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COVER STORY

Walls in minds

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The Prevention of Atrocities Act needs more teeth, and dominant castes should see their own enlightened self-interests in upholding Dalit rights.

S. JAMES



The wall in Uthapuram in Madurai district, Tamil Nadu, which, before a 150-metre stretch was demolished by the State government in 2008, blocked Dalits from entering areas previously under common use. The wall was built in 1989, the year the Prevention of Atrocities Act came into force.

THE caste system, of which “untouchability” is an integral part, has taken shape as a mechanism by which advantages, positions of privilege and opportunities for advancement can be secured in favour of a minority of the population while the majority is confined to the role of providing agricultural labour and other labour and services, many of them demeaning, and to that of supplying primary and secondary goods on exploitative terms, which keeps it deprived of opportunities for upward mobility.

Those in the lowest tier of this system, consisting mainly of agricultural castes and other labour castes (the “safai” castes, for instance), have now been classified as Scheduled Castes (S.Cs). The scourge of caste is the severest on them and they often face “untouchability”.

The castes placed just above the S.Cs are those of artisans and artisanal/artisan-like producers, the pastoral castes and the castes of those rendering inferior services, all of whom belong to the category of Socially and Educationally Backward Classes (SEdBCs), also referred to as the Other Backward Classes (OBCs). The next higher tier consists of castes of peasants most, but not all, of which have been categorised as Backward Classes (B.Cs). At the top are the castes that hold positions/occupations of privilege and prestige, referred to as the advanced/forward castes. The

Scheduled Tribes (S.Ts), the bulk of whom live in their tribal homelands, are outside the caste system but are subjected to various disadvantages and deprivations that keep them at the lowest level of society and economy along with the S.Cs.

The “discipline” of “untouchability” was adequate over the centuries to confine the agricultural labour castes and what are now known as the S.Cs to labour-providing roles. Similarly, the confinement of the S.Ts in remote areas was enough to keep them at the bottom of society and the economy. However, the reformist, nationalist and revolutionary movements of the last century and a half and the movements inspired by B.R. Ambedkar instilled in the S.Cs a new awareness. Untouchability and the philosophy of the caste system came under challenge. A new instrument of discipline had to be forged and atrocities against S.Cs and S.Ts started taking place.

The trend can be traced to the 19th century in parts of India. A committee that toured British India in the 1920s for a review of the working of the Government of India Act, 1919, noted that many atrocities were being committed against the “untouchables” but were going unnoticed and unpunished because no witness would come forward to give evidence.

Dr Ambedkar, then a Member of the Legislative Council of Bombay, cited some early instances of atrocities against Dalits in Annexure A to the Statement submitted by him to the Indian Statutory Commission (Simon Commission) on behalf of the Bahishkrita Hitakarini Sabha on May 29, 1928, including the rioting and mass assaults on Dalits on March 20, 1927, for asserting their right to drinking water from the public Chowdar tank in Mahad, Kolaba district, and the mass assaults on and burning down of the dwellings of Balais (S.C.) in Indore district.

After Independence

After Independence, one of the early indications of simmering caste animosities came with the Ramanathapuram riots of 1957 after the assassination of the young, educated Dalit leader Immanuel Sekaran, who had refused to follow caste-based customs of social interaction. The signal hardly registered on the all-India radar, though the State government under K. Kamaraj took strong measures to quell the attacks on S.Cs.

But the national leadership and Parliament sat up and took notice after the Keezhavenmani massacre, on Christmas eve in 1968, in which 44 S.C. people were burnt to death in Tamil Nadu. Then there was the gruesome killing of Kotesu in Kanchikacherla in 1969 in Andhra Pradesh, which was defended by a State Minister. After that, there were many other instances of violence against the oppressed castes in different parts of the country in quick succession.

Monitoring atrocities

The Government of India, under pressure from the Dalit Members of Parliament, started monitoring atrocities against the S.Cs from 1974, and those against the S.Ts from 1981. The focus was on murder, rape, arson and grievous hurt.

There was a spurt in atrocities from 1977. This, and a statement of the then Union Home Minister advancing a shocking argument, apparently to play down the seriousness of the situation, resulted in an outcry and the creation of the post of Joint Secretary in the Ministry of Home Affairs in charge of the subject of S.Cs and B.Cs. I was then in the post of Joint Secretary under the Ministry of Commerce/Industry and volunteered for this post. Apart from utilising this opportunity to conceptualise, create and launch the Special Component Plan (SCP) for S.Cs and a scheme of Central Assistance to the S.C. and S.T. Development Corporations of the States and Special Central Assistance to the State SCPs (the last of which could materialise only after the regime change in 1980), I took up on top priority the task of monitoring atrocities.

This I converted from mere receipt and transmission of statistical information into an active pursuit of individual gruesome cases such as the ones in Belchi, Bodh Gaya, Chainpur, Marathwada,

Chikkabasavanahalli and Indravalli. Special courts with special judges were set up for specific cases by State governments and special prosecutors were chosen carefully. This helped to secure quick trials and convictions. I continued this practice after the regime change in 1980 and pursued the atrocities at Pipra, Kafalta, Jetalpur, and so on. This produced a crop of convictions and punishments, including death sentences in Belchi.

