

Conversations on
CASTE
DISCRIMINATION
in South India

Published by
Alternative Law Forum, Bangalore

Conversations on Caste Discrimination in South India

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About the Alternative Law Forum:

ALF was started in March, 2000, by a collective of lawyers with the belief that there was a need for an alternative practice of law. ALF recognises that a practice of law is inherently political. ALF provides qualitative legal services to marginalised groups; conducts autonomous research with a strong interdisciplinary approach working with practitioners from other fields; acts as a public legal resource; operates as a centre for generating quality resources that make interventions in legal education and training; and is a platform to enable collaborative and creative models of knowledge production.

DEDICATION



When we from the Alternative Law Forum went to record conversations with people in Telangana (Hyderabad), Bittu, our trans friend, put us in touch with different community activists. Thanks to Bittu, we got introduced to Late Vijay Bhaskar who just opened our eyes to the issues of Adivasis and rethinking democracy. Our conversation with him on his work spanning decades, nuances on Adivasi rights and perspectives on discrimination has been important in shaping our work. But, his commitment, strength and ethics were what truly inspired us.

We met with him only once in November 2016, but he remains in our work and minds, for the rest of our journey. While we were still in the process of our study, we heard of his sad demise on May 8th, 2018. We were able to speak to him once again for his consent to quote him in this report.

We dedicate this work to him, his energy, dedication and activism.

If you would like to read more about Late Vijay Bhaskar, an article written in his memory is available at <https://forestrightsact.com/2018/05/09/vijay-bhaskar-in-memoriom/>

Photo credit: <https://telanganatoday.com/forest-rights-activist-vijaya-bhaskar-reddy-passes-away>

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Acknowledgements

Working with a community which did not even have voting rights, citizenship and fundamental rights for 65 years in this country, and being part of the trans community for over 15 years, the term discrimination for some of us and our friends is more of an experience of everyday life than a theory. We do realise that the constitution of India does have a provision of fundamental right of non-discrimination in Article 15.

In 2013, we started discussing this idea of working on delineating discrimination to look at the possibilities of drafting a comprehensive anti-discrimination law with Arvind Narrain and Siddharth Narrain. It was then that Arvind suggested to have a meeting with him, Siddharth and Gowthaman Ranganathan around June 2013. After the meeting, it was suggested that we would write a concept note based on the discussion in the meeting with the help of Gowthaman. It took us around 6 months to study and prepare a concept note. This concept note was revised several times to include as many possible forms of discrimination against different marginalised communities.

It was during this period that we requested Alternative Law Forum to take up this study/process of conversations and after a series of discussions, Arvind, Siddharth and Gowthaman agreed to make this an ALF project. We thank all our friends at ALF for supporting us with this project including Arvind Narrain, Siddharth Narrain, Gowthaman Ranganathan, Vinay Sreenivasa, Danish Shiekh, Darshana Mitra, Mohammed Afeef, Deeptha Rao along with interns like Akhil Kang, Ronak Chabbria and Vishesh Guru and many others who have helped us in different ways in these four years.

At this point of time, we began with a great ambition of covering all of India by dividing it into 5 zones, North, East, South, West and Central. Immediately we also realised many difficulties of not just travel and funds but also the language possibilities. We could handle South India as we knew all the South Indian languages from our experience of working with the LesBiT group (a group of lesbian, bisexual women and female to male transgenders migrated from all over South India) which we are part of. It was then that we decided we will travel in four Southern states and have conversations, not interviews, with people about the discourse of discrimination.

Before we could start we had some preparatory conversations with activists in Bangalore who helped us develop the theme of the conversations. They were Shakun Doundiyakhed, Madhu Bhushan, Issac Arul Selva, Ramdas Rao and Mariswamy. We are deeply indebted to them for their support.

We then started listing out people from all the states we knew, who could possibly lead us to different people from different movements like in Kerala - Reshma Bharadwaj, Reshma Radhakrishnan, Rekha Raj, in Tamil Nadu – A. Mangai, Prema Revathi, Jenny Dolly, and in Telangana - Karthik Bittu. It is these people who put us in touch with many different people, starting from the first generation Dalit scholars who got into higher education, to activists, academics, advocates along with the people whom we knew and had contacted for having conversations. We immensely thank Reshma Radhakrishnan, Reshma Bharadwaj, Rekha Raj, A. Mangai, Prema Revathi, Jenny Dolly and Karthik Bittu for these contacts, for they were not just new people we met, but many of them opened new doors of knowledge for us and also became very close friends.

We took two and a half years to cover four states. At the end of this report, we have given the names of the all the 90 people we had conversations with. We have deep gratitude for each and every person who took time to speak to us and share their views, knowledge, information and experience.

We also profusely thank Gee Semmalar, Kiruba Munuswamy, Radhika Raj, Bhuvana, Sathyakala, Ini Periodi, Reshma Radhakrishnan and Shilpa Prasad for having painstakingly transcribed and translated all the conversations covering all the four major southern languages.

We specially thank Kunal Ambasta for having helped us put together this report and constantly reviewing and giving responses while writing this report.

We thank Dr. Sunny Kapikkad for writing a response for us; Suchithra K.K. and Sonu Niranjan for typing it out, and Reshma Bharadwaj and Dileep Raj for translating it from Malayalam to English. We also thank Hulikunte Murthy for writing a foreword to the report.

We also thank Sarovar Benkikere for designing the cover page for the report.

Alternative Law Forum has been a space for us for all our debates, discussions, to express differences of opinion, a space that responds to any crisis and is open to all ideas. It would feel awkward to thank ALF but we feel deep gratitude, solidarity and love for ALF for having trusted us in this effort and organising many events, writing this report and taking forward the campaign.

We thank AJWS for having supported us through these years and funding us for the study and the publication of this report.

After four years of intense travel, work, discussions, debates and planning meetings, finally here we bring the report “Conversations on Caste Discrimination in South India” published by Alternative Law Forum, and we aspire to take this effort ahead as a campaign and we hope and wish that all you readers and friends would join this campaign against discrimination of all forms.

Thanking you

Sunil Mohan and Rumi Harish

Foreword

ಗಾಯದ ಬೀಜಗಳ ಹುಡುಕುತ್ತಾ.....

ಭೂಮಿಯ ಮೇಲೆ ಮಾನವ ವಿಕಾಸದ ಕೊನೆಯ ಅಂಕ ನಡೆಯುತ್ತಿದೆ. ಭೂಮಂಡಲದ ಜೀವ ಸಂಕುಲದಲ್ಲೇ ಅತ್ಯಂತ ಬುದ್ಧಿಶಾಲಿಗಳಾದ ಮನುಷ್ಯರು ತಮ್ಮ ಸಂಶೋಧನೆಯ ಶಕ್ತಿಯಿಂದಾಗಿ ಮಾನವೋನ್ನತಿಯ ಧ್ವಜವನ್ನು ಹಾರಿಸುತ್ತಿದ್ದಾರೆ. ಭೂಮಿಯ ಮೇಲಿನ ಬದುಕು ನೀರಸವೆನ್ನಿಸಿ ಅನ್ಯ ಗ್ರಹಗಳತ್ತ ಅವರ ಚಿತ್ತ ಹರಿದಿದೆ. ಅಲ್ಲಿಯೂ ತಮ್ಮ ವಿಜಯ ಪತಾಕೆಯನ್ನು ಹಾರಿಸಲು ಸನ್ನದ್ಧರಾಗುತ್ತಿದ್ದಾರೆ. ಅತ್ಯಾಧುನಿಕ ಸ್ಯಾಟಲೈಟ್‌ಗಳು, ರಾಕೆಟ್‌ಗಳು, ಸ್ಪೇಸ್ ಶಿಪ್‌ಗಳು ಭೂಮಿಯ ಆಚೆಗೂ ಅಧ್ಯಯನ ನಡೆಸಿ ಮನುಷ್ಯರ ಮಹತ್ವಾಕಾಂಕ್ಷೆಯನ್ನು ತಣಿಸುತ್ತಿವೆ. ನಿಮಿಷಕ್ಕೆ ನೂರಾರು ಮೈಲಿ ಓಡುವ ವಾಹನಗಳು, ಸಾವಿರ ಜನರ ಕೆಲಸವನ್ನು ಒಂದೇ ಗುಕ್ಕಿಗೆ ಮಾಡಿ ಮುಗಿಸುವ ಮೆಶಿನ್‌ಗಳು, ಇಡೀ ಜಗತ್ತಿನ ಚಲನ ವಲನಗಳನ್ನು ಅಂಗೈಯ ಮೇಲೆಯೇ ಕಾಣಿಸುವ ಎಲೆಕ್ಟ್ರಾನಿಕ್ ಡಿವೈಸುಗಳು ಈಗಾಗಲೇ ಮನುಷ್ಯರಿಗೆ ಬೋರ್ ಹೊಡೆಸುತ್ತಿವೆ.

ಆದರೆ, ಮಾನವಕುಲದ ಈ ಔನ್ನತ್ಯದ ಯಶೋಗಾಥೆಯನ್ನು ಪಠಿಸುವ, ಪಸರಿಸುವ, ಕೇಳಿ ಆನಂದಗೊಳ್ಳುವ ಯಾವ ಸೌಕರ್ಯವೂ ಇಲ್ಲದ, ಅಂದರೆ ಸಮಕಾಲೀನ ಲೋಕ ವ್ಯವಹಾರವನ್ನೇ ತಿಳಿಯುವ ದಾರಿಗಳು ತಿಳಿಯದ ಮುಕ್ಕಾಲು ಪಾಲು ಜನರಿರುವ ದೇಶಗಳಿದ್ದಾವೆ. ಅವುಗಳಲ್ಲಿ ಭಾರತ ಮುಂಚೂಣಿಯಲ್ಲಿದೆ. ಆ ಜನರಿಗೆ ಈಗಲೂ ಅಕ್ಷರ ಗೊತ್ತಿಲ್ಲ; ತಿನ್ನಲು ಒಂದೊತ್ತಿನ ಊಟವೂ ಇಲ್ಲ; ಅಥವಾ ಇವೆರಡೂ ಇದ್ದರೂ ಜಾತಿಯ ಹೆಸರಲ್ಲಿ ಎಲ್ಲಾ ಔನ್ನತ್ಯಗಳ ಹೊರಗೇ ನಿಲ್ಲುವ ಶಾಪ ಹೊತ್ತಿದ್ದಾರೆ. ಇದು ಮಾನವ ವಿಕಾಸದ ಅಧ್ಯಾಯದಲ್ಲಿನ ವೈರುಧ್ಯ. ತಾರತಮ್ಯವೇ ಸಾಮಾಜಿಕ ಮೌಲ್ಯವಾಗಿರುವ ಭಾರತದಲ್ಲಂತೂ ಹುಡುಕಿದರೆ ತಾರತಮ್ಯಗಳ ಸಾವಿರ ಮಾದರಿಗಳು ಸಿಗುತ್ತವೆ. ಲಿಂಗ ಜಾತಿ ತಾರತಮ್ಯಗಳಂತೂ ಆಧುನಿಕ ಮನೋಭಾವದಲ್ಲೂ ಹೊಸ ಹೊಸ ರೂಪದಲ್ಲಿ ಎದ್ದು ನಿಲ್ಲುತ್ತಿದೆ. ಒಂದು ಕಡೆ ಮಾನವರ ಭೌದ್ಧಿಕ ವಿಕಾಸದ ಅತ್ಯಂತಿಕ ಪ್ರದರ್ಶನ ನಡೆಯುತ್ತಿದ್ದರೆ, ಇನ್ನೊಂದು ಕಡೆ ಮಾನವ ವಿಕಾಸದ ಮೂಲ ರೂಪದ ಅಸಮಾನತೆಯ ಕೂಪದಲ್ಲಿ ನರಳುತ್ತಿರುವವರ ವಾಸ್ತವ ಹೃದಯಕ್ಕೆ ಬಡಿಯುತ್ತದೆ.

ಪರ್ಯಾಯ ಕಾನೂನು ವೇದಿಕೆಯ ರೂಮಿ ಹರೀಶ್ ಮತ್ತವರ ಗೆಳೆಯರು ಈ ಪುಸ್ತಕದ ಮೂಲಕ ಭಾರತದ ಅಸಮಾನತೆಯ ವಾಸ್ತವಕ್ಕೆ ಕನ್ನಡಿ ಹಿಡಿದಿದ್ದಾರೆ. ದಕ್ಷಿಣ ಭಾರತದ ಅಸ್ಪೃಶ್ಯರ ಬದುಕಿನ ಆಳ ಅಗಲಗಳನ್ನು ಆ ಸಮುದಾಯಗಳ ಪ್ರತಿನಿಧಿಗಳಿಂದ ಕೇಳಿ ದಾಖಲಿಸಿದ್ದಾರೆ. ಈ ರೀತಿಯ ಕೆಲಸಗಳು ಆಗಿಂದಾಗ್ಗೆ ನಡೆಯುತ್ತಿದ್ದರೂ, ಈ ಕಾಲಘಟ್ಟದ ಸಾಮಾಜಿಕ ವಾಸ್ತವ ಮತ್ತು ಲೋಕಗ್ರಹಿಕೆ ಹೆಚ್ಚು ಸೂಕ್ಷ್ಮವೂ, ಹೆಚ್ಚು ಮೌಲ್ಯಾತ್ಮಕವೂ ಆಗಿರುವುದರಿಂದ ಈ ಕೃತಿಗೆ ವಿಶೇಷ ಸ್ಥಾನವಿದೆ.

