

[Back](#)

COVER STORY

Victims always

VENKITESH RAMAKRISHNAN AND
AJOY ASHIRWAD MAHAPRASHASTA

The S.C. and S.T. (Prevention of Atrocities) Act has failed to make Dalits any safer.

RANJEET KUMAR



An innocent survivor amidst scattered bodies, a scene after the Ranveer Sena's carnage of Dalits at Shankarbigha in Jehanabad district of Bihar on the eve of Republic Day in 1999. Dalit rights activists say the Ranveer Sena, a private militia of Bhumihar landlords which terrorised Dalits in the 1990s, is regrouping.

THE ascent of the Mayawati-led Bahujan Samaj Party (BSP) to power in Uttar Pradesh on May 13, 2007, was seen as a defining moment in the politics of Dalit empowerment in the country. The Scheduled Caste (S.C.) leader of an avowedly “Dalit assertive” party had been Chief Minister earlier too, but the difference this time was that her party came to power on its own, without needing the support of other parties and independent members.

Thousands of Dalits who gathered in the State capital, Lucknow, on that day expressed the hope that atrocities against the S.Cs would decline drastically under the new “single-party” regime. Many social activists and observers who spoke to *Frontline* then also hoped that a single-party government under a Dalit Chief Minister in the country’s most populous State would have a salutary effect on Dalits’ condition elsewhere in the country too.

Approximately a year later, papers and documents presented at a two-day international seminar on Uttar Pradesh, organised by the Observer Research Foundation (ORF), a Delhi-based think tank, provided an indication of the situation on the ground. The papers documented that “within a month of the [Mayawati] government’s assumption of office, seven Dalits were killed in Muzaffarnagar, while three Dalit women were raped in the same district”. The papers also revealed that reports from areas such as Rae Bareli, Mohanlalganj, Lakhimpur Kheri and Mahoba were of a similar nature and that atrocities against Dalits continued in spite of the political gains made by the BSP.

The presentations at the seminar pointed out that the political leadership found it difficult to

implement what was perhaps its most important Dalit empowerment programme – the allotment of patta land to Dalits – on account of strong anti-Dalit sentiments within the administration.

A field study presented at the seminar revealed that in scores of villages in western Uttar Pradesh, in districts such as Baghpat, Muzaffarnagar and Meerut, Dalits were unable to occupy patta land allotted to them because of intimidation and in some cases even physical prevention by upper-caste groups. Not surprisingly, sections of the police and the administration were hand in glove with the upper-caste elements. Such was their allegiance to the caste interests that even repeated orders from the Chief Minister's Office to the District Magistrates failed to have any effect in a number of cases.

The National Crime Record Bureau's (NCRB) statistics for 2007 for crimes against members of the S.Cs and the Scheduled Tribes (S.Ts) corroborated the presentations made at the seminar. The figures showed that Uttar Pradesh topped the list on atrocities against the S.Cs and the S.Ts, with 2,113 cases out of a total of 9,819. The data also indicated a 10.2 per cent increase in crimes against the S.Cs and the S.Ts at the national level. Uttar Pradesh accounted for 20.5 per cent of all cases in India. The BSP's argument was that under the "friendly" Mayawati regime more S.C. members made bold to register cases against their oppressors.

There was merit in this argument, but the fact remained that Dalits were at the receiving end in large parts of Uttar Pradesh, where the politics of empowerment of the S.Cs and the S.Ts, the protection of their interests, their physical safety and the assertion of their constitutional rights had acquired, in comparative terms, the highest political and electoral acceptability.

Social and political observers hark back to an observation made by B.R. Ambedkar to explain this context. Ambedkar had said: "History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them."

Long-standing apartheid

Twenty years after the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the vociferous advocacy of the same by almost all political parties and even the rise of the politics of S.C.-S.T. empowerment across the country, it seems that the quantum of "sufficient force" visualised by Ambedkar would have been colossal. As the case of Uttar Pradesh indicates, the effective implementation of the Act would take a lot more than electoral victories and increasing political space.

The gaps in the implementation of the Act stand in stark contrast to the convictions that underlay its enactment. In simple terms, the legislation aims to prevent the various forms of offences by persons other than members of the S.C. and the S.T. against members of these communities. But studies have shown that it has systematically been prevented from achieving its goal. A number of factors have contributed to this, but the most important is the caste and class prejudices in society. These prejudices have got institutionalised, through religious and social practices, into a unique system of long-standing apartheid. That they have a class character is also evident; the Dalit and Adivasi communities that are discriminated against constitute almost 80 per cent of India's poor.

The S.C./S.T. Act is seen to be empowering as it is the first legislation to use and define the term "atrocities" committed against the S.Cs and the S.Ts. Introducing the Bill, the then Union Law Minister, B. Shankaranand, said the normal provisions of the existing laws, such as the Indian Penal Code (IPC) and the Protection of Civil Rights Act (PCRA), 1955, had been found inadequate to check the atrocities, gross indignities and offences against the S.Cs and the S.Ts. Therefore, the Act prescribes harsher punishments than the punitive measures detailed in the IPC and the PCRA, which used only the term "offences" vis-à-vis caste-related crimes.

