A pattern of impunity: on the SC/ST Act

For India's Dalits and Adivasis, May 1 this year was a 'May Day' in more ways than one. It was May Day, the day to commemorate the labour movement (the vast majority of them do belong to the working classes), and also 'mayday' in the maritime sense, an occasion to broadcast their distress over a life-threatening emergency.

Dalit and Adivasi rights organisations observed May 1 as 'National Resistance Day'. The immediate trigger was the Supreme Court order of March 20 on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter SC/ST Act). Protest meetings held across the country had three demands for the government: neutralise the Supreme Court order through an ordinance that would reinstate both the SC/ST Act and the SC/ST Amendment Act, 2015, in their original form; include both these laws in the Ninth Schedule to protect them from judicial review; and release all the Dalits arrested on April 2 when a 'Bharat Bandh' was observed to protest this Supreme Court order.

The Mahajan case

A lot has already been written on why the Supreme Court order is prejudicial to the cause of justice for victims of caste atrocities. But the underlying case that triggered the controversial judgment hasn't received enough attention. It might be instructive to briefly consider the facts of this case, *Subhash Kashinath Mahajan v. the State of Maharashtra*.

Preliminary enquiry not a must for every complaint under SC/ST Act, says Supreme Court

The dispute arose in 2007, when Bhaskar Gaikwad, a storekeeper in a government college in Karad, Maharashtra, wrote to the State government highlighting alleged illegalities committed by Satish Bhise, the college principal. Mr. Gaikwad is from the Scheduled Caste (SC) community, Mr. Bhise is a non-SC person.

In April 2008, Mr. Gaikwad stated in his annual confidential report (ACR) that he had brought to light certain irregularities in the procurement of materials for the college. When Mr. Gaikwad's reporting officer, Kishor Burade (also a non-SC person), saw it, he allegedly entered false information in the ACR about Mr. Gaikwad's performance as well as some casteist remarks about his character. Mr. Bhise, too, allegedly made mala fide comments against Mr. Gaikwad in the ACR.

When Mr. Gaikwad became aware of these remarks in his ACR, he filed a first information report (FIR) against Mr. Bhise and Mr. Burade under the sections of the SC/ST Act that penalise a non-SC person for giving a public servant false information that could harm a SC person. Since the accused were Class I officers, the police applied for sanction to prosecute them.

Subhash K. Mahajan, who was then the Director-in-charge, Technical Education, Maharashtra, wrote to the investigating officer denying sanction for prosecution, even though he did not have the authority to make that call.

SC/ST Act: Your judgement caused disharmony, great damage to the country, Centre tells Supreme Court

Following Mr. Mahajan's refusal to grant sanction for prosecution, the police in 2011 filed a C-

Summary report on the case, which means that the case is "neither true nor false". Mr. Gaikwad claims that he was not informed of this fact by either the police or the courts for more than four years, even though they were required by law to do so.

When he finally found out about the C-summary report in early 2016, he filed another FIR, this time against Mr. Mahajan, charging him with knowingly shielding persons accused of a crime against an SC person. This too is an offence that attracts the provisions of the SC/ST Act.

In August 2016, the defendant (Subhash Mahajan) approached the Bombay High Court asking for the FIR to be quashed on the grounds that the charges against him were false and frivolous. The High Court not only refused to quash the case but also ruled that "there are sufficient safeguards in the Act itself which guarantee protection against frivolous and false prosecution".

The defendant then filed an appeal against this decision in the Supreme Court. The apex court, instead of concerning itself solely with the merits of Mr. Mahajan's appeal, dramatically expanded the ambit of the case, noting, "The question which has arisen in the course of consideration of this matter is whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse."

In the name of protecting innocent non-SC persons from being victimised by false complaints under the SC/ST Act, it laid down three guidelines that nullify key provisions of this law: it removed the bar on grant of anticipatory bail; even though the Mahajan case only concerns public servants, it ruled that where the accused is a non-public servant, the police may make an arrest only after approval by a senior superintendent of police; and it held that before registering an FIR, the police may conduct a preliminary inquiry to ascertain the veracity of the complaint.

Setback for SC/STs

Taken together, the three changes neatly reverse the original mandate of the SC/ST Act: instead of immediately registering an FIR and investigating the accused, the police would now immediately doubt the Dalit and investigate her complaint for veracity, and what's more, they are required to do so by law.

Supreme Court to hear Centre's review petition on SC/ST Act ruling

One might assume that special guidelines to curb false allegations would be sparked by a case where false allegations have been proven. But that is not quite the case here. The apex court's judgment does not engage exhaustively with the allegations made by the original complainant, Mr. Gaikwad, against the defendants, Mr. Bhise, Mr. Burade and Mr. Mahajan.

In fact, Mr. Gaikwad has presented three fresh applications to the Supreme Court: one to prosecute Mr. Mahajan "for filing a forged English translation of the original Marathi FIR"; one seeking recall of the March 20 order on several grounds, "including fraud on the Hon'ble Supreme Court of India by not filing the full text of the FIR"; and one "seeking calling of original records from the Hon'ble Bombay High Court". These applications were tagged and listed along with the Central government's review petition.

By far the most disturbing aspect of the court's order is the idea that poor conviction rates and high acquittal rates suggest a high number of false cases. Can we apply this logic, say, to the acquittals of all the accused in the Kilvenmani massacre (Tamil Nadu, 1968, 44 Dalits killed), Tsunduru massacre (Andhra Pradesh, 1991, eight Dalits killed), Bathani Tola massacre (Bihar, 1996, 21 Dalits killed), Laxmanpur-Bathe massacre (Bihar, 1997, 58 Dalits killed), Shankarbigha massacre

(Bihar, 1999, 23 Dalits killed), to mention just a few of the most infamous instances of mass acquittals? Do these acquittals mean that the cases against the accused were false? Or do they suggest a pattern of bona fide impunity for crimes against the Scheduled Castes?

The SC/ST Act and the SC/ST Amendment Act hold enormous significance for Dalits not because they have been effective in protecting them from caste injustice; not at all. If they are cherished despite their poor conviction rates and shoddy implementation, it is because their very existence is a testament to Dalit agency in a heavily casteist society, and a powerful affirmation of the community's faith in the Indian Constitution.

The problem with this law is not its supposed misuse but the inability of India's criminal justice system to recognise its own casteist biases. It is, after all, a matter of common sense that in a society seeped in caste, no institution can claim immunity from casteist prejudices or mindset. Sadly, the judiciary has been reluctant to acknowledge the social matrix of jurisprudence in India, which is caste.

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