ಬಾಬಾ ಸಾಹೇಬ್ ಅಂಬೇಡ್ಕರರ ಸಂವಿಧಾನ ಅಸ್ಪೃಶ್ಯರಿಗೆ ಕಲ್ಪಿಸಿದ ಶೈಕ್ಷಣಿಕ ವಾತಾವರಣವು ಅರ್ಥಿಕ ಸ್ವಾವಲಂಬನೆಗಿಂತ ಮುಖ್ಯವಾಗಿ ತಮ್ಮ ಸಮುದಾಯಗಳನ್ನು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳಲು ಹೆಚ್ಚು ಸಹಕರಿಸಿತು. ಹೀಗೆ ಸ್ವಾಭಿಮಾನದ ಬೆಳಕಿನಲ್ಲಿ ತಮ್ಮ ಕತ್ತಲಿನ ಸಮುದಾಯಗಳನ್ನು ಕಂಡ ವಿದ್ಯಾವಂತ ಅಸ್ಪೃಶ್ಯರಿಗೆ ಪಾರಂಪರಿಕ ತಾರತಮ್ಯದ ಬೇರುಗಳನ್ನು ಕಾಣಲು ಸಾಧ್ಯವಾಯಿತು. ಈ ಕಾಣ್ಕೆಯನ್ನು ವಿವರಿಸಲು ಮತ್ತದೇ ಯಜಮಾನ ಸಂಸ್ಕೃತಿಗಳು ಸೃಷ್ಟಿಸಿದ್ದ ಭಾಷಾ ನಿರ್ಮಿತಿಯ ಮೊರೆ ಹೋಗಬೇಕಾದ ಅನಿವಾರ್ಯತೆ ಎದುರಾಯಿತು. ಈ ಬಿಕ್ಕಟ್ಟನ್ನು ದಕ್ಷಿಣ ಭಾರತದ ದಲಿತರು ಸಾಹಿತ್ಯಿಕ ಸಂಕಥನಗಳ ಮೂಲಕ ಕೊಂಚಮಟ್ಟಿಗೆ ಮೀರಿಕೊಂಡರು. ಇಲ್ಲಿರುವ ಬಹುತೇಕ ಸಂದರ್ಶನಗಳಲ್ಲಿ ತಥಾಕಥಿತ ಪರಂಪರೆಯನ್ನು ಮೀರಿಕೊಂಡು ಹೊಸ ನೋಟ ಕ್ರಮದಲ್ಲಿ ಸಮುದಾಯಗಳನ್ನು ಕಾಣುವ ಮಾದರಿಗಳು ಗೋಚರಿಸಿವೆ. ಈ ಭಾಗದ ದಲಿತರ ಅಕ್ಷರ ಸಖ್ಯ ಅವರಿಗೆ ಈ ಸಾಧ್ಯತೆಯನ್ನು ಕಾಣಿಸಿದೆ ಎಂಬುದರಲ್ಲಿ ಸಂದೇಹವಿಲ್ಲ.

ಈ ಪುಸ್ತಕದಲ್ಲಿ ಪಾರಂಪರಿಕ ತಾರತಮ್ಯವನ್ನು ಭಿನ್ನ ರೀತಿಯಲ್ಲಿ ಅರ್ಥೈಸಿಕೊಳ್ಳುವ ಹೊಸ ದಾರಿಗಳನ್ನು ಶೋಧಿಸಲಾಗಿದೆ ಮತ್ತು ಹೊಸ ಮಾದರಿಯ ನಿರೂಪಣಾ ಕ್ರಮವಿದೆ. ಓರಿಯಂಟಲಿಸ್ಟರು ಹೇಳಿಕೊಟ್ಟ ಮಾದರಿಯಲ್ಲಿ ಸಾಮಾಜಿಕ ವಾಸ್ತವವನ್ನು ಅರಿಯುವ ವಿಧಾನಗಳಿಗೆ ಬದಲಾಗಿ ಸಮುದಾಯಗಳಿಂದ ಟಿಸಿಲೊಡೆದು ಸಮಾಜದ ಕೇಂದ್ರದಲ್ಲಿ ನಿಂತು ಸತ್ಯವನ್ನು ಹುಡುಕುವ ಮತ್ತು ಮಾತಾಡುವ, ಬಿಡಿಬಿಡಿಯಾಗಿದ್ದೂ ಸಾಮುದಾಯಿಕ ಜೀವನಕ್ರಮದ ಲಕ್ಷಣಗಳನ್ನು ಹೊಂದಿರುವ ವ್ಯಕ್ತಿಗಳಿಂದ ಲೋಕಗ್ರಹಿಕೆಯನ್ನು ಕಟ್ಟಿಕೊಳ್ಳುವ ಹೊಸ ಮಾದರಿಗಳಿವೆ. ಇದರಿಂದಾಗಿ ತಾರತಮ್ಯಕ್ಕೆ ಒಳಗಾಗಿಯೂ ಅದರ ಆಳವನ್ನು ಅರ್ಥಮಾಡಿಕೊಳ್ಳಲಾಗದ ಅಸಹಾಯಕ individual ಗಳಿಗೆ ಸಮುದಾಯದ ಒಳಗಿನ ದಾರಿಯನ್ನು ಕಂಡುಕೊಳ್ಳುವ, ಆ ಮೂಲಕ ತನ್ನದೇ ಅಸ್ತಿಪಂಜರದ ನೈಜ ಚರಿತ್ರೆಯನ್ನು ಮುಟ್ಟಿ ನೋಡುವ ವಿಧಾನ ಗೋಚರಿಸುತ್ತದೆ. ಈ ವಿಧಾನವು ಅಸ್ಪೃಶ್ಯತೆಯ ಗಾಯದ ಬೀಜಗಳನ್ನು ಹುಡುಕುವ, ಅವುಗಳನ್ನು ನೆಟ್ಟ ಕೈಗಳಿಂದಲೇ ಹೊರತೆಗೆಸಿ ಇಡೀ ಸಮುದಾಯಗಳನ್ನು ವ್ರಣಮುಕ್ತಗೊಳಿಸುವ 'ಅಂಬೇಡ್ಕರ್ ಮಾದರಿ'ಯ ಪ್ರಕ್ರಿಯೆಯನ್ನೂ ಒಳಗೊಂಡಿದೆ.

ಕರ್ನಾಟಕ, ತಮಿಳುನಾಡು, ಆಂಧ್ರಪ್ರದೇಶ ಮತ್ತು ಕೇರಳ ರಾಜ್ಯಗಳಲ್ಲಿನ ದಲಿತರು, ಮಹಿಳೆಯರು, ಲೈಂಗಿಕ ಅಲ್ಪಸಂಖ್ಯಾತರು ಉತ್ತರ ಭಾರತಕ್ಕಿಂತ ಭಿನ್ನ ಬದುಕನ್ನು ಆರಂಭಿಸಿದವರು. ಆಯ ಸಮುದಾಯಗಳ ತಾರತಮ್ಯದ ನಿರೂಪಣೆ ಇಡೀ ದೇಶದ ತಾರತಮ್ಯವನ್ನು ಒಂದು ಅನುಭವವಾಗಿ ಕಟ್ಟಿಕೊಳ್ಳುವ ಹಾಗೆ ಕಟ್ಟಿಕೊಂಡ ಅನುಭವವನ್ನು ಸಮುದಾಯಗಳ ವಿಮೋಚನೆಗೆ ಬಳಸಿಕೊಳ್ಳುವ ನಿಟ್ಟಿನಲ್ಲಿ ಈ ಕೃತಿ ಸಹಕಾರಿಯಾಗುತ್ತದೆ. ಇಲ್ಲಿನ ಅಂಚಿನ ಸಮುದಾಯಗಳಿಗೆ ಬಹುದೊಡ್ಡ ಸಾಂಸ್ಕೃತಿಕ ನೆಲೆಯಿರುವ ಕಾರಣಕ್ಕೆ ತಾರತಮ್ಯವನ್ನು ಇಲ್ಲವಾಗಿಸುವ ಪ್ರಯತ್ನ ಕೊಂಚ ರೂಪಾತ್ಮಕವಾಗಿಯೂ, ನಿಧಾನಗತಿಯದ್ದಾಗಿಯೂ ಕಾಣುತ್ತದೆ. ಶಾಲೆಗಳಲ್ಲಿ ಪಾಠ ಮಾಡುವ ಒಬ್ಬ ಅಸ್ಪೃಶ್ಯ ಹುಡುಗಿ ಅಥವಾ ಹುಡುಗ, ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ ವಾದಿಸುವ ವಕೀಲ ಅಥವಾ ವಕೀಲೆ, ಜನರೂಟ್ಟಿಗೆ ಕೆಲಸ ಮಾಡುವ ಲೈಂಗಿಕ ಅಲ್ಪಸಂಖ್ಯಾತರು ತಮ್ಮ ದಾರಿಗಳಲ್ಲಿ ತಾರತಮ್ಯದ ವಿರುದ್ಧ ಸೆಣೆಸುವುದು ಏಕಕಾಲಕ್ಕೆ ಭಿನ್ನವೂ, ಸಾಂಸ್ಕೃತಿಕ, ಮಹತ್ವವುಳ್ಳ ಪ್ರಕ್ರಿಯೆಯೂ ಆಗಿರುತ್ತದೆ. ಅವರೆಲ್ಲರೂ ತಮ್ಮ ನಡಿಗೆಯಲ್ಲಿ ಬಾಬಾ ಸಾಹೇಬರ ಸಂವಿಧಾನವನ್ನು ಆಧಾರವಾಗಿಟ್ಟುಕೊಂಡಿರುವುದು ಮುಖ್ಯ ವಿಚಾರ. ಜಗತ್ತಿನ ಯಾವುದೇ ವಿಮೋಚನಾ ಚಳುವಳಿಗಳಲ್ಲಿ ಸಂವಿಧಾನದಂತಹ ಊರುಗೋಲುಗಳು ಇಲ್ಲದ ಕಾರಣಕ್ಕೆ ತುಳಿಯುವವರ ಮರುಹುಟ್ಟು ಜರುಗುತ್ತಲೇ ಇದೆ. ಆದರೆ, ಭಾರತದ ವಿಮೋಚನಾ ಚಳುವಳಿಗೆ ಬಾಬಾ ಸಾಹೇಬರ ಸಂವಿಧಾನವಿದೆ; ಮತ್ತದು ಚಳುವಳಿಕಾರರನ್ನು ಆಮದು ಮಾಡಿಕೊಳ್ಳಲು ಅವಕಾಶ ಕೊಡದೆ ಸಮುದಾಯದ ಒಳಗಿಂದ, ತಾರತಮ್ಯದ ಅನುಭವದಿಂದ ಚಳುವಳಿಕಾರರನ್ನು ಕಳೆದ ಎಷ್ಟೆಲ್ಲ ವರ್ಷಗಳಿಂದ ರೂಪಿಸುತ್ತಿದೆ. ಅದರ ಪರಿಣಾಮವನ್ನು ಈ ಪುಸ್ತಕದಲ್ಲಿ ದಾಖಲಾಗಿರುವ ಹೋರಾಟಗಾರರ ಮಾತುಗಳಿಂದ ನಾವು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳಬಹುದು. ಇದನ್ನೇ ನಾನು ಹೊಸ ಮಾದರಿ ಎಂದಿದ್ದು.

ಮೇಲ್ನೋಟಕ್ಕೆ ಇದೊಂದು ಅಧ್ಯಯನ ವರದಿಯಂತೆ ಕಂಡರೂ ಅಂಚಿಗೆ ತಳ್ಳಲ್ಪಟ್ಟಿರುವವರ ಕನ್ನಡಿಯ ಹಾಗೆ, ತಮ್ಮ ಹೋರಾಟದ ಬದುಕಿನ ಗ್ರಾಫಿನ ಹಾಗೆ ಕೆಲಸ ಮಾಡುವುದರಿಂದ ಸಾಂವಿಧಾನಿಕ ಹಕ್ಕು ಭಾದ್ಯತೆಗಳನ್ನು ಅಳಿಯುವ ಮಾನದಂಡವಾಗಿಯೂ ಕೆಲಸ ಮಾಡುವ ವೈಶಿಷ್ಟ್ಯವನ್ನು ಹೊಂದಿದೆ.

ಇಂಥಾದ್ದನ್ನು ಆಗುಮಾಡಿದ ಪರ್ಯಾಯ ಕಾನೂನು ವೇದಿಕೆಯ ರೂಮಿ ಹರೀಶ್, ಸುನಿಲ್ ಮತ್ತವರ ಗೆಳತಿ, ಗೆಳೆಯರಿಗೆ ಹೃತ್ಪೂರ್ವಕ ಅಭಿನಂದನೆಗಳನ್ನು ಸಲ್ಲಿಸುತ್ತೇನೆ.

