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Introduction – The Indian Constitution upholds the right to social, economic and political justice to all the citizens. Democratic institutions and elected representatives collectively engage in ensuring the exercise of fundamental rights without infringement. However, to say that a democratic society is free of social perils, is preposterous. Among social conflicts, incidents revolving around communal or religious disharmony often result in subjugation and repression. Although law takes its course, the prolonged delay in investigation and justice leads to the perpetuation of heinous atrocities against the socially disadvantaged.

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Democracy of Inclusion or Exclusion? Understanding and Analysing the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

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I. Introduction

The Indian Constitution upholds the right to social, economic and political justice to all the citizens. Democratic institutions and elected representatives collectively engage in ensuring the exercise of fundamental rights without infringement. However, to say that a democratic society is free of social perils, is preposterous. Among social conflicts, incidents revolving around communal or religious disharmony often result in subjugation and repression. Although law takes its course, the prolonged delay in investigation and justice leads to the perpetuation of heinous atrocities against the socially disadvantaged.

Besides Hindu supremacists, the communities that often find a hotspot in political debates are the Dalits and lower-castes who have been constitutionally categorized as Scheduled Castes (SCs) due to their historic social isolation and marginalization. As affirmative action, the Indian Constitution confers reservation in government jobs and educational institutes on these caste groups. Being at the lowest rung of caste hierarchy, these groups have often been subject to caste-based tyranny, further intensifying their marginalization. In response, the Indian government enacted the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act in 1989 as a remedy to stringently regulate and address caste-based atrocities. Moreover, with changing times, the Act has been amended twice (2016 and 2018) to accelerate the delivery of justice. However, the question that remains unanswered is the effectiveness of the law in setting a precedent for the offenders and guaranteeing the right to life (as enshrined in the constitution) to the victims.

The following paper gives a brief overview of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, highlights the nature and intensity of offences committed under the Act, and comments on the effectiveness of the Act in the long-run. Although the name of the Act bears the terms Scheduled Castes and Scheduled Tribes (STs), the scope of the paper is confined to the former.

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II. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

a) Background

The need for the Act arises from the long-standing four-fold caste system which is based on the two most important principles-birth (caste is ascribed at birth) and endogamy (marrying within one's own caste group). The institution of caste took an extreme form with the emergence of untouchability, which came to be associated with certain practices that were seen as polluting. These practices include handling of dead bodies, skinning of dead animals, manual scavenging, agricultural labour and leather tanning. The people performing these tasks came to be known as Dalits (untouchables) (Thorat and Joshi, 2015). As a result, the Dalits were denied land ownership, residence in village, temple entry, and access to public goods such as water from the common tank or well (Chandra et al., 2008). Despite various protests and movements, Dalits still continue to perform these tasks and face grave consequences.

In the background of thisdiscrimination, the Indian constitution has granted the Dalits and lower castes the status of Scheduled Castes and the government has enacted the SC/ST (Prevention of Atrocities) Act to ensure justice to the lower castes and Dalits.

b) Overview of the Act

The Act was enacted in 1989 to establish Special Courts as fast track courts at the district level to try offences under the Act and ensure speedy trial. Following is a list of major offences under the purview of the Act:

- Forcing a member of the Scheduled Caste to consume substance that is inedible and obnoxious;
- Acting with the intention to humiliate or injure a member of the Scheduled Caste by dumping faecal matter, waste or carcasses in the neighbourhood or premises;

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- Forcefully stripping off a member of Scheduled Caste naked and making him/her parade with a painted face or body;
- Illegally occupying or dispossessing a member of the Scheduled Caste from the land allotted to him/her;
- Assaulting or causing harm to any woman belonging to the Scheduled Caste with the intention to outrage her modesty; and
- Denying access to public goods to a member of the Scheduled Caste.

The offender having committed any of the above-mentioned offences is punishable for a period of time ranging between six months to five years along with a fine. The Act also specifies a number of duties to be performed by the government to ensure effective implementation. Some of these include the provision of legal aid, travelling and maintenance expenses, social and economic rehabilitation, and identification of areas where members of the Scheduled Caste are prone to atrocities(The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989).

III. Snapshot of Offences

Although the Act has been in place since the 1900s, the effectiveness of its implementation can be inferred from the crime data and the nature of offences.

a) Examining Crime Data

According to the latest report released by the National Crime Records Bureau (NCRB) (2016), over 40,000 cases of atrocities were reported against Dalits. The report presents data regarding the incidence of crime under various crime heads as mentioned in the Indian Penal Code (IPC). Around 1,500 cases of murder; 1,071 cases of grievous hurt (including acid attack cases); over 3,500 cases of assault on women; over 800 cases of kidnapping; around 2,500 cases of rape; and approximately 1,700 cases of rioting had been reported. Of the total cases reported, over 3,000 of the accused were convicted and over 10,000 of them were acquitted by the Special Courts. Over 1,20,000 cases remained pending with the courts. To summarize the plight of the people whose population exceeds 200 million in India (Census, 2011), everyday four Dalit women are raped, two Dalits are murdered, two Dalit houses are burnt and eleven Dalits are beaten up (Nawsagaray, 2018).

b) History of Offences

The reason for offences against Dalits is primarily grounded in land dispute, robbery, rape, and bonded labour amongst others. An overview of the nature and outcomes of these issues signifies the use of violence in ensuring marginalization of Dalits.

