



ATROCITIES AGAINST SCs, STs -A CRITICAL ANALYSIS

Madhusmita Chinara¹

Abstract: In India, crimes committed by the higher castes against the Scheduled Castes and Scheduled Tribes (SC and ST) are a severe example of prejudice and discrimination. Society's perception of schedule caste and schedule tribe is never clear. Although we claim to be granting them equal standing with other castes despite the fact that we are a developing nation, this is not the case. The government is seeking to ameliorate their situation in a number of ways, including by creating laws specifically for them, commissions created just for their benefit, and via the use of reservations. In this essay, I look at how the relative material standards of life between upper castes and SCs/STs have changed over time and how it has affected the frequency of crimes against Scheduled Castes and Scheduled Tribes. It examines crimes committed by the higher castes against the historically oppressed Scheduled Castes and Scheduled Tribes, or rest while untouchables and marginalized tribes (SCs and STs, respectively). I didn't go into much detail in my assignment paper beyond describing the situation of scheduled castes and scheduled tribes and the protections afforded to them by Indian constitution. These allowances are only a helping hand for them to become well. Only until all facets of society are established will our nation be considered developed.

Key Words: Atrocities, Schedule Caste, Schedule Tribe etc

I. INTRODUCTION

Formerly untouchable castes and a number of tribal communities continue to face stigmatization, economic and social isolation, and prejudice in India². Additionally, because of their low caste identification, these people have frequently been the victims of crimes and atrocities committed by the upper castes that are comparable to hate crimes in other areas of the world. Examples include forced evictions, police brutality, harassment of village council members from lower castes, and rape of women and more³.

The lower caste groups in India have experienced violence in addition to socioeconomic discrimination and marginalisation as a result of the practise of "untouchability." The untouchable communities were given the

¹ LLM Student, Madhusudan Law University, Cuttack, Odisha

²Chawla SK, Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Suvidha Law House 2004).

³'Practice of Untouchability and Atrocities' [2009] Dalits in India: Search for a Common Destiny 129.

position of Scheduled Castes (SCs) under the Indian Constitution, and they were granted access to affirmative action programmes. The most significant prohibition of untouchability is included in Article 17 of the Constitution. The first action in this regard was made with the passage of the Untouchability (Offenses) Act in 1955. Later, it was revised, and the name was changed to the Protection of Civil Rights Act, 1976. It did not, however, appear to be very successful. Consequently, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 was a significant piece of legislation. This Act established a specific definition of the term "atrocities" for the first time and imposed severe penalties for acts that meet that description.

Hindus are split into many divisions known as "Jatis" by the caste system. (castes). These groupings are a result of the old "varna" system, which classified society into four distinct categories. The "Brahmins" (priests and instructors) and the "Kshatriyas" (warriors and royalty) were at the top of the varna system, followed by the "Vaishyas" (merchants and moneylenders) and then the "Shudras." (engaged in lowliest jobs).

Every time Dalits have tried to gather or demand their rights, there has been a backlash that has resulted in mass murders, gang rapes, and the looting of Dalit communities. This shows that big legislative changes have not been matched by caste-neutral tolerance and social integration.

II. REVIEW OF LITERATURE

As to understand the leading contributing factors of crimes against SC and STs are the fundamental part of preventing people from committing illegal, antisocial and detrimental conduct. A systematic review of the available relevant literature has been made below.

2.1. Text books

- i. For the Rights of women and SCs and STs under constitutional law I have referred the book of "Indian Constitutional Law, by "M P Jain", 7th Edition of LexisNexis," offers crucial elements to improve the status of SC and STs in India. But it is more complicated as to the aspect of fundamental rights of SC and ST.
- ii. Certain special provisions also exist in the Indian Penal Code and the Code of Criminal Procedure, 1973 and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which is to provide special treatment and punishment to offenders for that I referred the book of " S N Mishra, Indian Penal Code, Criminal Procedure Code, 22nd Edition 2018 and Chawla SK, Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Author fails to give his view on misuse of provision by these sections of people.

2.2. Articles

- i. Practice of Untouchability and Atrocities [2009] Dalits in India: Search for a Common Destiny Journal by A Shaikh. In this journal, author has mentioned the preventive measures for the Practice of Untouchability and Atrocities in India.
 - It is silent about the recent laws implemented regarding Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
- ii. Slavery and the Roots of Sexual Harassment [2003] Directions in Sexual Harassment Law by AD Davis. This Journal Provides about a particular crime against women i.e Sexual harassment of Woman. However, In this journal author has only emphasis on this cause but not discussed about the other violence against women.