—ಮಲಿಕುಂಟೆ ಮೂರ್ತಿ

Foreword

Translation

Conversations on Caste Discrimination in South India

In Search of wounded seeds/seeds of wounds

We are in the last leg of human evolution on Earth. Human beings through their intellectual power are holding aloft the flag of human supremacy over all other species on Earth. The human race is also losing interest in life on Earth and is moving towards exploring other planets and is being successful in establishing their victory there. Most modern satellites, rockets, spaceships are sent to study things beyond Earth, and through this, the humans are fulfilling their ambition. People are already losing interest in things like vehicles running thousands of miles in minutes, machines which do the work of thousands of people and electronic devices which can control all movements in the world.

But three quarters of the population of the world live in countries where people do not understand or comprehend the achievements of the human race or have the ability to participate in the activities of the contemporary world. India is at the forefront of these countries. People in India still cannot access literacy, they cannot not even afford one square meal, and even if they can, they are kept out of all these achievements of the human race due to the curse of caste. This is the contradiction which any study of human development will have to face. In India, where the social norm is discrimination, discrimination takes a thousand faces. Gender and caste discrimination take on newer forms of discrimination in modern times. While the development of human intellect is

powerful, it is also a reality that the fundamental form of human development was and is still stuck in the deeply entrenched inequality which should trouble the human heart.

Through this report Rumi Harish, Sunil Mohan and the team from Alternative Law Forum have held a mirror to the reality of unequal systems in India. By conversing with the representatives of the untouchable community they have documented the depth and the breadth of the experience of the untouchable communities of South India. While there have been previous such efforts, this report has a special place due to the ethical sensitivity with which it perceives the present social reality.

The constitution written by Babasaheb Ambedkar has been more useful to understand the community situation through an educational environment than through economic independence. In the light of independence, it became possible for educated untouchables to see the traditional roots of systemic inequality which was responsible for the darkness in which the untouchable communities were forced to live in.

But to explain and understand this vision, there is the inevitability of having to depend on the same language constructed by feudal cultures. The Dalits of South India have to some extent been able to overcome this problem through the creation of their own literature and discourse. In this report, many of the documented conversations have given up the traditional literal styles and have adopted newer perspectives to understand marginalised communities. There is no doubt that the rapport of the Dalits with literature has influenced this newer perspective.

In this report, there is a search for different interpretations of traditional systemic discrimination and adoption of new methodologies. Instead of using an orientalist lens to understand social reality, this methodology focuses on understanding social reality through the perspective of people who live in marginalised communities and therefore understand the reality of community

life. Through this methodology, the individual who is rendered helpless by his inability to comprehend the situation, searches for a path through community efforts to give the flesh and blood of a real history to an otherwise bare skeleton. The process of this methodology follows the perspective of Babasaheb Ambedkar, where it searches for the seeds of the wounds of untouchability, makes the people who had implanted it remove it and attempts at healing society.

Dalits, women and sexual minorities of Karnataka, Tamil Nadu, Andhra/Telangana and Kerala states have experienced a different kind of life from that of their compatriots in North India. The narratives of different marginalised communities on discrimination in this report, not only focuses on their specificities at the local level but also apply to the narratives of discrimination in the context of the country as a whole. This work as a whole will be useful from the perspective of the liberation of marginalised communities. To the marginalised communities in South India, it seems as though the process of breaking free from discrimination is slow and formal. This is due to the deep socio-cultural roots which discriminatory practices have in the soil of this country. Whether it is untouchable men and women teachers, or men and women lawyers, or even sexual minorities who work with people to fight discrimination, this fight is simultaneously a different and culturally meaningful process. What is most important to note is that all these people who are struggling against discrimination, the base of their struggle is the Constitution of Babasaheb Ambedkar. In many of the liberation struggles around the world, oppressors keep surfacing because there is no base such as the Constitution. But for India's struggles for liberation, there is always the base of Babasaheb Ambedkar's Constitution. This is the reason why there is no need for importing activists or theories from outside; instead activists have been formed through their experiences of discrimination within the society for the last seventy years. We can see the resulting truth of this through the narratives of the

activists in this report. And that is the reason why I called this methodology new.

On the surface, this might look like any other report, but this is a mirror to the lives of marginalised; it is a graph of a life of struggle and stands as a benchmark for upholding constitutional rights and duties.

I congratulate the Alternative Law Forum, Rumi Harish, Sunil Mohan and their friends for having made such a study possible.

Hulikunte Murthy

Introduction

Background

Sometime in the year 2012, different groups began discussing the idea of an anti-discrimination law to protect vulnerable communities from different forms of discrimination. The Forum against Oppression on Women in Mumbai had by then attempted a draft, and several other persons and organisations had also either drafted a policy or a potential legislation. The Humjinsi Report of 2002¹ suggested anti-discrimination protections for communities who are marginalised on the basis of their genders and sexualities. We at the Alternative Law Forum (ALF) had put together in the year 2013, a focused account of anti-discrimination in a report co-published by ALF and LesBiT.² In that study, it was noted that there was a demand from the communities who are marginalised on the basis of their genders and sexualities for an anti-discrimination legislation. We felt that in the absence of an effective anti-discrimination legislation protecting various marginalised communities, newer legal protections proposed should be all inclusive.

Around 2012-13, we at ALF started conceptualising a study that would address all forms and types of discrimination in an inclusive manner. In 2013, the Supreme Court was to deliver its verdict on the constitutionality of Section 377 of the Indian Penal Code, 1860, which criminalizes ‘carnal intercourse against the order

1 HUMJINSI: A RESOURCE BOOK ON LESBIAN, GAY AND BISEXUALS IN INDIA (Bina Fernandez ed., Indian Institute of Human Rights and Law 2002).

2 SUNIL MOHAN, SUMATHI MURTHY, TOWARDS GENDER INCULSIVITY: A STUDY ON CONTEMPORARY CONCERNS AROUND GENDER (Alok Vaid-Menon ed., 2013).

of nature’, which has been used to persecute and target even consenting same-sex adults. The focus of movements that work on gender and sexuality across the country was the Supreme Court case and preparing for the verdict. However, some of us also felt the need for legal recognition and protection beyond something like decriminalization, for various marginalised communities. Some of us also felt a need for different kinds of legal recognition and protection for people from oppressed communities. Basically, there was no legal recognition for trans people as citizens; mere decriminalization would not help protect their fundamental rights, citizenship rights and human rights.

In 2013, the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation*³ re-criminalized same-sex love. Within months, in April 2014, the NALSA judgment⁴ recognised trans individuals as full citizens of this country. Even the supposed guarantee of inclusivity articulated in the judgment does not address all the concerns of the community. Despite its progressive reading of gender, the recognition of trans communities as full citizens is still far from being implemented, as the law operates in a rigid binary, conflating gender and sex. By extension, legal and administrative institutions struggle to make gender inclusivity more than just a safeguard on paper.

Despite the Supreme Court’s direction to the Central and the State Governments to take steps to treat members of the transgender community as socially and educationally backward classes of citizens, and extend all kinds of reservation in cases of admission in educational institutions and for public appointments,⁵ the law has failed to translate into substantive benefits for the community. For example, most members of trans communities are pushed out of education at the secondary school level; reserving a nominal 2% of seats for trans students in higher education would not benefit

3 (2014) 1 SCC 1 (India).

4 National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

5 *Ibid.*

a large section of the community. Secondly, this percentage of reservation, (one is unaware of how the number was arrived at), excludes the most powerless and invisible trans communities like Kothis⁶ and female-born gender minorities. With other marginalised communities, there is usually a form or some proof of ‘belonging’ such as legal identification or common community life. On the other hand, with marginalised genders and sexualities, arriving at numbers is dangerous because only people who are ‘out’ are visible and yet, sometimes even they cannot provide proof of belonging to their communities. The percentage of reservation is usually arrived at on the basis of the population of a community, and not the extent of marginalisation or injustice it has faced. Hence, the determination of 2% is arbitrary as it does not take into account the problems of visibility and the extent of marginalisation that trans communities face. Therefore, in order to move towards equality with respect to marginalised genders, the parameter of numbers (i.e. population) is incorrect.

Additionally, these communities, whose marginalisation lies along various intersections of caste, class, ethnicity, labour, disability, etc. were not even allowed to exercise their right to vote, while simultaneously being denied other fundamental, civil and human rights even 70 years after independence. On the spectrum of gender and sexual identities, awareness of the unique needs and experiences of female born trans people, trans masculine, trans men and gender non-binary people doesn’t exist. This is why law and policy-makers often provide safeguards and opportunities mostly for male born trans communities. Even in the NALSA judgment, there is only a mention of trans-masculine community and no delineation of their specific needs and concerns.

Hence, while the fight for decriminalization of homosexuality continued, we realise that mere decriminalization will not change the lives of many trans and queer individuals, who remain

6 An Indian cultural identification of a male born person who identifies as female.

oppressed because of their caste, religious and class identities. Decriminalization is not synonymous with substantive citizenship rights and does not necessarily change social attitudes towards sexual minorities; on its own, it cannot guarantee inclusion. Full citizenship as a legal status would not achieve much in terms of actually benefiting marginalised communities if it is not complemented by protection against violence and discrimination, and understood along with the intersection of other forms of structural oppression.

This was also the time when we saw that, while people's movements recognised caste, class, gender and disability as legitimate issues, there were very few efforts to bring these movements together on a single platform to look at the intersectional nature of marginalisation. For example, Dalits or Muslims who also identified as trans, and were from a working-class background or did not have access to education, could not assert their citizenship. At this point, we felt the need for a two-pronged effort. First, to address inclusion in the socio-political movements, and simultaneously institute legal protections for people who are denied legal recognition. This, we felt, could be achieved only through an anti-discrimination campaign that would lead to the formation of a bill or a policy. The idea behind this kind of a campaign was also to bring different social movements together to think through the larger forms of oppression that would lead to violence, atrocities, violation of rights and discrimination. The nature of oppression cannot be viewed through the lens of only one identity. Hence, this effort was also to understand the multiple marginalisations in people's realities.

Our Journey

There has always been a difference between legal reality and the grass-root level reality. The formal equality that may be granted by law does not automatically translate into substantive equality. In order to understand and bridge this gap, we got inputs from

activists working on the ground to think about the possibilities of changing how the law perceives and responds to the lived realities of marginalised communities. The main aim behind this study was to build a narrative of intersectional discrimination through the lived experiences of different communities, instead of readily slotting people's experiences into existing theories of discrimination. When we started thinking through this project, the main idea was to also develop a discourse on discrimination from the ground level contexts of marginalisation that could be channelled, not merely into legal reform but also to start a campaign against all forms of discrimination.

What was visible at that point in time were different identities like caste, gender, religion, region, labour, ability, sexuality, etc. We had extensive discussions on how to approach class as an identity, or whether we can think of class as an identity at all. Or if we should address class through labour, especially since some degree of mobility is possible. Some of the people we spoke to understood class as an identity that cuts across different kinds of marginalisation, others also felt that upward mobility was impossible for some communities. Another concern that people expressed was how the law has failed to address class discrimination among groups like street vendors, slum residents, migrant labourers, sex workers, etc.

When we began this study, we were also clear that the law couldn't be an answer to all our concerns, or address discrimination in all its forms and manifestations. One question was - how much could the law be allowed to regulate our lives? Another was - are there certain forms of discrimination that can be justified on the grounds of individual choice or preference? While addressing such complexities, we decided that we needed to explore the issue further and make it a part of the ensuing campaign to have an understanding and developing consciousness on subtle discrimination and the question of the right to choice.

To capture the manifestations of discrimination on the ground,

many thoughts came up in our discussions - how structural and systemic discrimination operates, how expansive discrimination is, how does it intersect with violence and violation of rights, the practicality of drafting a new legislation based on lived experiences and the theorizing of discrimination in the legal and social context, to also include experiences from people belonging to the marginalised communities. The usual practice of drafting a Bill would be where it is drafted and circulated for critiques and comments among citizens by the ministry, through consultations or written submissions or oral submissions. Something like a comprehensive anti-discrimination Bill would typically refer to legislations of other countries and tailor make it suit the Indian context. What we wanted was the exact opposite. That the formation of legislation/policy should happen with the involvement of marginalised communities through a campaign. We were very clear that people from marginalised communities, activists, movements and advocates should build this work as a collective process. This is also important in order for us to come to a better understanding of the issue itself since lived experience is the basis on which any campaign should build itself for legislation. Without the lived experience, mere concepts alone cannot be contextualized. 'Discrimination' is a reality which is known by all but will remain just a concept if not understood with substantive lived experiences which will bring multi layered understanding to the word. The main reason behind this process is that the theory and concept of discrimination should not be something that does not capture the practical experiences of people's lives. Each practical experience of discrimination varies from person to person, community to community, region to region. For example, a domestic worker's experience in Kerala will not be the same in Telangana. The cultural, socio-economic and caste vulnerabilities will also add to the act of discrimination.

Moreover, the caste hierarchy in each state and within the state also differs to the extent that a Scheduled Caste in one state could be classified as an OBC in another state. In some states, landed or numerous Backward Castes wield more power and influence than the dominant castes; we cannot have a uniform or universal understanding of caste oppression across different regional and cultural contexts. Even within a state, caste dynamics differ from one region to another. As one of our respondents told us –

“Adi Karnataka in Mysore side is Madiga⁷ and Adi Dravida⁸ in Tumkur side is Madiga. My name is usually kept in Madiga community. When I was applying for job, the employer first thought I was Madiga and later figured out I was Holeya,⁹ slightly higher in the strata but it is still Dalit.”

