarding the rights of the Dalits and SC/ST communities. A brief definition of the POA act is as following: An Act to prevent the commission of offenses of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for 1 [Special Courts and the Exclusive Special Courts] for the trial of such offenses and the relief and rehabilitation of the victims of such offenses and matters connected therewith or incidental thereto.

We would now like to put some light on the facts and measures which constitute the PoA Act. The various mandatory and accountability mechanisms to monitor the implementation of the PoA Act and prevent atrocities, such as periodic reviews of cases and the performance of SPPs; reviews by the SC/ST Protection Cell, Nodal Officer, and State and District Level Vigilance Monitoring Committees (SVMCs and DVMCs), etc. in most of the states are more widely flouted than adhered to. Even though SVMCs and DVMCs have been constituted in many states, for example, in the absence of regular meetings no follow-up action emerges, let alone the plans of action mandated by the PoA Rules. Furthermore, victims and witnesses of atrocities are not informed about their rights and entitlements to travel and daily allowances to enable them to attend court hearings. The states are mandated by the PoA Act to declare atrocity-prone areas for officials to take preventive measures to stop the occurrence of atrocities. However, according to the MSJE Annual Report 2013 on the Status of Implementation of the PoA Act, only ten states had identified 171 districts as atrocity prone by 2013. Such is the appalling state of affairs and level of poor coordination between the enforcement authorities and the victims/ witnesses.

POA amendment Act, 2014: what it is and why it is necessary:

The provisions present in the POA act are somehow reflective of not being adequate or up-to-the-mark to end the atrocities of Dalit or SC/ST communities. The amendment will improve the conviction rate and high acquittal rate. The provisions in the amendments will suffice with the contemporary scenarios of the country in which Dalits are facing stringent irregularities in achieving legal justice and live life at par in society.

The following are the recommendations of the amendment bill, they are as followed:

Provision of rights of victims and witnesses. For example, protection from harassment and other such issues.

Include a new chapter on 'National Monitoring and Enforcement Authority' in the Act, defining the roles and responsibilities of this Authority to ensure effective coordination by State Governments and other state agencies as prescribed by the Act, and to ensure enforcement of the provisions of the Act.

Better infrastructure facilities including forensic support. This will help in proper coordination between the police authorities and criminal investigations.

The monitoring committees under the Act should be further strengthened to function effectively concerning their mandatory responsibilities of monitoring the investigation and prosecution of cases.

Make specific amendments to the clauses relating to enforcement authorities by amending section 4 of the PoA Act on the negligence of official duties by including the following nature of dereliction of duties: a) not reading out to the informant/s any oral complaint which has been reduced to writing by the Officer-In-Charge of the police station before taking the signature of the informant/s; b) misleading the complainant to change the content of the complaint; c) not registering FIR at all; d) not registering FIR under the POA Act; e) not registering the FIR under appropriate sections of the Act; f) investigating officer not recording the statement of the victims or witnesses; g) investigating officer delays the investigation for more than 30 days; h) Impolite treatment by an officer or staff of the police

station towards the complainant, informant and any social worker helping the victim in any manner.

The following problems as regards implementation of the PoA Act need to be addressed:

- Procedural hurdles such as non-registration of cases
- Procedural delays in investigation, arrests, and filing charge-sheets
- Delays in trial and low conviction rate
- Procedural delays in providing relief and rehabilitation to victims, and
- Inadequate rate of compensation.

A study of the case of Swapnil a 17-year-old boy, who was brutally murdered for falling in love and relationship with an upper-caste girl, Gauri. Swapnil was killed by the girl's brother and his friends. The family of Swapnil earlier tried to lodge a police complaint with the nearest area police station. But they belong to the Dalit community, were not allowed to meet the senior police official. This prevented them from getting police protection, which if it would be there have saved the life of Swapnil. The parents of Swapnil after his death tried to register an FIR with the police station but all they got was nothing.

This is not just one case where a Dalit, despite provisions present for its protection is made to suffer through the law jargon. His parents tried every level best to put the criminals behind the bar but failed. The court rejected the plea and thereby the case was finished.

Conclusion

The Dalit community has always been on the verge of getting justice delayed. This is due to the lawmakers and Jurists' narrow approach and backward thinking struck in the old Vedic timeframe of caste scrutiny. All that has been mentioned above reflects the provisions available to protect Dalit from atrocities. But the point is how far are they being applied and implemented? The day-to-day discrimination of the Dalits and the inequalities they face at the modern institutions are never-ending. The government should create awareness about the rights of Dalits so that they can approach courts and other legal parameters that could be easily addressed to them. We would like to summarize the paper by saying that a country like India which is secular and provides for a welfare state, must include the subaltern classes of its society so that there is far more equality than what is present in real and contemporary India.