Constitutional Rights ⁴:

- Article 14 ensures equality before the law.
- Article 15 (1) forbids discrimination against any citizen based on their place of birth, race, caste, religion, sex, or any other factor, including if they are subject to any disability or other restrictions.
- Article 15(3) gives the State the authority to enact specific legislation in support of women and children.
- Article 16: Equal opportunity in public employment.
- Abolition of Untouchability, Article 17.
- Art. 19: Protection of rights to freedom of expression
- Protection against conviction for offences is covered under Article 20
- Article 21: Protection of life and individual freedom.
- Article 23: Prohibiting forced work and human exploitation;
- Article 24: Prohibiting the use of children as workers in industries, etc.

Important measures for improving the position of women and SC and STs in India may be found in the Directive Principles of State Policy. Some of them are:⁵

- According to Article 39(a), the State's policy shall be focused on ensuring that all the people have equal access to appropriate means of subsistence.
- Article 39 A guarantees that no citizen will be denied the ability to pursue justice due to a lack of resources or other obstacles.
- Equal remuneration for equal labour is required under Article 39(d) for both men and women.
- Art. 40: SC/ST are given a reservation for one-third of the seats in Panchayats.

⁴ The Constitution of India (Eastern Book Co 2012)

⁵ ibid

- Article 43: Living wage for employees.
- Art. 44: Citizens' uniform civil code.
- Provisions for free and required education for children are included in Article 45.
- Article 46: Requires the governments to safeguard the economic and educational interests of the weaker groups, particularly SC and STs.
- Article 51 (A) (e) encourages peace and a sense of unity among all Indians and calls for an end to practises that are disrespectful to women's dignity.
- Art. 243, Seat Reserving.
- Art. 243T: Seats are reserved in each municipality.
- Articles 330 and 332 provide the reserve of seats for SC/ST in both state legislatures and the parliament.
- Article 334 states that special representation and seat reservations must end after fifty years.
- Article 335: Relaxes the requirements for SC/STs seeking promotions or admission to educational institutions.

Legal Rights- Special laws have occasionally gone into effect for SCs and STs in order to uphold the constitutional mandate and safeguard the interests of these social groups. The Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act, 1989, was created to prevent and deter crimes.⁶

In *Asiad Projects Workers Case*⁷, According to the Supreme Court, the right under Art. 17 is also applicable to private persons, and it is the responsibility of the state to prevent any violations of this right.

III. Atrocities against SCs/STs under Special and Local Laws (SLL)

(1) **The Protection of Civil Rights Act, 1955**

The following are classified as crimes under Sections 3-7A of the Act if they are committed on the basis of "untouchability":

1. Refraining from utilising sacred water resources and accessing sites of public worship.
2. Refusing entry to any store, public restaurant, hotel, amusement park, crematory, etc.
3. Being denied entry into any medical facility, pharmacy, or school of higher learning.
4. Refusal to provide services and sell goods.

⁶ Majumdar R, Commentary on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: As Amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (1 of 2016) (W.E.F. 26.1.2016), the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 (27 of 2018) (W.E.F. 20.8.2018) Along with the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, National Commission, State Acts, Rules & Regulations, Constitutional Orders, Allied Central Legislations (Sweet & Soft 2019)

⁷ *People's Union for Democratic Rights v Union of India* 1982

5. Sexual assault, harm, insult, etc.

6. Making someone perform any sweeping or scavenging or remove any carcasses out of respect for their untouchability.

In State of Karnataka vs Appa Balu Ingle⁸ The Supreme Court affirmed the conviction for prohibiting a member of a lower caste from filling a bore well.

(2) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Act has defined the term 'Atrocity' comprehensively. The purpose of the Act is to Prevent, Punish and Protect individuals from various atrocities.