The Act also introduced an executive system specifically to govern justice for the S.Cs and the S.Ts in cases of 22 broad types of atrocities relating to socio-economic discriminatory practices, which are listed in it. This system should comprise special courts, a special public prosecutor, nodal officers in each State, an S.C. and S.T. protection cell, and State-level and district-level monitoring and vigilance committees to identify atrocity-prone areas, and a special officer appointed by the district head to look after each case of atrocity. In actuality, in most States the full system has either not been constituted or has been functioning ineffectively.

Gaps in implementation

ANU PUSHKARNA



Activists of the Dalit Sena staging a demonstration in New Delhi on July 21 demanding action from the Bihar government to check atrocities on Dalits.

The gaps in its implementation could be studied at two levels – the executive and the judiciary. The National Human Rights Commission (NHRC) noted in its 2002 report: “Under-reporting is a very common phenomenon and the police resort to various machinations to discourage S.C./S.T. [persons] from registering their cases, to dilute the seriousness of the violence, to shield the accused persons from arrests and prosecution.”

A study done by National Dalit Movement for Justice (NDMJ), part of the National Campaign for Dalit Human Rights (NCDHR), showed that between 1992 and 2007 only 33 per cent of the atrocity cases were registered under the S.C./S.T. Act. The majority of the cases were registered under IPC sections and 1 per cent under the PCRA. It also showed that the conviction rate of cases under the S.C./S.T. Act was just 3.3 per cent for the country as a whole.

The figures at the level of the judiciary are equally pathetic. Between 1992 and 2007, as many as 80 per cent of the cases heard by the special courts (created under Section 14 of the Act) were not registered under the Act. In 95.1 per cent of the cases charge sheets had not been filed. The monitoring advisories set up in States on an ad hoc basis by the Ministry of Social Justice & Empowerment (MSJE) and the Ministry of Home Affairs (MHA) noted that in many cases the police wilfully neglected the S.C./S.T. Act and did not register first information reports (FIRs). Among the recommendations made were the setting up of special police stations and the launching of awareness campaigns about the Act.

The Ahmedabad-based Council for Social Justice (CSJ) has collected documents of 400 cases pertaining to 2004 filed under the S.C./S.T. Act in Gujarat. There are some startling revelations in them. Despite Section 18 of the Act restricting anticipatory bail in atrocity cases, anticipatory bail had been granted in 320 of the 400 cases.

Valjibhai Patel, secretary CSJ, told *Frontline*: “Rule 4(1) of the Act says that there should be two

panels of advocates in atrocity cases – a state-appointed public prosecutor and a panel created by the district head. In most of the cases, we see no such panels. The Act states that an officer below the rank of DSP [Deputy Superintendent of Police] cannot investigate the case. Many of the accused have been acquitted by courts just because the case was investigated by officers below the rank of DSP. I have seen in Gujarat rape cases of Dalits being sent to Lok Adalats meant for only compoundable offences.”

Plight of women

Dalit women face the worst atrocities as both women and Dalits. A seminal study conducted by the NCDHR (“Dalit Women Speak Out”, 2006) enumerating the experiences of 500 Dalit women from Andhra Pradesh, Bihar, Tamil Nadu and Uttar Pradesh presents a shocking picture of the conditions they live in. The study records the violence – physical, sexual and mental – inflicted on Dalit women. The study reinforces calls for comprehensive preventive measures to be put in place to eradicate caste discrimination and violence against Dalit women, in conjunction with measures to help Dalit women achieve their rights.

Valjibhai Patel says that though the Act mentions punitive measures against negligence, to date not a single official in India has been punished despite serious violations of the Act all over the country. He says the judiciary should also be made accountable, not just the police and the district administration. “There are many cases of atrocities where the accused has been punished under the IPC but has been acquitted under the S.C./S.T. Act. In Gujarat, one of the professors who raped his Dalit student got life imprisonment but was acquitted under the S.C./S.T. Act. The Khairlanji case is a big example where the people now serving the death penalty were acquitted under the S.C./S.T. Act. How is this possible? This means there is some problem in investigation and pursuance of the Act,” he says. The CSJ has filed a petition in the Supreme Court regarding the violation of the Act, the first hearing of which will be on December 3.

Budget and policy

The MJSE is responsible for the implementation of the S.C./S.T. Act. To implement the Act effectively, the MSJE has to provide for special courts for the trial of offences and for the relief and rehabilitation of victims of such offences. The Ministry provides financial resources for the implementation of the Act through the Special Central Assistance (SCA) from the Union government, which is 50 per cent of the total expenditure of the States and the total expenditure of the Union Territories.