An important landmark is the historical letter of Union Home Minister Giani Zail Singh dated March 10, 1983, to all State Chief Minister and Governors, candidly touching the root of atrocities and clearly mapping the preventive, punitive, rehabilitative and personnel measures required. The letter is now forgotten, but its contents have found place in the Prevention of Atrocities Act & Rules. It was prepared by me in the white heat of the Pipra massacre of February 27-28, 1980.

Atrocities, however, continued to take place as the Centre and State governments evaded addressing basic contradictions, vulnerabilities and causative factors. Only the symptoms of the problem were treated, and palliative measures were taken where radical solutions were required.

In his Independence Day address from the Red Fort in 1987, Prime Minister Rajiv Gandhi, under continued pressure from Dalit MPs and leaders, said that an Act would be passed to check atrocities against the oppressed castes. I was called back from the State and appointed as Special Commissioner for S.Cs (the pre-1992 constitutional machinery under Article 338).

I had the privilege of helping in translating the Prime Minister's policy announcement into a Bill and conceptualising its frame and content. The S.C. and S.T. (Prevention of Atrocities) Act came into force with the President's assent on September 11, 1989. Subsequently, after I was appointed Secretary, Ministry of Welfare, I got the Act operationalised with effect from January 30, 1990. Though the frame and part of the content I pressed for came into the Act, some important provisions which I had proposed did not find place, which made the Act less effective than it could have been.

Impact of the Act

The Act came as a watershed in the jurisprudence of protection for the S.Cs and S.Ts and their better coverage by the Right to Life under Article 21.

Its potential was immediately recognised positively by scholars such as Upendra Baxi and negatively by certain Chief Ministers belonging to the dominant upper castes or dominant middle castes, including the land-owning B.Cs, which tried soft-peddalling/backsliding tactics.

Over time, the Act created a certain measure of confidence in S.C. and S.T. communities that they had a protective cover and also a wariness in potential perpetrators of atrocities. Yet, atrocities continue as basic contradictions, vulnerabilities and root causes continue to remain unresolved.

The benefits of this basically and conceptually sound Act has not fully, or even largely, reached the S.Cs and S.Ts on account of deficiencies in the Act and in various aspects of its implementation.

Basic contradictions

Because of the traditional socio-economic structure and system, still largely prevalent today, most S.Cs live typically in a situation where they form the major segment/majority of agricultural wage-labourers but a minority of the population. This is true of not less than 80 per cent of the S.Cs as they are less urbanised than other communities (only 20 per cent against the average of 32 per cent in 2001).

The juxtaposition, typical of the Indian village, of a caste of agricultural labourers (S.C.) with a caste of land-based dominant upper castes/dominant middle castes and dominant middle B.Cs, to which most of the large landowners belong, provides an explosive situation that can be ignited by

any spark.

This juxtaposition is accompanied by dissonance caused by continuing economic dependence of S.Cs on their oppressors though they have rejected the ideology of inequality and subservience; contradictions between socio-economic realities and socio-ideological and socio-psychological factors; and contradictions between the aspiration for equality from below and atavistic yearnings above.

The state has been unwilling or unable to intervene actively in the caste situation because the leadership, both at the national and State level, is drawn from or is dependent on socially and economically powerful persons belonging to dominant upper and middle castes and dominant B.Cs.

The Dalits' demand for land and better wages and their resistance to discrimination and demands for modern, civilised inter-personal, inter-community relations are opposed by major land-owning/land-controlling dominant upper and middle castes and dominant middle B.Cs.

Even the limited upward mobility and consequent changes in lifestyles, achieved though hard work, thrift and education, with or without the aid of reservation, is an eyesore to those who are accustomed to seeing the S.Cs as only indigent and subservient labourers.

Even the legitimate protection of their rights, such as resistance to the encroaching of community land, is perceived as intolerable and insolent rebellion and is resentfully stored in the mind until an opportunity arises to wreak collective "vengeance", as happened in the mass arson case in Gohana, Sonapat district, Haryana on August 31, 2005.

Members of the much-trumpeted civil society (with a few honourable exceptions) are either hostile on account of their own dominant caste origins or indifferent on account of the socio-psychology and socio-culture fostered over centuries by the caste system.

These basic contradictions ought to have been resolved by resolute and radical measures such as quick distribution of agricultural land to all rural S.C. families so that not a single such family remains landless and dependent on others for its livelihood; similar land distribution to landless S.T. families in non-tribal areas; stopping the loss of tribal lands; rescuing S.C. children from the compulsion to work to supplement their family incomes; setting up a network of high quality residential schools from Class VI to XII for S.C. children in every district and mandal/tehsil area and similar schools for S.Ts (in which one-fourth to one-third of the seats could be provided for poor non-S.C./non-S.T. children respectively); ensuring full access and reasonable presence of S.Cs and S.Ts in government and private educational institutions at all levels through reservation and other means (Bill for reservation of seats for S.C., S.T. and B.C. in private educational institutions for which the 93rd Constitutional Amendment was passed in 2005 is pending after the Act providing reservation for them in government institutions was upheld by the Supreme Court on April 10, 2008).