Section 3 -Punishment for offenses of atrocities⁹-

People who do not belong to a Scheduled Caste or Scheduled Tribe:

1. Requires an individual who belongs to a Scheduled Caste or Scheduled Tribe to consume any offensive or inedible material.
2. Disposes of excreta, garbage, carcasses, or any other offensive material in his property or neighbourhood with the aim to harm, insult, or irritate any member of a Scheduled Caste or a Scheduled Tribe.
3. Forcefully strips a Scheduled Caste or Scheduled Tribe member of his or her clothing, parades him nude or with a painted face or body, or engages in any other act that is offensive to human dignity.
4. Unlawfully takes possession of or cultivates any land that belongs to, is assigned to, or was notified by a competent authority to be allotted to a member of a Scheduled Caste or a Scheduled Tribe.
5. Forcibly evicts the person who belongs to a Scheduled Caste or Scheduled Tribe from their property or interferes with their right to use any land, property, or water.
6. Forces or encourages a person who belongs to a Scheduled Caste or Scheduled Tribe to perform "begging" or other similar forms of compelled work except from any government-mandated mandatory duty for public reasons.
7. Intimidates or coerces a voter who belongs to a scheduled caste or tribe to skip the polls, submit a ticket in opposition to a particular candidate, or use a voting method that is against the law.
8. Starts a fraudulent, malicious, or vexatious lawsuit, criminal investigation, or other legal action against a person who belongs to a Scheduled Caste or Scheduled Tribe.
9. Provides any public official with incorrect or irrelevant information, which prompts the official to utilise his or her legal authority against a person who belongs to a Scheduled Caste or Scheduled Tribe.

⁸ AIR 1993 SC 1126

⁹ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s.3.

10. Deliberately insults or intimidates a member of a Scheduled Caste or Scheduled Tribe with the aim to degrade or disgrace them.

11. Attempts to insult or violate the modesty of a woman who belongs to a Scheduled Caste or Scheduled Tribe by using force or by attack.

12. Using one's status to exert control over a lady from a Scheduled Caste or Scheduled Tribe in order to engage in sexual activity with her that she would not have otherwise approved of.

13. Damages or pollutes the water from any spring, reservoir, or other source that members of the Scheduled Caste or the Scheduled Tribe typically use in as to make it less suitable for the use to which it is typically put.

14. Impairs a member of a Scheduled Caste or Scheduled Tribe's entry to or usage of a public resort that other members of the public or any portion thereof is entitled to use by refusing to allow them a traditional rite of passage to the resort.

15. Any act that forces or incites a member of a Scheduled Caste or Scheduled Tribe to abandon their house, hamlet, or other place of residence is punishable by a fine and a period of incarceration that must not be less than six months nor more than five years.

(2) Whoever, other than a member of a Scheduled Caste or a Scheduled Tribe,¹⁰—

(i) Anyone who provides or fabricates false evidence intending to, or knowing it is likely that he will, cause any member of a Scheduled Caste or Scheduled Tribe to be found guilty of an offence that is capital by current law will receive a life sentence in prison and a fine; if an innocent member of a Scheduled Caste or Scheduled Tribe is found guilty and executed as a result of such false or fabricated evidence, the person will also receive a death sentence.

(ii) Gives or creates false evidence with the intention to convict any person of Scheduled Caste or Scheduled Tribe for a crime that carries a sentence of seven years or more than that in prison; this offence carries a sentence of at least six months in prison but up to seven years or more, as well as a fine;

(iii) A term of imprisonment that must not be less than six months but cannot be longer than seven years, as well as a fine, will be imposed on anyone who intentionally damages property belonging to a member of a Scheduled Caste or Scheduled Tribe by using fire or any explosive substance;

(iv) Destruction of any building usually used by a person belonging to a Scheduled Caste or Scheduled Tribe as a place of prayer, a residence, or a storage facility, with the intent to do so or knowing it to be likely that he will do so, is punishable by life imprisonment and a fine;

¹⁰ Swamy MN, Shorter Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Along with Rules & Allied Laws (Asia Law House 2018)

(v) commits any offence against a person or piece of property under the Indian Penal Code that is punishable by a term of ten years or more, on the basis that the person or thing is a member of a Scheduled Caste or Scheduled Tribe, or that the thing is owned by such member, will be punished with life imprisonment and a fine;

(vi) knowingly or with reasonable cause to believe that an offence has been committed under this Chapter, conceals any evidence of that offence with the intent to avoid punishment, or with that intent provides any information about the offence that he knows or reasonably should know to be false, shall be subject to the punishment specified for that offence; or

(vii) Any offence under this section that is committed by a public employee is punishable by imprisonment of one year but may go as far as the punishment specified for such offence.¹¹

Section 4- Punishment for neglect of duties

Anyone who wilfully disregards their obligations under this Act while working for the government other than a member of a Scheduled Caste or Scheduled Tribe is subject to a sentence of imprisonment of at least six months but which may extend to one year.¹²

Section 5-Enhanced punishment for subsequent conviction

Anyone who has already been found guilty of an offence under this Chapter and is found guilty of a second offence or an offence that occurs after the second offence shall be punished with a term of imprisonment that must not be less than one year but may go as far as the punishment specified for that offence.