If these diverse realities are not understood and accounted for, there will continue to be gaps in the legal understanding of discrimination.

We attempted to talk to people about their experiences of discrimination and how they perceived patriarchy, capitalism, casteism, hetero-normativity, racism, ableism and other forms of structural hierarchy and oppression. Our study also endeavours to look at how these forms of oppression are written into the structures of the state, and how our respondents engaged with positive discrimination, and other kinds of safeguards intended to protect their rights and mitigate inequality. For this purpose, we chose to have wide-ranging and in-depth conversations that would help us engage with lived experiences and the theoretical articulations that arise in response to these experiences. Our focus was not on the intentions or perspectives of the perpetrators of violence or discrimination; we were primarily concerned with how victims of discrimination ‘feel’ and perceive experiences of marginalisation.

7 One of the castes that is classified as a Scheduled Caste.

8 *Ibid.*

9 *Ibid.*

In August 2014, this study on discrimination began at ALF. Initially, we focused on existing work around discrimination. We had some on-ground experience with some questions, like those of gender and sexuality, but less so with others. A point of discussion was whether we ought to have a fixed questionnaire, do interviews, or approach this project through conversations. We felt that free-flowing conversations would help us get detailed information and also engage with our respondents' perceptions and arguments better. With this in mind, we spoke to a few activists in Bangalore; they work in diverse fields, including gender, caste and human rights. These conversations helped give our work initial direction.

This report is based on our conversations with more than 90 people across 4 states of South India (Karnataka, Kerala, Tamil Nadu, Telangana). We would like to mention at the outset that when we refer to respondents whom we conversed with, we are quoting members of the Dalit community, unless otherwise specified, as the majority of our respondents belong to the Dalit community.

As we started having in depth conversations with different people from different states, the grounds of discrimination, which we had only considered in terms of identities like caste, class, race, gender, sexuality, labour, religion, disability, region, etc. grew to much more complex issues like articulation capacities, colour, educational qualification, opportunities, language, access to resources, etc. Interestingly these grounds would also not operate in isolation.

Most of the people with whom we had conversations, were either introduced to us by word of mouth or through people whom we knew as activists, advocates, and people from different movements like the women's movement, Dalit movement, disability movement, sexuality and gender rights movement, labour movement, etc. We also sought the help of organisations, groups and individual activists for contacts and introductions. We would also ask our respondents to suggest friends who might be

interested in this work, with whom we could speak. In most of our conversations, we discussed broad areas and themes, and were thrilled at the rich inputs we received from our respondents.

After about 90 conversations in four states of South India, what came up very strongly was the intersecting causes of discrimination. In no example was it singular in nature. For example, in one of the conversations, a trans activist from Chennai was sharing that whenever programs of queer and trans people take place, the media demands fair, 'decent', articulate and beautiful looking trans people to address the media. It is very clear that the media perceives the trans community through the lens of the dominant-caste and 'standardised' notions of beauty. Causes of discrimination also intersect - that the media practices brahmanism while regulating standards of beauty, presentability, etc. In this process, after these individual conversations, we felt the need to bring together all these grounds and causes that were discussed extensively by individual activists and movements. We felt the need for these movements to come together to discuss and develop the discourse further based on these lived experiences.

In our experience, we have often seen that people in progressive movements work in a compartmentalised manner; for example, the sexuality rights movement hardly addresses caste, class and labour; disability rights movements might focus on the issue of disability alone, and not cover its intersections with caste or gender and sexuality. Similarly, in many anti-caste movements, issues of gender or sexuality have not been adequately discussed. This was the main reason why we started the Inter-movement Dialogues - a process of facilitating conversations between different movements to work towards a more intersectional approach to their seemingly separate areas of activism. We invited people from various movements to engage with each other and deliberate on issues that our respondents had also discussed. We organised consultations at the regional and national level to bring together people and movements from across the country, and

organised three consultations; the first on identity with four panels on caste, disability, religion and class, the second on education, employment, health and housing while the third consultation focused on personal laws and the idea of a Uniform Civil Code. (The reports of all the three consultations are found at the end of this book as annexures.)

What is discrimination?

We initially began with the understanding that ‘discrimination’ refers to kinds of behaviour, structures and interactions that translate power imbalances into disadvantage for certain groups or individuals. These disadvantages could manifest themselves as physical violence, humiliation or denial of rights and dignity. Inequality and discrimination are interlinked. Inequality is inherent to social, political, economic, cultural and educational structures; it normalises discrimination to the extent that many marginalised communities often have no option but to negotiate their entire lives within these positions of disadvantage.

Tracing the history of the discrimination discourse in India, an activist-lawyer from Chennai said that in the Indian context, discrimination has been discussed in two main ways -

- 1) Radical anti-caste movements.
- 2) Liberal anti-colonial nationalism, exemplified by the Gandhian Congress and movements associated with it.

She said –

“I think this history is really important because in the post-independence period these two versions of discrimination are at odds with each other. The liberal nationalist discrimination argument is what has translated into those who have retained power. Yet they are able to muster the idea of nationalism, the freedom struggle, that we fought the British.”

She shared that histories may not be seen as important, but recognised that they are far more complicated than how they are portrayed by people who have the power to decide what these histories should be. She said –

“The Gandhi/Nehru struggles which built an argument against the British, were still ‘the powerful’ and after independence, their power got fully placed in the newly created nation state. That developed many layers of and forms of discrimination.”

The second form of discrimination that she recognises is caste-based discrimination; and related to identity-based discrimination - the discrimination against Muslims, the demand for Pakistan, discrimination against Dravidians, how the tribal argument is different in Nagaland and Manipur. This activist situated the survival of caste and the emergence of different forms of discrimination at the heart of the freedom movement and the independent Indian nation-state.

She said -

“The strength of their argument is that none of these places wanted to be a part of India at all. If it weren’t for Babasaheb Ambedkar, Maharashtra would have wanted the same thing too. Now, Ambedkar is an important person, who actually believed that these two discourses of discrimination can be brought together by putting caste in the forefront. And this is the argument he makes over and over again. All of these things, he is constantly debating with these people, because he believes that those who have seen discrimination by the British, will see the logic of being discriminated by upper castes. As a result of this, we have our constitution. As we know world-over it is a very celebrated document, a combination of different things, vis-a-vis discrimination it has a detailed bit on caste, on religion, class, gender, etc.”

She then identifies another strain of discrimination in the post-independence period, which focuses on women. She said –

“It began in the pre-independence period in its own weird way – with widow re-marriage, anti-Sati, property rights, etc. In the post-independence period, the constitution enshrined equal rights for women as well. The people who took up those issues were all dominant caste women, up to 1975, when Vina Mazumdar¹⁰ and Lotika Sarkar¹¹ travelled across, made notes and released the report called “Towards Equality” on the status of women in India on discrimination during the emergency.”¹²

She also shared that at the core of these discussions there was no language to make it clear that it shouldn't become only about elite women. For a long time, this was not thought to be a problem as the assumption was about the hetero-normative monolithic understanding of the concept of 'woman'. So, women from marginalised sections of society who had to go through everyday horrors were assumed to be part this discourse without their specificities recognised.

Some of the respondents shared that discrimination is fundamental to all forms of violence, for example, gender discrimination within the family leading to violence on girl children in terms of mobility, food restriction, beating, etc. On the other hand, some people

10 Dr. Vina Mazumdar was an Indian academic, left-wing activist and feminist. A pioneer in women's studies in India, she was a leading figure of the Indian women's movement. She was amongst the first women academics to combine activism with scholarly research in women's studies. She was secretary of the first Committee on the Status of Women in India that brought out the first report on the condition of women in the Country.

11 Lotika Sarkar was a noted Indian feminist, social worker, educator and lawyer, who was a pioneer in the field of women's studies and women's rights in India.

12 LOTIKA SARKAR, VINA MAZUMDAR et. al., TOWARDS EQUALITY: REPORT OF THE COMMITTEE ON THE STATUS OF WOMEN IN INDIA (Ministry of Education and Social Welfare, Government of India 1974).

shared that discrimination is considered as part of a larger framework of violence and oppression, which the women's movement has engaged with for many years. Many people also shared that discrimination was normalised in the society in such a manner that it becomes difficult to look at discrimination as a legal issue except for the provision of non-discrimination under the Constitution, contained in Article 15. People also said that certain practices of discrimination are so normalised that the marginalised communities themselves would not even think of that particular experience as a form of discrimination; for example, domestic workers who did not earlier see the separate plate and tumbler system as untouchability in the houses they worked.

Activists also brought up inequality as a basis for discrimination. When the social structure by nature is unequal, discrimination will be an inherent component. The very fact that inequality exists based on many identities like caste, class, gender, ability, religion, race, colour, region, etc. creates space for discrimination leading to violence and atrocities. Some people also argued that equality should not be understood based on binaries that the brahminical society has created, like dominant caste and oppressed caste, upper class and lower class, abled and disabled. The creation of these binaries are the basis for the perpetuation of notions like superior and inferior, pure and impure, sacred and unholy, etc.

The binaries should not be the basis for achieving equality. Equality ought to be achieved by breaking these binaries. Though the moralistic society projects life in binaries, the fact is that nearly all marginalisation is in the form of a graded hierarchy. Technically though, the recording of a discriminatory act is in comparison with another, however when it comes to understanding discrimination on the ground, the reality is very different. This method of comparison is very limited, because there are several levels of hierarchies. The dominant caste system has created such a hierarchical and graded fabric of society that

even among the supposedly lowest strata, there exists a notion of who is more superior and who is purer. Going by the existing theory on discrimination, the need for comparison cannot be maintained in this complex hierarchical system.

One of the activists from Karnataka similarly shared that the root of discrimination exists in the very thought process of “I and the Other”, “I, me, us, we”, which are all the roots of casteist binaries of superior and inferior, pure and impure, fair and dark, abled and disabled, etc. She said that after having been involved in deep discussions with different people on caste and discrimination, she realised that the thought process should be about how life should be understood more in terms of multiplicity/diversity. She says –

“Nothing is unique, everything is one, but each thing is a universe in itself.”

She shared that the *othering* process always presents only binaries, but the thought process where diversity is recognised, and yet, each of the diverse aspects have their own specificities, should be recognised as a process that we have to develop to understand the complexities of discrimination.

On the other hand, any act of discrimination or the preconditions for discrimination, intrinsically have comparison as the main component for the crime/act to be established. It is always subjective and relative in terms of “I feel discriminated because I am trans and I do not fit into the binary gender system, and that is the reason why I am not getting education.” Two things become important here, that *I am feeling discriminated against*, where I have to determine the act of discrimination and that *I am not getting education like others*, where it is a comparison.

The debate about the link between equality, dignity and discrimination is an ongoing process as different activists and communities gave different angles on it. One of the activists from Telangana spoke very interestingly about the

concept. She said these are terms in books, in reality it is just the experience that we feel in different contexts. It is the experience of reducing self-respect or sometimes absolutely no self-respect and all these experiences cannot be captured either in academic terms or legal language. The fact of no self-respect is the reflection of the society, of where it places certain sections of people. This is glaring inequality which vulnerable communities experience. She said that the root of dignity is understood based on the family background, the work the person does and what privileges they enjoy. There is dignity fixed by the social morality, which is in fact a norm for society, which in turn regulates the same inequality.

Dignity is also a feeling of self, where an individual relates to it in terms of socially perceived notions of social, political, cultural, economic, educational respect and individuality; that which is established and accepted by certain standards which are expected to be followed by all. The social construction of this concept of dignity excludes certain forms of labour, certain body types, colour, status, orientation, individuality, caste, class, gender, educational level, articulation capacity and many more. This construction is so deeply rooted in people that the persons themselves will feel that *“I am not dignified enough to go into a mall if I look a certain way.”* Dignity is often sensed in the way other people respect or perceive, in the way they interact, in the way they view, look, behave, speak, etc. All these aspects of dignity are based on social morality or norms. For example, a sex worker being addressed by the police, or how waiters in restaurants are called, how Hijras are treated on streets while begging, how street vendors are seen as an obstruction to urban beautification, etc. Sometimes even in these contexts the dignity is graded, for example, statements like *“I don’t mind begging on the streets but I will not do sex work”* or *“I don’t mind doing coolie work but I will not touch a broom and clean toilets.”* There is grading and comparison in dignity also, which can be felt in these kinds of statements.

The Judiciary has also emphasised dignity as a fundamental right in a number of cases. In *Naz Foundation v. Government of NCT of Delhi and others*,¹³ the Delhi High Court observed that –

“The Constitutional protection of human dignity requires us to acknowledge the value and worth of all individuals as members of our society.”

All citizens of India should live and enjoy a peaceful, dignified life without any disturbances. In simpler terms, it can be said that dignity can be ensured when every member of the society has a feeling that they are respectable members and no one can humiliate, harass, exploit and insult them on the basis of caste, creed, sex, gender, status, etc.

On the other hand, as one of our respondents pointed out, there is “constitutional dignity” that is broader than the socially moral understanding of dignity, which is not biased or regulating of human living standards. The understanding of dignity in the context of the Constitution is that the value and worth of individuals with respect to their status and identity should not be subjected to prevailing social morality.