The names of Dalit families have not been disclosed in the following section to maintain their dignity.

- *The Khairlanji Massacre, 2006:* The massacre involves a Dalit family that had moved to Khairlanji, a village in the state of Maharashtra, to cultivate five acres of their newly purchased land. This piece of land, being a common passage for the villagers, became a bone of contention. Although the matter was taken to court, the Dalit family remained unscathed. This spurred tension between the family and the upper caste Hindus, leading to a series of unpleasant events. The latter inflicted torture on the family and this resulted in parading the women of the house naked to the centre of the village, crushing the genitals of the two sons with stones, gang raping the women, and dumping the corpses in the canal(Teltumbde, 2015).
- *The Mirchpur Carnage, 2010:* The carnage involves a trivial issue escalating into a massive inhumane act of violence in Mirchpur, a village in the state of Haryana. The issue started with a dog, belonging to a Dalit family, barking at a member of the Jat community (a dominant upper caste). The latter attacked the dog with a brick, leading to protest by a young boy from the Dalit family. Sensing trouble, two Dalits went to apologize to the Jats in the village. However, they were thrashed and later agreed to an out of court settlement, giving an opportunity to the Jats to suppress the community. Over 300 Jat men and women set fire to eighteen Dalit homes and stole their personal belongings such as jewellery, cash, clothes, gas cylinders and so on (International Dalit Solidarity Network, 2012).
- *The Dangawas Violence, 2015:* The violence against Dalits spurred over a land dispute in Dangawas, situated in the state of Rajasthan. The Jats claimed ownership to a piece of land that had been legally transferred to a Dalit family. However, the dispute turned violent when the family began constructing a house on the land. A mob of around 200 Jat men gathered around the land, leading to Dalits firing at the crowd and killing one of the Jat members. In retaliation, the crowd drove tractors over three men from the Dalit family. Women alleged of being sexually harassed and receiving threats of brutal attacks on their genitals(Meghwanshi, 2015).
- *The Dankaur Atrocity, 2015:* The atrocity involves an assertive Dalit man who had repeatedly sought legal remedy, but suffered defeat while seeking remedy against caste-based insult. He filed a complaint at the local police station in Dankaur, a town located in the state of Uttar Pradesh, accusing three members of the Gurjar community (a dominant upper caste) for dispossessing him of money, two cell phones and a motorbike. However, the police took no heed of the complaint, resulting in protest by the Dalit family and physical abuse by the police. The protest

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turned fervent with the family stripping themselves naked in response to the torture. The protest has been termed as an act of obscenity and the family has been labelled as lunatic(NDMJ-NCDHR, 2015).

- *The Una Flogging, 2016:* The incident involves a Dalit family that was mercilessly beaten up with iron rods and sticks by cow vigilantes for skinning the carcass of a cowin Una, a town located in the state of Gujarat. Three of the male family members were then made to march in the town while they were being ruthlessly flogged(Kateshiya, 2016).
- *The Kurara rape case, 2018:* The horrific rape incident took place in Kurara, located in the state of Uttar Pradesh. A Dalit woman was initially gang raped by a group of four upper caste men and warned not to mention the incident to anybody. However, on informing her family, she was attacked, her private parts were brutalized with sticks, and she was made to march naked in the village(Verma, 2018).

IV. Effectiveness of the Act

The SC/ST (Prevention of Atrocities) Act was enacted with the idea that fear of criminal law would effectively bring about a change in people's social attitude towards caste discrimination, thereby, alleviating caste-based violence and suppression. Therefore, to ensure its effective implementation with the passage of time, the Act has been amended twice.

Amendment, 2015

Despite the existence of deterrent provisions, adequate and timely justice remained a big obstacle. On the implementation side, there had been procedural hurdles such as non-registration of cases; delays in investigation, arrest, filing of charge-sheets and trial; and a low-conviction rate. Furthermore, it was observed that several atrocities caused against the SC community had not been covered under the Act(The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014). Therefore, the Act has been amended to include uncovered atrocities such as putting garlands of footwear on SC members; stripping offtheir clothes; forceful tonsuring of head; shaving off their moustache; painting their face or body causing human indignity; and dedicating an SC woman to a deity, object of worship, temple or any other religious institution. In addition to Special Courts, the Act also establishes Exclusive Special Courts at the district level to try offences under the Act(The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015).