This legislation provides protection to SC and STs in various forms: -

1. Protection from social disabilities. Ex: Refusal to enter some public spaces, such as temples.
2. Protection from personal atrocities. Ex-Forceful drinking or eating of inedible or obnoxious substances, insulting of modesty, sexual exploitation.
3. Protection from atrocities affecting properties. Ex-Deprivation from land occupancy, residential occupancy.
4. Protection from Malicious Prosecution.
5. Protection from political disability.
6. Protection from economic exploitation.

¹¹ Shukla N, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: With Rules (Modern Law Publications 2002)

¹² ibid

Most significantly, those charged under the Act were refused the right to request anticipatory release, serving as an effective deterrent to crimes against the SCs and Scheduled Tribes (STs). It also claimed that government officials had violated their obligations by failing to execute or oversee the Act was also made a crime.¹³

Subhash Kashinath Mahajan v. State of Maharashtra¹⁴, In March 2019, in this case the Supreme Court of India weakening the strict rules.

The order stated that public employees could only be arrested with the consent of their appointing authority, that a deputy superintendent of police was required by law to conduct a preliminary investigation before filing a FIR, and that there was no longer a right to immediate arrest following the filing of a complaint. The senior superintendent should approve it when it comes to independent contractors.

If the court determines that there is no case to answer or that the complaint is untrue, it may give anticipatory bail to the accused.

Dalit leaders throughout the nation were shocked by the decision and claimed it diluted the true intent of the law. Evidently, this decision disregards the standard imposed by the Supreme Court in Lalitha Kumari v. Government of UP,¹⁵ when offence has been committed, an FIR must be filed.

IV. CRIMINAL LAW TO COMBAT ATROCITIES

Indian criminal Law has certain provisions to combat these atrocities. These shall be discussed in this chapter. In 1979 National Police Commission was constituted to analyse the factors behind dissatisfactory performance of the police throughout the country. The police's handling of the atrocities committed against SCs and STs was primarily characterised by refusal to file complaints, late arrival at the scene, extreme brutality when dealing with accused members of weaker sections, complacency when dealing with accused members of influential sections, making or failing to make arrests for nefarious reasons, etc. The suggestions have not been fully followed, and the police have been detaining and torturing Dalits and demanding money from them. There is an urgent need to eradicate the caste violence and discrimination from the society. In particular, the practice of "untouchability," should be completely abolished in compliance with Article 17 of the constitution. There is also need of creating awareness at both the ends.¹⁶The dalits activists have been falsely charged under many offences.To prevent such false implications and detentions of the there are certain protective provisions provided by the criminal law. These are¹⁷

1. If an accused person is arrested, they have the right to:
 - a. know the circumstances surrounding the arrest;
 - b. read the warrant, if one was issued.

¹³ Mehta S and others, "Atrocities against the Schedule Caste in India" (2022) 03 Asian Journal of Multidisciplinary Research & Review 01

¹⁴ [2018]

¹⁵ S.L.P (Cr.) No.[2006]

¹⁶ "Supreme Court Upholds SC/St Amendment Act, New Law Has No Provision for Anticipatory Bail" (*India Today* February 10, 2020) <<https://www.indiatoday.in/india/story/supreme-court-scheduled-castes-and-scheduled-tribes-prevention-of-atrocities-act-1644895-2020-02-10>> accessed March 7, 2023

¹⁷ Criminal Procedure Code 1973

- c. seek legal advice from a lawyer of their choosing;
 - d. produce before the local magistrate within twenty-four hours; and
 - e. find out if they qualify for bail release.
2. Any officer is prohibited from using threats or promises to coerce testimony from a witness or an accused under Section 163 of the CrPC.
 3. According to Section 330 of the Indian Penal Code, causing harm to get a confession or information about an offence is likewise punishable by up to 10 years in jail.
 4. Police brutality against suspects is against their constitutional rights to life and liberty, which are protected by articles 20 and 21 of the constitution.

