

Caste-blind justice

In November 1995, while dismissing Bhanwari Devi's plea for justice, the district sessions judge remarked that the upper-caste men (the five accused included a Brahmin and the rest Gujjars) could not have raped a Dalit woman at the cost of defiling their caste purity. Twenty-two years later, the Indian judiciary's caste blindness shows little sign of ebbing. Last month, the Supreme Court (SC), no less, tightened the provisions concerning registration of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, seemingly to avoid "instances of abuse" of the law by "vested interests". This comes in the wake of the sinister Bhima [Koregaon](#) violence in Maharashtra less than three months ago.

The SC ruling in Subhash K Mahajan vs State of Maharashtra was in a bid to protect public servants from being threatened by the fraudulent invocation of the above-said Act in the course of discharging their bona fide duties. The court was specifically worried by the spectre of "imminent arrest" facing the accused in such cases. However, in expressing such concern, the bench has failed to establish the prevalence, to any degree, of such abuse of the law. In fact, the court has mandated that the arrest of a public servant under the Act must be approved by the appointing authority whereas that of a non-public servant must be approved by a senior superintendent of police. Thus, it has taken a single case to make a blanket amendment to the law, which has implications for all atrocity accused and not just public servants.

Contentions over the use of the atrocities law are as old as the law itself in India. These contentions have sharpened since the Act was amended in 2016 — the amendments, especially the introduction of Section 4 which punishes neglect of duty by errant investigating officers, increased its stringency. This has not led to an increase in convictions but has certainly raised the stakes for members of the bureaucracy who actively collude with upper-dominant caste perpetrators in hampering cases filed under the Act.

The procedural safeguards introduced by the SC serve to embolden perpetrators of atrocities and weaken the struggles of Dalits/Adivasis for justice. A study conducted by the author on cases of caste/sexual atrocities against Dalit women in rural Maharashtra in 2016-17 revealed that a long history of everyday humiliations and assaults by the perpetrator(s) preceded the climactic episode of violence, which prompted the complainant to break her silence and invoke the law. Even then, the battle of registering a complaint was an uphill one. In all three cases, the FIRs were filed in adverse circumstances (two were filed well past midnight, and one in hospital), with the complainant outnumbered by the kith and kin of the accused present in the police station, dissuading her from registering a complaint. It often took the persuasive intervention of civil society activists and/or local media to compel the police into registering an FIR.

Even after the FIR is registered, the perpetrators, often in connivance with the police, tamper with evidence, coerce witnesses into turning hostile, instigate villagers to sign bonds stating that the complainant is of poor character or a trouble-maker, and lure the complainants' family with monetary compensation, towards weakening the case or coaxing the complainant to withdraw. If and when, the complainant refuses to withdraw, perpetrators who are usually the village elite effectively issue further threats and social boycotts against the complainant and her supporters, only piling up the odds against her. Thus, when perpetrators fail to avert an FIR, their next alternative is to hamper the investigation leading to a weak chargesheet and the inevitable closure report. These are some of the reasons why 15-16 per cent of atrocity cases meet a premature end at the magistrate's desk, as noted by the Court.

These attempts at intimidation and active obstruction by perpetrators mar the fate of cases in courts too. Such pressure outside the courts, coupled with the historic caste blindness of the

judiciary heavily stacks the odds against Dalit/Adivasi petitioners, already reeling from the trauma of the atrocity itself. The abysmal 2-3 per cent conviction rate in atrocity cases explains the unabated impunity with which caste crimes continue to this day across the country. Yet, in a perfect instance of obverse logic, this figure has been trumpeted as evidence of the fact that most atrocity cases are “frivolous or motivated”. In arriving at this extraordinary conclusion, the SC has company in the Maratha morchas of Maharashtra, who demanded the very abolition of the Atrocities Act in light of the above argument.

Advocacy for improving the implementation of the law and stringency of its provisions, too, is also as old as the law. Today, the politically conscious and articulate constituency of Dalits has begun to report, support and follow up atrocity cases. The fear and shame are slowly giving way to assertion and resistance. It is this attitudinal change that has shaken the caste complex everywhere. And most upper-dominant castes believe that the Atrocities Act emboldens such consciousness and grants it immunity from further retribution. This explains and fuels the popular angst this legislation.

The Supreme Court’s proposed safeguards will not go unopposed. Despite the routine as well as spectacular indignities Dalits face in the cultural realm and political economy, they have time and again invested faith in the law and Constitution. It is this faith which has been put to the test by the Court’s recent ruling. The judiciary needs to be sensitised to the nature and operation of caste in Indian society if it is to uphold this faith.

The only thing worse than denying justice to a historically oppressed people is to falsify their trauma. Unravelling the truth in acts of willing and dehumanising violence, for which there is a seeming tolerance in society, requires an unsparing law. The truth of caste oppression must be uncloaked, for there can be no reconciliation without truth.

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