Amendment, 2018

The amendment was a result of the Supreme Court's judgement in 2018, which received severe criticism. Firstly, the amendment states that a preliminary inquiry for registration of First Information Report (FIR) shall not be required (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018). The Supreme Court's judgement in 2018 supported that a preliminary enquiry shall be conducted before the registration of FIR to avoid false cases. However, this is most likely to delay the entire process of investigation which can lead to injustice (Nawsagaray, 2018). Secondly, the investigating officer would not require prior approval for the arrest of the accused (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018). Earlier, the Supreme Court laid down that the investigating officer would require the approval of the Superintendent of Police before the arrest of a non-public servant and the approval of the appointing authority prior to the arrest of a public servant. However, such a provision is likely to make it impossible for the police to ever arrest the accused, especially given the low conviction rate (Nawsagaray, 2018). Lastly, even though in its judgement in 2018, the Supreme Court makes the granting of anticipatory bail mandatory, the amendment disallows the same with the view to prevent further perpetuation of atrocities against the victims (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018).

A Brief Analysis

The amendments to the Act are a move in the right direction as they make it a stronger piece of legislation. However, the effectiveness of the legislation would depend on the implementation which involves the coordination within the administrative apparatus that includes the police, investigating agencies and the judiciary. Past experiences have shown that police officials refuse to file FIR or invoke the provisions of the Act in the FIR. In addition to this, perpetrators file false cases or counter-cases in collusion with police officials. Furthermore, officials do not arrest the accused immediately, cause delay in investigation, fail to interview or cross-examine the victims and witnesses, and have been inefficient in providing adequate protection to the victims and their families during and post investigation. In fact, it has been observed that investigation is often faster in counter-cases compared with cases under the Act (Nawsagaray, 2018).

Quite often, statements of victims and witnesses are not corroborated with the contents of the charge-sheet. Moreover, there have been deliberate efforts to leave vital information out of the charge-sheet to strengthen the case in favour of the accused (usually the upper caste members). An important aspect of police investigation that does not receive much attention in the debate regarding the effectiveness of the Act is the Final Report. The Final Report (FR) is prepared by the police upon completion of the investigation. In other

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words, it carries the verdict of the police, indicating whether or not the case deserves to go to the court. Given the time constraint, FRs are not usually scrutinized by higher authorities. However, in case of dissatisfaction with the investigation, a remedy available to the complainant is to file a protest petition. Despite remedy, the function of the investigation solely lies with the police who would eventually generate the FR, deciding the fate of the case (Khora, 2014).

In 2012, more than 40% of the cases across seven Indian states were categorised as 'False' in the FR. Although cases under the 'False' category invoke Sections 182 and 211 (punishment for filing false charges with the intent to cause injury) of the IPC, police officials are selective about invoking them. In both situations, the SC community members are likely to become the victims. Therefore, this lacuna is reflective of the police's hostility towards the SC victims and their service to the upper castes (Khora, 2014).

Another major hurdle in the way of implementation is the weak judiciary system. There is a shortage of Special Courts and public prosecutors; delay in trials due to the absence of the accused, victims and witnesses in the court; problem of lengthy hearings; and the issue of courts being overburdened with cases, and so on (Nawsagaray, 2018). Moreover, courts consider delay in reporting of cases as lack of veracity with regard to the SC/ST (Prevention of Atrocities) Act, while the same situation does not arise in offences outside the purview of the Act. This seems bizarre because the victims have to constantly fight to prove the veracity of atrocities faced by them. Furthermore, the court barely ever takes notice of the fact that the delay in reporting may have been caused due to victims fearing threats to their social lives and the risk of being antagonised bythe upper castes (Khora, 2014).

In most cases, courts do not apply the Act on the pretext that the crime was not committed because of caste. For instance, in the Khairlanji massacre (2006) (as previously mentioned), the court declined to take notice of any caste angle. In another case where five Dalits were lynched by a Hindu group, the Act was not applied on the grounds that the group did not know the caste of the victims. This reasoning of the court seeks to neutralize the Act (Teltumbde, 2018).

The Act has remained a good piece of legislation, but has been largely ineffective in its implementation. The administrative apparatus has been distorted and unaligned with the sole objective of the Act. The police have, time and again, favoured the upper castes and the system of justice has remained unjust. This hasfurther increased marginalization and victimization of the weaker sections in the Indian society.

V. Conclusion

Laws and legal processes are not self-executing; they depend on and are reflective of human agency and institutions. The egalitarian nature of the Indian Constitution has led to the drafting of a plethora of legislations that appear flawless and sincere on paper. However, the implementation on the part of state agencies has perpetuated casteism, bearing an adverse impact on the integration of the society, thereby, further intensifying the vulnerability of the SC community to caste-based violence.

It is deeply saddening that India is approaching the 75th year of Independence, yet a substantial chunk of its population faces discrimination and injustice. The subjugation of Dalits is not only an issue of ineffective implementation, but it largely stems from the ignorance of the society, which has failed to hold those in power accountable. In other words, oppression, violence, victimization, marginalization, subjugation and repression cannot be eradicated unless the society exercises its will to transform. The law will continue to be amended with passing time, but a fragmented and ignorant society would be the biggest reason for its ineffective implementation.

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