This is very well captured in a primer on the Naz Foundation decision by the Delhi High Court in 2009 published by the Alternative Law Forum¹⁴ -

“The Judges make it extremely clear that safeguarding popular morality is not a compelling state interest that can justify limiting the rights of dignity, privacy and equality of LGBT persons. Thus the public’s moral opinions cannot be used as a justification for limiting LGBT persons’ fundamental rights. The Court says: “Popular morality or public disapproval of certain acts is not a valid justification

13 160 Delhi Law Times 277.

14 *The Right that Dares to Speak its Name*, THE ALTERNATIVE LAW FORUM (Aug. 17, 2018, 12:36 AM), <http://altlawforum.org/publications/the-right-that-dares-to-speak-its-name/>.

for restriction of the fundamental rights under Article 21. Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjective notions of right and wrong. If there is any type of “morality” that can pass the test of compelling state interest, it must be “constitutional” morality and not public morality.” (para 79) “Moral indignation, howsoever strong, is not a valid basis for overriding individual’s fundamental rights of dignity and privacy. In our scheme of things, constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view.” (para 86)”

One of our respondents, a scholar from Telangana said –

“The society has made morality based denial of dignity into ideological subordination which is direct slavery, so one cannot even understand equality or dignity in a general sense. Consequently, discrimination also manifests in different forms for different people; it is experienced both individually and as a community.”

She continued –

“People say dignity is based upon access to livelihood and economic independence, but for Dalit women this does not apply. Almost all Dalit women work and are economically independent, yet they undergo naked parade which totally dehumanises them.”

Some scholars also brought up the link between different forms of labour and the associated caste and dignity or indignity to that work, which leads to further discrimination, as there is no chance of getting away from this inhuman cycle of caste. It happens at all levels. Going by the present social understanding of dignified labour, even if a person from the Dalit community attempts social mobility, there is lot of discrimination. There is also a lot of shaming of their work, the way they are treated; for example,

many people who are at the officers' levels are either transferred or never given their due promotions. One of the respondents shared that sometimes the discrimination and shaming of Dalit people in government offices through unnecessary transfer, demotion, no action against denial of due promotion, etc. are like “snatching away of social status.” Or the other way of retaining the low dignity or no dignity to certain jobs is through not allowing upward mobility and forcing communities, directly or indirectly, to continue in the same caste occupation.

Terminology and discourse

The process of conducting these conversations and compiling this report took us across regional, linguistic and cultural contexts; there are gaps between the vocabulary of discrimination used in people's movements and academics. We felt that movements and activists, who have been involved in decades of struggle against oppressive structures, have evolved a distinct and nuanced vocabulary to understand discrimination and articulate resistance. This vocabulary, and the terms they used, often came from personal experiences of systemic discrimination. For example, an activist told us that as a child, when he was in the third standard at a corporation school, there had been no prescribed uniform for three years. In the third year, the school made uniforms mandatory, and children whose parents could not afford the uniform had to discontinue school.

The activist called this experience '**framing**'; framing refers to policies that exclude a particular class, group or marginalised community. He also shared another example of framing; there is a nomadic tribe and their profession is magic and astrology. Whenever a nomadic tribe decides to settle, it is the government's responsibility to help them settle by giving land, schools, PHC, water, electricity, etc. When this particular tribe wanted to settle near Gadag district in Karnataka, the government said that they cannot buy the land as non-farmers cannot take farmland, and

finally when they found land, they were forced to take it in one person's name and not as a community as they were nomadic in nature. They somehow managed to get dry land and bought it as a community where the government had to set up all facilities. For this, the government insisted that it had to be declared by the slum development board. But if the slum board declares the same, the land will not be theirs any more as a community or as an individual, it will become government property. Finally, the community gave back the land and received no facilities.

The same activist also discussed another form of discrimination - he called it '**targeting**'. Different institutions have the power to make policies, or administer schemes intended for the welfare of vulnerable communities; however, those policies and schemes are often formulated in ways that deprive the marginalised of the benefits they were intended to receive. Another example, the Below Poverty Line Ration Card gives the poor access to the Public Distribution System; the government insists that people have a permanent address to get a card. How many people living in the slums can get a ration card if the government policy insists on permanent address proof? Another example for targeting as shared by the activist was that, in Bangalore, migrant workers could get a house in the slum area only after they have stayed in Bangalore for 10 years. This requirement automatically excludes a large number of migrant labourers. The difference between 'framing' and 'targeting' is brought out in the intention of the state or the person who is discriminating. The word targeting is used when the state puts forward safeguards and benefits intended for vulnerable people, but which are made contingent on conditions with which they cannot possibly comply. Framing on the other hand is done more in terms of general changes that are brought without being inclusive or mindful.

Some of the activists insisted that discriminatory practices of state agencies and court proceedings and processes should also be brought under the ambit of legal redressal. People also

shared experiences of how they understood terms like ‘**systemic discrimination**’ and ‘**structural discrimination**’. For example, accusing Adivasis of being Maoists, or dumping mainstream cultures on Dalit or Adivasi communities thereby taking away their agency for their own culture, is structural discrimination including segregation of marginalised communities. The dominant structures regulate everything leaving out no space for diversity. If any dominant structure is questioned by adopting different or alternate structures, then it is seen as a threat and is immediately destroyed or pushed to margins through different processes.

Systemic discrimination included how the state or social systems discriminate against “morally deplorable” communities by criminalizing the marginalised. For example, sex workers and homosexuals are considered criminals according to social morality, and this reinforces social discrimination against them. Heterosexism as a system does exclude, criminalize, punish, and deny rights to life and dignity of people with different sexual orientations. In fact, because heterosexism becomes part of the system of society, anything other than hetero–normativity is called ‘different’, ‘alternate’, etc. Heterosexism is made normative which complies with brahmanism and patriarchy that are also systems of our society regulating the structures of marriage, family, gender behaviours. This is the main reason why the trans identity is despised, punished, and so the whole structure of the state, till the NALSA judgment in 2014, refused to even recognise transgender persons as citizens.

The understanding of ‘**direct discrimination**’ among many activists is the discrimination perpetrated by the state; for example, the non-implementation of the Fifth Schedule of the Constitution of India. This was shared by the Adivasi activists who were in a standing protest when we interacted with them in 2014 in Kerala. They also argued that clubbing of SC and ST is another direct form of discrimination by the state, as these two communities do not share similar lived realities, histories, and the specific

needs of both these communities are very different. For example, the issues of Adivasis has been mostly around land and forest struggles and retaining their own indigenous cultures. For Dalit communities, it is mainly about equal access and opportunities, fighting untouchability meted out to them and many more issues. The dumping of Kerala caste culture on Adivasis through ‘education’, or through agriculture in the name of bringing them to mainstream society was also seen as another form of direct discrimination. These activists said that they have their own language and lived in their own commune and everybody works as farmers. Further, Adivasi children are forced into the modern Kerala schools where they are educated about the middle-class patriarchal system of Kerala and the same practices are inculcated in them. In the long term, such a policy would have the effect of erasing their selfhood, culture, food habits, lifestyles, practices, and not even enabling them to sustain alongside the dominant culture. These are examples of discrimination pertaining to the cultural, religious, linguistic identity of marginalised communities, which are eroded through state practice.

An activist working for the rights of Adivasis from Telangana also stated that understanding Adivasi rights as individual rights is another form of direct discrimination as people live in a different social structure, with the community at the centre. For instance, they have community owned land and the Land Acquisition Act simply does not work in their context. When Adivasis lose their lands, they are deprived of their livelihoods and this is also direct discrimination by the state. This is economic as well as cultural loss.

Some of the activists stated that different forms of direct discrimination by the state also come in the name of development. These development modules are implemented without consulting people living in those areas where such projects are undertaken, especially the constructions of dams. In this process, large amounts of submersions lead to large sections of Adivasis, Dalits

and other minority groups being displaced. Displacement as a consequence of development is a form of discrimination which is based on an oppressive practice of the state. It has been a fact that most of the rehabilitation schemes by the state for these victims of displacement is a big disaster. Displacement drives these communities into bonded labour and removes dignity from the people's lives. Displacement also pulls back the economic progress of the marginalised in a mass scale.

Activists used words like 'subtle', 'soft' and '**invisible discrimination**' for acts of discrimination where it is just impossible to create evidence or where one cannot prove that the act was committed. It could be in passing statements where certain prejudices come into action. It could be said or stated or done with such subtlety that it becomes very difficult to even register it as a crime. For example, as one of our respondents shared, a professor was denied a house under the assumption that he was Dalit, going by his colour. The house owner did not say anything directly and also it is the discretion of owner to decide whom to give the house. Some of the activists also perceived these kinds of acts as indirect discrimination.

People said that indirect discrimination also manifests itself even in the law because the social system that promotes patriarchy and casteism works only for upper class and dominant castes, and is based on gender biases. For example, the provision of equal wage for equal work is made with good intention but going by the social structure, certain forms of labour are invariably assigned to certain genders, which will fetch less wages. Though the equal wages are based on skills, there is a concern that social prejudice has now become an unspoken rule; that is, skilled labour is always men's labour and unskilled labour is women's labour. For example, in hotels it is men who cook and get paid and women are employed for cleaning, but at home it is a woman's assigned gender role to cook and clean, and in extension, the work of cleaning up the hotel by women is deemed to be unskilled. This kind of division

of wages comes into action only in the sphere of physical labour. Here, the system will never allow a woman to get the jobs of men, and even if she does, that is not encouraged. On the other hand, who decides what is skilled work and what is unskilled work? This was also seen as gender discrimination creeping into the labour system.

Many of our respondents also shared how regulating sexuality, particularly of women, is a form of discrimination leading to severe violence. Respondents also shared that popular morality became the base for exclusion of people in different social movements. This form of discrimination happened in many progressive movements like Left, Dalit, Women's Movement, etc. Most of the time, women were insulted, morally deplored, sometimes also punished in horrible ways for their choice of multiple partners. An activist shared a traumatic experience of male counterparts of a 'progressive movement' inserting sand in a woman's vagina for having multiple sexual relationships.

The state also ensures this kind of regulation through its systems, which go unpunished despite being carried out as severe forms of violence. For instance, in the case of Adivasi activist Soni Sori¹⁵ who was tortured by Dantewada SP Ankit Garg. Most of the time, the regulation of sexuality of women has always been through sexual assault, and varies on the basis of their differing vulnerability based on identities of being Dalit, Adivasi, Muslim, Hijras or other marginalised identities. Though not similar but equally discriminatory and violative, punishments are also meted out to men from vulnerable communities in cases of inter-caste and inter-religious marriages.

Having more than 90 conversations in hand, when we were going through the same, we realised one thing; people could really not give a specific definition of discrimination as a concept. There

15 An Adivasi school teacher turned political leader of Aam Aadmi Party in Sameli village of Dantewada in south Bastar, Chhattisgarh, India.

were different kinds of descriptions, sharing of personal or others' experiences, picking out general perceptions, practices, insensitive remarks or statements that go in the name of jokes or patronising statements, etc. For example, one of our respondents stated that a person told her, "*Oh! You don't look Dalit.*" In this example, it is patronising and blatant discrimination on the grounds of caste and class, said by a person of power and privilege. The statement is also stereotyping how Dalit persons 'look' - So what is the stereotype –

"Dalits are unclean, dirty, not dressing well, have no culture, dark, and have no behaviour plus no education and even if educated they will be from reserved quota?"

Though this is directly said with a passive effect, our respondent was so shocked, that she could not react to the statement, which in turn manifested into feeling a sense of deep hurt.

'Stereotyping' is one of the most visible forms of discrimination. For example, all dark people are Dalits, all Muslims have more children, people who eat meat are dirty, most of the people who sell meat are violent and inhuman, women need to be protected and cannot dress up as they wish and that is the reason why they get abused and assaulted, homosexual and trans people are perverts and many more. Victim blaming is another form of discrimination which most women, especially Dalit, Adivasi and Muslim, face in the context of sexual violence. Instead of addressing the crime, the entire public is blaming the victim on the issues of mobility, dress code, that too in the name of protection. This stereotyping also judges people and puts them in a certain coloured box that leads to biases against these people. It gives rise to different kinds of discrimination like untouchability, humiliation, violence and 'others' them. This is also a way of exclusion where such stereotyping is done only of marginalised communities and not the dominant caste, upper class, mainstream society so that the feeling of disgust is generated against marginalised community people which also leads to phobia and hate against them.

In the process of conversing with more than 90 people across South India, what we also gathered was that experiences like everyday comments, statements, insults, patronising language, which one cannot recognise as either adverse or supportive; certain silencing acts, and over expressive silence about certain issues that people do not want to overtly respond to; are not as visible as the consequences of overtly violent acts. Respondents also spoke about how acts of discrimination are acts of violation of rights but do not always fit into legally recognised acts of violence. For example, the silence around the issues of sex workers or issues of sexuality in many progressive movements; non-representation of Dalit women, sexuality and gender minority community people, Adivasi women, Muslim women in leading movements and in sharing the stage at programs, does not directly imply violence in a very physical sense.