However, the allocation of funds every year under the SCA has seen a steady decline. Under the Act taluk- and mandal-level officers are responsible for disbursing compensation and this work has to be monitored by the District Magistrate/Collector and the district monitoring and vigilance committee. Separate funds have to be given to police stations/courts towards travelling allowance/dearness allowance (T.A./D.A.) of victims and witnesses on FIR investigation and it has to be monitored by the Superintendent of Police (S.P.) and the District Judge (D.J.). There is also clear direction in the Act that arrangements should be made for maintenance expenses and reimbursement of medical costs of victims of atrocity.

In 2008, the Dalit Arthik Adhikar Andolan, also a part of the NCDHR, looked into the actual budget for the S.C./S.T. Act in each State and estimated the amount every State actually needed for its proper implementation. Its calculations have been done on the basis of the number of compensation cases in each State, the average cost of running the present number of special courts and special police stations, and relief and rehabilitation measures for victims specified in the Act.

The results in all the States reveal that the actual budget allocated for the Act is much less than what is required. This is despite the fact that both the Central government and the State governments share the amount made available for the programme under the special component

plan. Uttar Pradesh ranks the highest in terms of this deficit, and its figure stands at a staggering Rs.1,640 crore. Rajasthan, also a State with one of the highest rates of caste crimes, is second with Rs.1,157 crore, and Bihar follows with Rs.1,085 crore.

According to the actual budget allocated, as shown in the MJSE annual report, Uttar Pradesh, since 2007, ranks the highest in the allocation of funds for the Act, with around Rs.950 crore, followed closely by Andhra Pradesh and Karnataka. Among the big States, the lowest allocation is in Bihar, with just Rs.27 crore. Chhattisgarh's allocation is Rs.40 crore. In Haryana, which has one of the largest numbers of caste crimes, the allocation is only Rs.60 crore. In the South, Tamil Nadu ranks the lowest, granting around Rs.235 crore.

An NCDHR analysis of the qualitative investments of the Central government shows that in this year's Budget the amount spent on wage labour, school education, basic health, shelter, nutrition and primary necessities involving Dalits is 62.44 per cent of the total special assistance funds. In sectors where the upper classes dominate, such as higher education, entrepreneurial development, and land and asset building, the allocation is 37.56 per cent. State budgets present a similar trend. Most of the funds still go to the traditional occupation of Dalits, such as cleaning, agricultural labour, leather works, and so on, which is in contrast to the theme of the SCP of systematic empowerment of Dalits in all sectors of production. It therefore does not surprise when the S.C./S.T. Act, a tool for legal empowerment of Dalits, lacks funds for its implementation.

The aggressive pursuit of neoliberal economic policies by governments at the Centre and in many States over the past decade has also resulted in an increase in atrocities against the S.Cs and the S.Ts. Ironically, even the Uttar Pradesh government is not free from such ventures. The government's ambitious 1,047-kilometre-long Ganga Expressway project, connecting Greater Noida near Delhi and Ballia in eastern Uttar Pradesh, was expected to acquire 64,000 hectares of land, 70 per cent of which is agricultural land. A number of observers and social analysts pointed out that this acquisition would militate against the basic livelihood of a large section of Dalits who were into share-cropping with upper-caste, land-owning farmers.

According to NCRB data since 2005, Uttar Pradesh ranks the highest in the number of cases of caste atrocities, followed closely by Madhya Pradesh, Rajasthan, Andhra Pradesh, Bihar and Gujarat. "Acts like these empower and help organise Dalits. With greater awareness about the Act, we have seen a rise in caste atrocities every year," said Sirivella Prasad of the NDMJ.

The trend clearly shows that caste atrocities have increased with greater social and economic mobility of the S.Cs and the S.Ts which disrupts the exploitative status quo of a feudal society.

Many activists note that atrocity cases happen when Dalits try to avail themselves of legal resources; assert their right over land, water, and livelihood; assert their right to choose their occupation; attempt to participate in the cultural life of the community; assert their right to vote; and are victimised to satisfy the superstitions of dominant castes (witchcraft, human sacrifice). With respect to the S.Ts, activists say most of the atrocities happen when they try to organise themselves politically against the combined exploitation of government officials and industrial goons in the hinterland.

However, the Act is not clear about the rules with respect to social and economic boycott of the S.Cs and the S.Ts and there is an ongoing advocacy campaign among Dalit groups to seek amendments to certain provisions of the Act to make it stronger. Said Colin Gonsalves of Human Rights Law Network: "Unless the institutional caste bias is systematically done away with at the policy level and proper action is taken against negligent officials, violations will continue to happen. The legal system has failed the S.Cs and the S.Ts. The Act is a clear instance of wonderful legislation but useless implementation. Our judiciary needs at least 15 per cent reservation for the S.Cs right from the lower courts to the Supreme Court. The Rajasthan High Court has not had a single Dalit judge since Independence – absurd for a State that ranks very high in caste crimes."

To put it simply, caste is a combined social system of occupation, endogamy, culture, social class and political power, which has historically been exploitative for Dalits and Adivasis. In this context, the S.C./S.T. Act and its status echo Ambedkar's words: "This condition obtains even where there is no slavery in the legal sense. It is found where, as in caste system, some persons are forced to carry on the prescribed callings which are not their choice."