The failure of the Central and State governments to implement these economic liberation and educational equalisation measures and various other programmes which are part of the unimplemented national/constitutional/CMP commitments have been compounded by certain lacunae in the Act and the failure to ensure the thorough implementation of the Act even as it is, on account of indifference of local-level personnel and casualness of high-level personnel (all subject to honourable exceptions).

Statistics of poor outcome

That is why, as I analysed from the annual reports on the Act (for the years 1999 to 2003 tabled in the House), only 50 to 60 per cent of the cases reported to the police lead to charge sheets; only eight to 21 per cent of the cases in which charge sheets are filed go on to the trial stage. Convictions are secured in only 11 to 13 per cent of the cases that are tried. The percentage of

conviction is only 1 to 2 per cent when calculated against all cases that reach the court.

While S.Cs and S.Ts may not be aware of statistical details, they are aware of the acquittals in many serious cases. They are aware, from their own experience, of indifference, sometimes even hostility, in investigations and tortuous delays in trial. The perception among them, therefore, is that the Act and its implementation fall far short of their expectations and need. As illustrations, one may mention that in the Tsundururu atrocity case of Andhra Pradesh (August 6, 1991), a substantive trial could start only in November 2004; the Kumher case of Rajasthan (June 6, 1992) has been blocked by the appointment of a judicial inquiry, followed by a Cabinet Committee and then a Secretaries' Committee; and in Gohana a substantive trial is yet to start. It is symbolic of the situation that while the Berlin Wall fell at the same time (September 11, 1989) as this Act was passed, the wall in Uthapuram (Madurai district, Tamil Nadu) and the wall between Bhim Nagar and Dare Nagar (Satara district, Maharashtra) to isolate and keep out Dalits still stand tall. So do the walls in people's minds.

A number of Dalit and human rights organisations and activists have been engaged in helping and guiding S.C. and S.T. victims and survivors of atrocities. Their grassroots experience has brought out specific problems of implementation. These are partly traceable to the lacunae in the Act and partly to the lackadaisical way in which individuals are posted in positions of responsibility for actual day-to-day implementation of the Act, and indifference (subject to honourable exceptions) at the top levels of the political and permanent executive at national, State and sub-State levels.

Amendments required

After a series of meetings and consultations, the last of which was on September 11, 2009, marking the 20th anniversary of the presidential assent, and flagging off of a campaign upto January 30, 2010 (20th anniversary of the operationalisation of the Act), a compendium of amendments required in the Act has been prepared.

The convergent sources from which these proposed amendments have been put together are the provisions that I proposed in 1988 and 1989 but which did not find place in the Act; the Dalit Manifesto of 1996, which I formulated under the auspices of the National Action Forum for Social Justice and certain subsequent documents, in which some important provisions had been included; my personal observations during my visits to the sites of a number of atrocities and the feedback I have been receiving from victims, social workers and valuable media reports; the field experience of a large number of Dalit and human rights organisations in the past 20 years; and suggestions made in national consultations and meetings based on the field experience of participants.

The proposed amendments fall under the following categories. (1) Those required for speedy and fair trial. (2) Inclusion of offences which do occur but were not specified in the Act in 1989. (3) Effective protection of victims, including survivors, and witnesses and their rights. (4) Deletion of words and phrases such as "intent", "intentionally", and "forcibly" which are not really necessary but which give a handle to defeat prosecution. (5) Spelling out the duties of public servants. (6) Extension of the protective umbrella of the Act to sections of victims who for technical reasons are left out. (7) Establishment of an effective national authority to monitor and ensure the proper implementation of the Act. (8) Complementary amendments in the Constitution, Representation of the People Act and to the Criminal Procedure Code Amendment Act, 2008.

Democratic movement

The strengthening of the Act is only one aspect of the struggle. The other part is to build up a powerful and peaceful democratic movement all over the country, encompassing S.Cs and S.Ts as well as other patriotic members of the general society in order to bring home to the government and all arms of the government that they should give the highest priority to the actual implementation of the Act and deliver full protection to the S.Cs and S.Ts on the basis of the principle of zero

tolerance of atrocities. This has to be accompanied by measures of economic liberation and educational parity at all levels.

The protection, development, advancement and empowerment of the S.Cs and S.Ts is synonymous with the advancement and progress of the nation. Dalit and human rights organisations and their enlightened friends should take up this task with this vision and sense of national destiny.

It must be understood by the advanced castes and classes of society who occupy the commanding heights of the state and of all its institutions and also the economy and private institutions and the media, that casualness or indifference or hostility on their part to this goal of ensuring the protection, development, advancement and empowerment of S.Cs and S.Ts will be injurious to their own self-interest, not to speak of the national interest, which would profit from optimal development of the nation in economic as well as social parameters. Their own progress will be hampered by the dead weight of the past. If they look at this issue rationally and from the point of view of their own enlightened self-interest, they should wholeheartedly join this epic effort and historical movement.

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