The violence framework that was evolved by the women's movement in terms of 'violence against women' is extremely important as that is the marked beginning for the documentation, trials and convictions of perpetrators, and to remove the normalisation of violence which is visible. This framework also extended to cover non-visible violence like emotional violence, mental torture, verbal abuse, etc. which is included in the laws like the Protection of Women from Domestic Violence Act, 2005 and Section 498-A of the IPC (Husband or relative of husband of a woman subjecting her to cruelty). In these legislations, such acts are understood from the point of view of the victim/survivor in terms of the victim/survivor's perception of the crime and its extent, within the cis-heteronormative familial structure. Based on the discussions with our respondents, and after several debates and analysis of the manifestations of discrimination, we listed an entire set of acts as non-visible discrimination, for example acts like segregation, hostile environments, humiliation, derogatory statements, morality-based statements, ghettoisation, displacement, migration, stopping promotion, exclusion, etc.

The visible violence like rape, dowry deaths, domestic violence, caste violence, etc. are not less in comparison to the non-visible violence or non-visible discriminatory acts. The point that we are trying to make is that the state can take immediate cognizance of the visible violence. At the same time whether it is the state, the public or legal mechanisms, they are not equipped enough to take cognizance of the invisible systemic violence and non-visible discriminatory acts in spite of the legal reforms brought in place to cover such acts.

We would argue that discrimination as a framework, working side by side with the violence framework, would cover both visible and non-visible forms of violation of rights and violence. For instance, trans persons were recognised as full citizens only in 2014 when the Supreme Court passed its judgment in *NALSA v. Union of India*.¹⁶ However, till today, trans women struggle to access legal protections for women under the IPC or the PWDV Act, 2005.

Why are we focusing on Caste Discrimination in this report?

A feminist scholar and activist from Hyderabad stated in one of our consultations —

“Caste system in India is a mental disease which does not get uprooted even if you burn it.”

The truth of this statement is reflected in almost all our conversations across the four states. We did not see even one conversation treat this issue as a passing comment. Caste was such an overarching issue that showed us that without the proper understanding of different forms of caste discrimination, our study would be incomplete.

What we also experienced was about how caste discrimination manifests in multiple ways and how it is omnipresent. The presence of the practice of the caste system is evident at all

¹⁶ Supra note 4.

levels and spheres, like at home, public spaces, in progressive movements, educational and skill development institutions, employment spaces, political movements, government offices, courts, prejudices of judges, government schemes and infinite other spaces. Many of the respondents spoke at length about how the atrocities on Dalits do not even get registered as offences. They shared that in most cases, the police and local dominant caste authorities would try and compromise the case, that there are hardly any cases and even if cases get registered, it does not result in conviction.

In each state, there are different histories of caste discrimination. How people in the 1950s and 60s struggled to access education was another eye opener as we spoke to first generation Dalit scholars in all these states. If not for reservation, they would never have accessed education, and even within that, they had to survive discrimination for having availed facilities of reservation. These people shared a lot in terms of how the times have changed and how certain situations have worsened in terms of Dalit communities accessing education. Though our conversations were on the issue of discrimination, most of the people who spoke with us did a critique of the social, political, economic, cultural, educational, employment, health, housing, and other systems and the overarching religious majority and brahminical structures, the knowledge production systems, power, authority, governance, mainstream culture, prejudices and hate against minorities, etc. This led to a change in our perception of society, law, administration and notions of justice.

These critiques open up the caste hierarchies, casteist rituals, practices, prejudices, food practices, appearance, differential treatment in schools, newer forms of untouchability, forming of families, practice of slavery system and its present day forms, dignity only to certain labour, and newer caste oppressions, which also reflects the multiple intersections with gender, class, colour, labour, sexuality, disability, etc.

With the large amount of material that we got in terms of more than 90 conversations, the major concern and focus has been on caste and intersections of caste discrimination. It is with all these concerns that we decided to come up with our first report on discrimination based on caste and its intersections. It becomes practically impossible to bring out a comprehensive report including all the grounds of discrimination, as the depth and breadth of issues that we have got is so complex that it cannot be brought under one umbrella report. To put together the material and categories itself was the work of almost 4 months.

Along with these limitations, the purpose of focusing on caste discrimination is also to register our protest against the recent spate of murders, violence, lynching, discrimination, violation of rights of Dalits in the last two years. Especially after the current central government came into power, the violence against Dalits, Muslims and other minorities has increased.

As we finished our conversations in Telangana and returned, within a month the institutional murder of Rohith Vemula took place. Then there was the students' protest across the country on the issues of caste discrimination, questioning of the state, and a series of lynching of Dalit and Muslim community people in the name of food habits, Dalit communities entering temples, etc. between the years 2014 and 2016. All these developments made us decide to focus on caste discrimination and its intersections that is discussed in the following chapters: The Character of Caste – Caste Narratives; Caste, Gender and Sexuality; Law and Caste Discrimination; Caste and Education; Caste and its Grip on Livelihoods; The Way Forward. The report ends with a response by Sunny M. Kapikkad.

THE CHARACTER OF CASTE - CASTE NARRATIVES

Most of the respondents in our conversations have shared their own experiences of caste discrimination and reflected upon how caste is a deep-rooted form of oppression. Respondents have also discussed different manifestations of caste oppression, and also argued that the manner in which caste discrimination manifests itself is structural in nature. In this section, we will share the views of our respondents in the form of narratives; these form the basis for the development of a discourse around caste discrimination through the eyes of our respondents. Scholars, activists and other respondents from marginalised communities have not just spoken about caste-based discrimination, but also about stereotypes that operate in dominant cultures and target marginalised communities, how brahminism sets up insidious forms of oppression, how caste discrimination is dehumanising as prejudices are institutionalised, and how even seemingly progressive movements often fail to address caste with sensitivity and openness, even within the ‘safe’ and ‘inclusive’ spaces that they seek to create.

Caste is a system of oppression based on segregation, exclusion and graded hierarchy - “*an ascending scale of reverence and a descending scale of contempt.*”¹ The fundamental characteristic of caste is that it is hierarchical, and has specific local contexts, varying from one region to another. Dominant caste interests, however, are centred on maintaining their dominant position and sustaining inequality. There is always a sub-caste and oppressed caste to each caste. The feeling of “I am holier than you” is

1 1 B. R. AMBEDKAR, DR. BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES 3-22 (Frances W. Pritchett ed., 1979).

entrenched in every aspect of caste and this set of scriptural, ritual and social sanctions is translated into diverse manifestations of power.

Brahminism is not merely an internalised sense of ‘superiority’ but also imposes a feeling of ‘inferiority’, on the oppressed castes. Brahminical scholars have attempted to justify this by arguing that the caste system was a natural or necessary division of labour made for the easy working of society. Babasaheb Ambedkar, refuting this line of argument, said -

“It is a pity that Caste even today has its defenders. The defenses are many. It is defended on the ground that the Caste System is but another name for the division of labour; and if the division of labour is a necessary feature of every civilized society, then it is argued that there is nothing wrong in the Caste System. Now the first thing that is to be urged against this view is that the Caste System is not merely a division of labour. It is also a division of labourers. Civilized society undoubtedly needs the division of labour. But in no civilized society is the division of labour accompanied by this unnatural division of labourers into watertight compartments. The Caste System is not merely a division of labourers that is quite different from the division of labour—it is a hierarchy in which the divisions of labourers are graded one above the other. In no other country is the division of labour accompanied by this gradation of labourers.”²

As Babasaheb rightly says, this division of labour and labourers is inseparable from concepts of purity and pollution, which in turn are at the root of oppression, which takes the form of untouchability.

Early articulations of the concept of ‘class’ understood different sections of society as having common interests based on their

2 B. R. AMBEDKAR, THE ANNIHILATION OF CASTE (Blumoon Books, 2000).

economic status and productive role, leaving a clear distinction between a ruling class and a working class. Caste is a form of graded inequality and hierarchical segregation specific to the Indian subcontinent, and today has complex intersections with class and religion. Caste is indicative of relative power - based not merely on the labour people do, but also on superiority or inferiority assigned to the accident of birth. Certain castes have historically occupied a dominant position, thereby defining social and productive relations, and norms of purity, beauty, lifestyle, aesthetics, gender and sexuality, and attempted to impose their values on the oppressed castes.

The dominant castes construct a brahminical ‘common understanding’ about the sexuality of the oppressed castes; this ‘common understanding’ is a justification for the sexual exploitation of Dalit-Bahujan women by dominant caste men. Women are either treated as property, or violence against them is justified with the excuse that Dalit men cannot physically satisfy ‘their’ women. Further, Dalit women, are hyper-sexualized to justify systems like devadasi or jogini system.³ This construction is common, but is turned on its head in the question of consensual relationships between a Dalit man and a dominant caste woman. Here, the dominant caste narrative becomes that the Dalit man is ‘virile’ and therefore dangerous to the dominant caste woman, and by extension, her community’s honour. Both these constructions operate in a realm of illegitimacy, and therein lies the normalisation of and impunity for dominant caste sexual violence.

The question that remains unanswered is why dominant caste people do not get into professions which are considered unclean or ‘polluting’, while it is the oppressed castes that have been

3 **Devadasi or Jogini system** is a practice in parts of southern India, whereby parents marry a daughter to a deity or a temple. The marriage usually occurs before the girl reaches puberty and requires the girl to become sexually available for dominant-caste community members.

forced into demeaning or exploitative forms of labour. Thus, in the Indian experience of caste, the notion of impurity has inflected not just labour but also the labourer in a vicious cycle sustained by birth, marriage, food, etc. In this manner, entire communities are ostracised and pushed to the margins through the imposition of rigidly prescriptive brahmanical norms and equally rigid forms of labour based on 'purity'. These are reinterpreted in modern vocabularies and are justified in the name of cleanliness or hygiene.

It is not just social pressure which a community faces and has no power to oppose when being pushed into 'cleaning' the 'dirt' of the dominant castes. It is also the exploitation, abuse, humiliation, punishment, insult and stripping away of the dignity of the life, labour, identity, expression and sexuality of these communities. It is ironic that the people who have been designated the task of cleaning up this dirt/filth are themselves deemed impure. Different marginalised groups have resisted the stigma attached to their work and found ways to resist these impositions and reassert their right to live and work with dignity. For instance, Powrakarmikas (civic workers) in Bangalore; in common parlance, they were referred to with derogatory terms but began to identify as Powrakarmikas, or 'civic workers', in a reclamation of dignity of their labour.

There were, and still are, many kinds of movements working towards the annihilation of caste; Periyar's⁴ Self-Respect Movement in Tamil Nadu, Ayyankali's⁵ movement in Kerala and

4 Arun Janardhanan, *A Man, An Ideology: The Importance of EV Ramasamy Periyar*, INDIAN EXPRESS (Mar. 13, 2018, 8:53 AM), <https://indianexpress.com/article/explained/a-man-an-ideology-the-importance-of-ev-ramasamy-periyar-statue-vandalised-5090002/>.

5 Lekshmi Priya S., *Forgotten Hero: Ayyankali, the Dalit Legend Who Brought Social Justice to Travancore*, THE BETTER INDIA (Oct. 17, 2017, 3:17 PM), <https://www.thebetterindia.com/118521/forgotten-hero-ayyankali-dalit-legend-who-brought-social-justice-to-travancore/>.

the 12th-century movement of Basavanna in Karnataka.⁶ Caste discrimination has persisted and reinvented itself, taking on newer forms and structures, and continues to oppress people at various levels. The very fact that manual scavenging, a casteist, exploitative occupation, continues and is socially acceptable among dominant castes despite the existence of a law against the practice, proves this.

Caste and the City

The state also institutionalises caste oppression and often seeks to ‘sanitize’ and gentrify the city by systematically segregating, excluding and evicting vulnerable populations. For example, in 2008, Bangalore’s new Commissioner of Police came up with the ‘Clean Bangalore Drive’⁷ which essentially sanctioned the displacement of marginalised communities like slum dwellers, and the driving away of sex workers and trans women from the streets. Ideas of pollution, with their roots in caste, are extended to the ways in which the marginalised occupy the city, to their presence, their ‘looks’ and ‘labour’ and any markers that are clearly on the fringes of society.

The dominant castes have certain privileges irrespective of class - like being able to rent or own houses in the heart of the city. Middle class Dalits are denied rental homes and ownership of housing in the heart of the city, while working class Dalits are evicted from slums and pushed to the fringes of the city with the exception of a few slums, as a result of blatant untouchability which continues to be perpetuated under the guise of beautification.

6 Basavaraj Sadar, *Basaveshwara - A visionary of Total Revolution*, PRESS INFORMATION BUREAU (Nov. 13, 2015), <http://pib.nic.in/newsite/mbErel.aspx?relid=130442>.

7 *India: Stop ‘Social Cleansing’ in Bangalore Illegal Mass Evictions Against a Transgender Community*, HUMAN RIGHTS WATCH (November 18, 2008, 6:49 PM), <https://www.hrw.org/news/2008/11/18/india-stop-social-cleansing-bangalore>.

One of the most visible manifestations of caste in the city, a reality vehemently denied by urban dominant caste elites, is how neighbourhoods are planned and segregated. In one of our Inter-movement Dialogue programmes, a slum residents' activist explained that in a city like Bangalore, there are relatively fewer slums in Basavanagudi, or Jayanagar (localities with a predominantly dominant caste and upper-class population). He continues by saying that slums continue to be demolished and the people living in them are pushed to fringes of the city.

He continued by stating that often people who live in the slums are very clearly Dalits, Dalit Christians, and Muslims and the very names of these areas/streets often portray the caste location of a majority of its residents. Elaborating further, he shared that villages continue to be segregated along lines of caste and religion, and this spatial segregation can be seen written into the seemingly modern, cosmopolitan space of the city. As one activist respondent told us, denying the existence of caste, especially in 'modern' cities, is a prominent marker of caste privilege.