In *D. K. Basu v. State of W.B* case¹⁸ To avoid arbitrary detentions, the Supreme Court has provided clear directions for police procedure to be followed in case of arrest and detention. These are :

1. Police officers conducting arrests and handling the questioning of an arrestee must be clearly identified by name tags and accurate, visible identification.
2. All personnel who conduct interrogations must have their information entered in a register.
3. The arresting police officer must create a note of arrest at the moment of the arrest. This document must be attested by a witness, who may be a relative of the arrestee or a local official in charge of the area where the arrest was made.
4. The individual who has been arrested or detained has the right to be notified as soon as is practical by a friend, relative, or other person who is familiar to him or has an interest in his wellbeing.
5. The arrestee must be given a medical examination when they request one, and the results must be noted in a memo. The arrestee and the relevant police officer must both sign the inspection memo, and the arrestee should receive a copy.
6. The individual who has been arrested must get a medical checkup every 48 hours while they are being held in jail.
7. During questioning, the arrested person should be allowed to speak with his or her attorney.
8. Within 24 hours after the arrest, the detained individual shall be brought before the magistrate. (CrPC)

The police usually disregard proper procedure of arrest of the Dalits and subject them to physical abuse and torture. They also levy false charges on the dalits just to suppress them. These instructions have been strictly made enforceable by the Supreme court to prevent such atrocities.¹⁹

The Andhra Pradesh High Court, in *D. Ramlinga Reddy v. State of AP*²⁰, argued that Rule 7's requirements must be followed, and that only officers with at least the level of DSP may conduct investigations under the SC/STs Act. An investigation conducted and a charge sheet submitted by an inept officer are subject to being overturned. Similarly, Madras High Court in *M. Kathiresam v. State of Tamil Nadu*²¹ ruled that it is inappropriate and detrimental for the law for an officer other than a DSP to undertake an inquiry. Without taking into account the

¹⁸ [1996]

¹⁹ "Practice of Untouchability and Atrocities" [2009] Dalits in India: Search for a Common Destiny 129

²⁰ [1999]

²¹ *ibid*

shortcomings of the State, the courts have been penalising SC/STs for the same. In essence, this means that there are 77,000 SC/ST people for every IPS officer. Therefore, this regulation has to be changed.

V. CONCLUSION

Violence in society includes acts committed against SC and STs. Numerous new laws and adjustments to India's existing laws have been introduced in an effort to tackle these offences efficiently. Social media is crucial to the development of this culture in Indian society. In addition to providing legal protection, the government should promote gender sensitization, safety and respect for women, and other initiatives that will influence how people view society and, in turn, reduce crime. However, more and more restrictive regulations are required in order to prevent anyone planning to commit such crimes from gathering the confidence to carry out his plan. Until the legislation's present provisions are changed or unless a comprehensive awareness campaign is started to inform the less fortunate of their rights, the law cannot fulfil its intended aims. But it's widely asserted that this law is abused rather regularly. In conclusion, the law should be construed to best serve the interests of the beneficiaries even if it is sometimes seen as a vehicle to enact harsher penalties and welfare laws.

Suggestion To Improve the Implementation of Law

Fast Track Courts- It should hear any matter involving SCs and STs. Violence against them cases have to be given high consideration. The establishment of extra fast track courts is necessary.

Strict Penalties: Lawbreakers are discouraged from breaching the law by the possibility of penalty. Every wrongdoer should be subject to harsh punishments. Increase case reporting and awareness-building.

Effective planning is necessary for law enforcement bodies to reduce violence against SCs and STs. For the law to be applied effectively, the police department is essential. They should cooperate with victims more closely. Police should urge crime victims to file reports.

BIBLIOGRAPHY

Statutes

- Constitution Of India, 1950
- Indian Penal Code 1860
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Books

- Surya Narayan Mishra, Indian Penal Code, 19th edition, 2013

- Chawla SK, Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Suvidha Law House 2004)
- Swamy MN, Shorter Commentary on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Along with Rules & Allied Laws (Asia Law House 2018)
- Shukla N, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: With Rules (Modern Law Publications 2002)

Articles

- Practice of Untouchability and Atrocities [2009] Dalits in India: Search for a Common Destiny
- Mehta S and others, Atrocities against the Schedule Caste in India, Asian Journal of Multidisciplinary Research & Review.