Knowledge as Power

In India, historically, the priestly castes have monopolised access to literacy and education, under the pretext of religious and divine sanction. It is not just the power of knowledge but also the sanctity associated with certain forms of knowledge that make the priestly castes claim supremacy over other castes, especially those that depend on physical labour for their livelihoods. Power was retained by the priestly class through two processes; *firstly*, by restricting access to education, castes that were not treated as 'untouchable', such as the intermediate castes, were not allowed access to all forms of education and were limited to education and training which pertained to their caste occupations. *Secondly*, brahminical ideals devalued and undermined the diversity of knowledge produced by the marginalised. For example, various forms of agriculture have always been assigned lower value than

the oral or written forms of knowledge produced by the dominant castes.

In discussions around caste, one cannot proceed without asking the questions “What is considered knowledge? Who produces different kinds of knowledge?” The dominant castes construct a hierarchical distinction between knowledge and skill, with ‘knowledge’ being considered distinct from and superior to ‘skills’. Today, literacy and formal education have come to be privileged over other skills. An artificial economy of knowledge is created with reading and writing. It privileges the ‘knowledge’ of a medical doctor over the ‘skills’ of a farmer or nurse. The lower the material value assigned to physical labour, the lower it is in structures of power. It is this same brahminism which turns into the dominant social systems, state power, ruling power and also informal laws of the land. This power denies the space for multi-cultural expressions, lifestyles, food habits, living patterns of communities, removes dignity from physical labour, pushes different professions into being just utility occupations, everything that is a skill and knowledge system of the marginalised is made into menial and dirty.

One of our respondents, a scholar from Telangana, observed that service occupations were also graded; for example, a potter is considered higher up than a cobbler, but a potter is considered to be lesser than a goldsmith. At the bottom of this hierarchy, she said, would be communities forced into manual scavenging or other forms of waste-disposal in the city. She elaborated further that pottery is an artisan skill; and that knowledge of pottery is not recognised, unlike knowledge of the shastras. Certain communities have historically accessed the shastras, and those communities did not accord pottery the same status or allow it to be studied in the manner that the shastras were. She went on to argue that dominant-castes could monopolise certain forms of knowledge by investing them with power and simultaneously excluding other castes, while the knowledge

systems of the marginalised were denied the same status. In this manner, reading and writing, and using certain kinds of language, came to constitute forms of knowledge that were restricted to the dominant castes and continue to exclude the marginalised.

For instance, our respondent scholar from Telangana spoke about the Karnam system⁸ in Telangana, which is a system of writing down land measurements. The village accountants work under the landlord and decide who has to own how much land. They maintain the records in purposefully illegible handwriting. It is planned and written in a manner that ensures that no one else understands it. This is not part of the formal legal system. In a village, the Karnam is a legal institution in and of himself. This practice is also written into modern forms of governance, with the collector performing the landlord's role, and the Karnam being replaced by the local MLA.

Power always rests with knowledge. Our scholar respondent argued that the urban planner, architect or engineer who is often a dominant caste member is a “power bank” of knowledge; hence, the dominant caste communities historically have access to knowledge and systematically exclude others. Throughout, their ‘expertise’ is valued, while ‘unskilled’ labourers are employed to ‘merely’ execute their plans. Even if the skill is recognised, it is also graded among labourers. There is also an added oppression of not allowing such skilled workers to access literacy, reading and writing which will be a threat to the dominant castes. The workers remain without respect and dignity. For example, bamboo workers - the work that they do is needed for utility purpose. But the bamboo workers themselves are not respected as scholars of bamboo making.

First of all, many of the marginalised caste people are forced into physical labour assuming that they cannot have the power of

8 An authority that maintains records of land and its owner, and collection of taxes.

knowledge. Dominant caste people create a section of vulnerable communities within the lowest strata so that they can take advantage of this community's existence. The primary purpose of discrimination is to ignore the skills that the Dalits possess and dehumanise them to push them into a subordinate position in the society. This is also to make them internalise victimhood and inequality.

The categories of skilled and unskilled labour are also constituted by gendered experiences of caste. The labour of women from the marginalised castes is often considered unskilled, and they either go unpaid or are inadequately paid. The wages they receive are also often lower than men, further it is disproportionate to the amount of labour that the women perform. This makes them more vulnerable than their male counterparts. Similar instances of gendered experiences of caste-based discrimination can be seen in the hotel and garment industries and in anganwadis. Dominant castes take advantage of the most vulnerable communities, devalue and dehumanise their skills and knowledge systems, and thereby normalise and sustain discrimination, violence and inequality.

The scholar from Telangana argued that the food habits of their communities were linked to the kinds of work that they traditionally did, and the cultures that evolved around it. She told us –

“There is a deep understanding of knowledge of biodiversity among certain Dalit communities that depended on agriculture.”

She went on to tell us that animal-rearing and non-vegetarian food habits were part of a system; it maintained animal populations, optimally utilised resources and ensured that human beings and animals could live in harmony. For example, in our respondent's part of Telangana, young bulls were used to breed with cattle in the village. They could then be castrated, hooved and tamed for

agricultural work. The leather of dead cattle could be used to make tools and implements for other artisans, potters and goldsmiths. Beef was also commonly served at festivals and other celebrations. Communal dining at festivities also engendered different forms of sociality and a sense of community. The knowledge and labour of their communities were systematically exploited by the dominant-castes, while the lifestyles, cultures, and expressions that evolved around them were devalued and marginalised. This scholar also said that different Dalit communities have forms of ‘original priesthood’ outside of brahminical frameworks of purity and superiority. This is based on their knowledge and experience of agriculture and animal-rearing.

When we think of brahmin superiority in the caste order, two broad themes emerge: one pertaining to work - dignity, ownership and access to resources, segregation, and space; and the other theme, broadly pertaining to religion; purity and pollution, ritual status, lineage, knowledge-as-power, proximity to God, etc. Another writer-activist asked a crucial question –

“If brahmins and their languages are considered superior, what are the criteria of superiority?”

She continued –

“Who does manual work? Why is it inferior to work that requires the use of brains? Why are ‘thinking jobs’ considered superior? Why is the brain considered superior? Even the government discriminates against people involved in physical labour.”

She felt that the vast majority of people accept this without questioning. These differentiations, constructed for the convenience of the dominant castes, construct their work and knowledge as superior; these are clear strategies to suppress marginalised communities and restrict them to only particular kinds of work.

In the course of our conversation, she also told us this story –

“Apparently, once there was a huge fight between different parts of the body, and it was the ass that sat quietly without saying a word. By the end of the day, everyone else just agreed that ass was the greatest of all and asked the ass to stop being silent and end the misery with all the shit inside the body.”

She also rightly recognised that only certain systems of knowledge were, and remain, structured in such a way that only those systems and those ways are considered knowledge. She says –

“If you are discovering something in a laboratory then it must be the ultimate truth.”

She went on to argue that so many communities, over the centuries, have found their own ways of acquiring and sharing knowledge. For example, before getting into a well, people lower a little lamp into it; if it continues to burn, then it means that it is safe to get into the well. If not, they don't enter it. These are ways in which communities have learned from their experiences, but these experiences are often devalued, while 'scientific' explanations gain legitimacy only if discovered in a laboratory or a university.

She further pointed out that brahminism has also taken to legitimising dominant knowledge systems in the name of science. The knowledge systems of the marginalised that have evolved despite, and in response to, centuries of domination are relegated to the status of 'myth', 'tradition' and irrationality. Only recently agriculture was academised and commercialised. She went on to add -

“Chemistry is not just done inside TATA institute, and it is inside the kitchen as well. So, when the criteria for superiority changes, there is a realisation of multiple truths.”

Caste in the Arts

Structures of power are secured by the dominant castes in ways that leave very little space for dissent. The scholar from Telangana argued that brahminical concepts like ‘Paapam’ (which roughly translates to ‘sin’ in English) are blackmail strategies; they imply that assertions against the caste order, or challenges to the dominant-castes, would result in misfortune befalling Dalits. These concepts are used uncritically in popular culture - media, art and cinema, even today. They have been historically used to police Dalit communities, enforce segregation and even deny them access to public spaces and basic necessities. Another dimension of caste in the arts is that stringent systems and rules were established to ‘clean up’ and ‘purify’ music, while at the same time laying down rules of who could sing this ‘pure’ music. In the alternative, performers would have to adopt the lifestyle of classical music, be devotional, touch instruments in a particular way, play with a particular hand, the instrument would have to be worshipped in a particular way, to be accepted as performers.

Some of our respondent activists, who have engaged with cultural expressions such as playing the *Tamate*⁹ and the *Are*,¹⁰ stated that the fine arts syllabus of any university categorically excludes Dalit arts and cultural expressions. They said –

“If caste and religion are not separated from all art forms, only dominant cultures and arts will be part of the mainstream and will be taught as part of the curriculum in universities.”

An artist from Kerala also brought up that discrimination is practiced in the arts by branding what is ‘classical’ and determining what is to be learned in universities, who can learn

9 An instrument played by artists of Dalit communities at different occasions, like resistance, deaths, etc.

10 Are is a percussion instrument played by the Holey community (Dalit community).

which art forms, and how these art forms are later promoted in the field. The reason for non-inclusion of such arts could be traced back into untouchability and the denial of respect and dignity to marginalised communities. This they framed as direct and visible discrimination. These activists observed that it is difficult to bring cultural discrimination in the purview of law to be tried in courts. As one of our respondents shared, being a member of the Dalit community having learned an instrument dominated by dominant caste people, he was never given the opportunity to perform with dominant caste artists. He felt that it was easier to use contemporary instruments that are not associated with any caste markers, like the keyboard.

If we call an instrument a 'Dalit' instrument in a context where dominant caste instruments have been popularised and made mainstream without their caste markers, it ascribes the caste marker on the instrument. On the other hand, if we were to ascribe caste to the veena and call it a brahmin instrument along with all the connotations of exclusion, dominance and exclusivity, it would only reinforce caste, as opposed to breaking it. What would it mean that if tomorrow, a non-brahmin wants to play that instrument either out of eagerness or as an act of rebellion? If we then erase the caste marker of an instrument, do we undo the history and struggle of the community playing that instrument? Why does the dominant caste strategically use caste markers to associate with certain instruments: do they use it to stigmatise the culture or art form of a community, erase caste and ascribe caste to only the marginalised community's art forms or to appropriate and de-contextualise the instrument?

One respondent, a Tamate player, told us that in their village when the dominant caste people called them to perform, they would openly play certain rhythms that question caste hierarchy. The dominant caste people do not understand these rhythms. Today, we also see women Tamate players, who register their protest both through their performances and by reclaiming the

instrument itself. In this manner, oppressed caste cultures have subverted and questioned brahminical domination.

One of our respondents, a scholar from Telangana, told us that a combination of suspicion, contempt and fear feed into the vilification of Dalit communities and their art forms. She shared that many art forms like Jambavapuram and Ammavari traditions have evolved out of resistance to the brahminical hegemony. The Jambavapuram and Ammavaari traditions question the superiority brahmins enjoy, raising questions about the relationship between their skills and the ritual, social and economic status they enjoy.¹¹ Why is your hand above my head all the time, probes the Jambavapuram. They refer to their ancestors while they raise questions on issues pertaining to caste and untouchability. She argued that the non-brahmin dominant castes like Kammas, Kaapus and Reddys do not question superstitions or brahminical hegemony, but that Dalit communities face backlash because they do. This is because Dalits have their own philosophy, like Jambavapuram.

Vilification

Brahminism has historically responded to challenges from the marginalised castes through co-option or immense violence. Sexualisation of and violence against Dalit-Bahujan women has been a tool of repression and humiliation, while also constructing the dominant caste woman as 'pure' and 'virtuous'. Inter-caste marriages are seen to destabilise the foundations of these patriarchal caste values, and often face terrible backlash, with physical violence and ostracisation that seeks to show vulnerable communities 'their place'. Economic mobility, or claims to public spaces and resources by the oppressed castes are seen as assertions to be consistently suppressed, and invite violence and

11 Syed Akbar, *The little known stories of castes: Jambava Puranam and the Dakkali community*, (Jun. 3, 2012), <https://syedakbarindia.blogspot.com/2012/06/little-known-stories-of-castes-jambava.html>

repression from the oppressor-castes. Some of our respondents said that this systematically hinders mobility for Dalit-Bahujans, either because their assertions are seen as an ego issue for dominant communities, or are threats to dominant caste control over resources. There are also attempts to sanitise the essential casteist nature of oppressive practices like the Devadasi system and Banamati.¹² Brahminical domination is universalised into a 'casteless mainstream' that subtly retains control over social, economic and cultural capital.

The scholar from Telangana also spoke in detail about Banamati. She said that Dalits are vilified as practitioners of witchcraft and black magic to spread fear and hate against their communities. The dominant pattern currently is that the Dalits get killed, lynched, stripped, raped or punished severely for Banamati and similar traditions in different states like Telangana, Karnataka, Bihar and Rajasthan. Sadhus also practice this, but violence is only inflicted on Dalit communities, which is highly questionable.

She also said that among the current generation, Dalit youth are asserting themselves, and not submitting to the whims of the dominant castes. This has resulted in a spate of dominant caste violence against them; this violence has always been a means of reinforcing caste hierarchies. The emergence of lynching as a form of majoritarian violence has also normalised collective violence against the bodies of the marginalised, even if on the basis of unfounded allegations and rumours.

She mentioned Babasaheb Ambedkar's work on the everyday forms of discrimination that Dalits face; Babasaheb pointed out that in many places, Dalits were not allowed to store food grains, or have doors to their houses, in addition to the denial of other kinds of basic civil rights, which he thought of as essential for human life. Dalits were denied these basic rights and treated in

12 Banamati is a tradition where dominant caste people, for ulterior motives, target Dalits, usually Dalit women, as witches and kill them.

dehumanising ways. She questioned -

“But if they are not considered humans, why isn’t there a genocide of the Dalit community? There would never be one, because the dominant caste needs someone to do their menial jobs, under them, in their houses, temple lands and farms.”

Expansion of Targeting and Stereotyping: Imaginary Reproduction

After centuries of oppression in the name of reformist changes, caste oppression has taken on different forms, which has been explained and theorised by many of our respondents. One strategy that reinforces caste domination is the way oppressed communities are represented. This construction of ‘image’ leads to not just further marginalisation but the perpetuation of ingrained casteism. The stereotyping of marginalised castes is thus a clear strategy to keep the community powerless, invisibilise their struggles for education, emancipation and empowerment.

As one of our respondents from Kerala, a writer-activist shared, we need a public that understands what the Dalit community and other marginalised sections have been subjected to throughout history. He said that while there was a public consciousness among Dalit communities that their circumstances have changed; academia, media and other forms of caste dominated systems refuse to acknowledge these changes. These institutions reproduce the images of oppressed sections of society in their own ways. He says -

“We are talking about establishments that are called mainstream, not about individuals. Savarnas know that we have undergone changes, it’s visible. But the press, institutions, universities... these establishments are unable to comprehend this. The images and imaginations

that these establishments produce and reproduce are such that they ruin the progress made by marginalised communities.”

He says that these dominant representations of the marginalised, destroy in a single description, their struggles and the progress they have fought for by diminishing, reducing and erasing their efforts. This, in turn, constructs an image of the marginalised as trapped in and by their pasts. This representation will thus, become synonymous with their past. He continued -

“The argument of the society, in fact of a political party itself, in Kerala, is that ‘you organise yourselves, and your rights shall be granted’. The perpetuation of the marginalised status of certain communities is the result of the reproduction of such imaginations by these establishments. These communities are instead subjected to accusations, as a result of which, their transformations or their imaginations of themselves never get shared.”

He made the pertinent observation that these establishments are one of the main reasons for the continuation of marginalisation of Dalits, which create the imaginary reproduction of marginalised castes and religions.

When we went to converse with this writer-activist respondent and discussed his formulation of ‘imaginary reproduction’, we initially did not understand what he was referring to. We later realised that he had a very clear understanding of systemic casteist stereotypes, as they are not merely sustained by individuals in casual conversation or gossip, but constructed by institutions themselves. He actually recognises a systematic intention to maintain this imagination, which is not just mass-produced by the mainstream to hammer it into the minds of the general public, but is also violative of identities, and is in itself a severe form of oppression.

This deliberate mass production of the imaginary constructions of the marginalised enables the mainstream to maintain their power, remain dominant and in positions to ‘grant rights’ to the marginalised. In other words, the dominant position is that “we will make sure our comfort is not disturbed and give only so much space for you to squeeze in and *you adjust*.” These representations of the experiences and struggles of the marginalised feed into and sustain the structures that exclude or diminish their voices. This represents brahminism’s most insidious strategy of survival in the face of heightened resistance and assertion from those it has historically oppressed; by benevolently agreeing to cede space and ‘rights’ while safeguarding their power and capital that has been acquired with centuries of caste privilege. This is a distinctly dominant caste imagination that is portrayed as the ‘mainstream’ or ‘universal’.

He continued -

“Everyone is ready to undertake the Adivasis issue, but no one cares to engage with the imaginations produced by the Adivasis. It is to that imagination they should converse with. Not only does the mainstream disengage with this, they constantly reproduce and impose their own imaginations through very powerful means of the mainstream, like films, songs, etc. Like Adivasis are stupid, Dalits are all wicked thieves who engage in criminal activities and so on.”

The oppressed castes have always had rich social, political, cultural and intellectual imaginations which have resisted dominant structures but have been systematically othered and silenced, instead of being engaged with. These knowledge systems have come to use music, film, literature and art to tell the stories of their communities in their own voices.

Another scholar and rights activist from Kerala gave us this example -

“The funniest thing is, in Kerala if you see the stories spun by right-wing establishments like TV channels, 90% of their staff is supposedly left-leaning. Now, for example, a speech by Arundhati Roy was translated and given in an online news portal. It is a ‘leftist’ establishment. The title given is, ‘Should the Dalit still carry shit?’ Of course, it is a forced hereditary occupation of Dalits. But in Kerala, Dalits have transformed. Different efforts in Kerala, including those by the PWD and agricultural department have taken steps towards ensuring that Dalit communities are not forced into hereditary occupations. Ambedkar had asked why priesthood was made hereditary and had challenged the very idea of hereditary occupation. Over the past 50 years, the Dalit community has remarkably distanced itself from traditional occupations.”

Both the above two respondents from Kerala discussed Ernakulam -

“Ernakulam is a big city that evolved using Dalit labour in the 1940s and 1950s when Dalits distanced themselves from agriculture and shifted to other occupations. But these do not get marked anywhere in their consciousness. If you think about it, all the parallel organisations that emerged in Kerala had Dalits in the leadership or active presence. If you examine their history, the early phase of all these organisations, feminist movements, etc. involved the active participation of Dalits. But all these get erased and the imagination of ‘shit carriers’ and so on are marked in the history. It is not that it never existed. It did. But the perpetual reiteration of these and reproduction of these imaginations through various symbols is done, not just by hegemonic savarna forces, but also by leftists and liberals.”

Another respondent scholar from Kerala argued that through the imposition of such stereotypes and representations, caste is

perpetuated, even if Dalit people progressively would want to live a casteless life. He said that caste is not an attitude, but is a social institution. Caste is ascribed only to the oppressed castes, while the dominant castes stake claim to more ‘cosmopolitan’ identities. Claims to castelessness cannot be taken at face value; one has to consider who is making those claims. It could be a person from the oppressed castes, attempting to leave behind the violence and stigma associated with their caste identity as they aspire to an egalitarian, just and caste-free society. Or, it could also be a dominant caste person making these claims, betraying ignorance of their privilege while continuing to perpetuate dominance.

These claims to castelessness, even if coming from a conscious disavowal of caste, are dishonest, because caste brings social and cultural capital that influences all aspects of life. Further, caste is not something that is chosen by one. Outsiders, the people in society, decide it. One can claim to live a casteless life but the existing social structure does not permit it.

He said -

“I can say I am casteless, I can live a casteless life, mingle with all, but you will not allow me. You will say, ‘he is a Pulayan.’ There ends my casteless life.”

Another musician-activist from Kerala shared a story - he went to meet his friend in a town in Kerala and when he asked a passer-by about the address, the person responded by asking which caste the friend belonged to, and what work they did. Therefore, it is clear that caste becomes the marker on the basis of where you stay in a town.

Both the above writer-activists pointed out that various aspects of daily life serve as caste markers; food habits, attire, occupation, language, even figures of speech. The above musician-activist told us that at his house, his family asked him not to sing songs sung by his community, or his ‘type’ of songs because the neighbourhood would come to know of their caste.

These markers often give away one's caste identity, leading to prejudice and discrimination. Brahminical attitudes are an internalised acceptance of inequality. The declaring of caste is not just a statement that 'this person belongs to this caste', or an attitude, instead it is a deeply rooted, ingrained sentiment that comes out of one's conscience where discrimination is internalised.

Another scholar from Kerala told us that caste is not to be challenged merely on the grounds of economic inequality or the oppression of caste occupations. Caste is also a value system that is rigid and uncritically believed in by dominant castes. He said that earlier, in Kerala, when untouchability was openly practiced in public, the oppressed castes had to keep their distance from the Namboodiris; Pulayas had to keep 96 feet distance, Nairs 76 feet and Ezhavas 36 feet. He asks what harm would have been caused had a member of the Pulaya community touched a Namboodiri. He asks -

“What would have happened? Nothing would have gone wrong, isn't it?”

And yet, this practice could survive because caste upheld an inherent inequality between communities, assigning them a fixed place in the social and ritual hierarchy. Further, he said-

“Ayyankali, Ambedkar, Phule, Sree Narayana Guru, or people like Poyakayil Appachan, etc. lived in extreme poverty. There wasn't even enough food to survive. Yet why didn't they fight for property or land, but for the right to education?”

He claims that only modern (and English) education systems imbibed people with a sense of justice and equality, through which the chains of the past, sustained through imaginary reproduction, could then be broken. Caste-based strictures that authorised the denial of education, equality and mobility for the marginalised gave inequality social and religious sanction. These did not merely

uphold a ritual hierarchy but ensured that the oppressed castes could be systematically excluded from structures of power and State instrumentalities. Babasaheb Ambedkar recognised this, and fought for constitutional safeguards for reservations in education and employment, thereby attempting to ensure representation in state institutions and in the public sphere.

There is also another position taken by a Dalit scholar from Kerala, who said that there are two issues with taking this position. He says -

“One, without shame we must be ready to say that we claim stipend. It’s important. Because see many other communities also enjoy benefits. The Muslim community has a 13% reservation. Latin Christians have 6% and Ezhavas have 16% reservation. But people don’t see those. We must say this out with pride. The only option is to have that kind of a consciousness developed in us and secondly, even if I don’t reveal my Dalit identity, I will still be seen as a Dalit. So, the option in front of me is to say that, isn’t it? For instance, if someone else can read from what I write or from my vocabulary or from my identity consciousness, and brand me as Dalit, then why should I rather not talk about it? It is our fake consciousness that says there is no caste. Caste can be annihilated only by talking caste.”

Brahminism allows a deeply ingrained sense of superiority which involves prejudice against the oppressed castes to be articulated in modern vocabularies of merit, hygiene and science. Further, these constructed imaginations of the mainstream not just have markers of caste for every action and expression, but also have visual impressions which are again perpetuated through media, novels, cinema, TV channels, etc. Simultaneously, there is also an image that gets constructed of the dominant caste, especially the ‘brahmin’ in this process, that reinstates the same caste value system. In this constructing of ‘Dalit’, the ‘Dalit looks’ or ‘typical

Dalit' is the consequence of reflecting not just historical oppression as 'normal' and 'usual' but it also puts these communities' access to resources and opportunities at stake. This is also the way of disregarding historical injustice as 'normalised history' by refusing space to recognise discrimination and oppression. This sentiment is reflected in many statements made to different people, like in Karnataka one of the Dalit rights activists said that she is often faced with this statement "*Oh! You don't look like a Dalit*" and "*even though you are Dalit you have done so much.*"

Further this attitude that "*I am better, I am superior, and I am pure*" stems out of multiple strands of caste value system which is made to impose not just superiority by dominant castes but also impose inferiority on the oppressed castes. All the virtues of high morality in brahminism which is imposed on the oppressed castes (regardless of their differing degrees of marginalisation), and is also to be followed if there is an aspiration for upward mobility (though of course there is no upward mobility in caste). So what is the stereotype – Dalits are unclean, dirty, not dressing well, have no culture and have no behaviour plus no education and even if educated they will be from the reserved quota. When you are not stereotypical, you are a problem and a threat to the dominant system.

For example, in the celebrated Malayalam film '*Celluloid*', the protagonist Rosy is from a Dalit caste. An actor from a dominant caste was chosen to play the role, and her complexion was darkened with cosmetics to make her 'look Dalit'. Further, in the same film, the character is chosen to act in the first Malayalam silent film as a dominant caste woman, and is made to look fair complexioned, 'like a Nair woman'. There are also other films that portray poor brahmins being forced into occupations other than the traditional one - priesthood. While Dalit-Bahujan poverty and oppression are naturalised, poverty among brahmins is made out to be a greater indignity, claiming narrative sympathy and space. For example, many Malayalam films portray the lives of workers

on fields - the landlords are often Nairs or Namboodiris, slavery is depicted as natural, violence against the workers is normalised, and their struggle for any kind of upward mobility is also made invisible.

An activist from Kerala mentioned an anecdote about a Malayalam filmmaker who engages with caste in his movies. The filmmaker approached a well-known actress to act in his film. She told him that she did not have dates, and another actor was cast in that role instead. The movie was very well received, and the filmmaker received attention and accolades for it. The male protagonist, a well-known comedian, even won a national award for his role in it. Later, that heroine who had refused the offer reportedly told the filmmaker that she had, in fact, had dates, but then thought that he did not have the looks of a director. Why would she feel that he did not 'look like a director'? It is a stereotype created by the historically unequal access to resources and continually reproduced in elite imaginations. The activist pointed out that it is important to understand how the bodies of the marginalised are seen, read and understood. He said that, according to society, he has a 'classic Dalit look'. The actor said that the filmmaker could never have 'that director's look'. Therefore, our respondent felt that for someone like that filmmaker to survive in the industry, he would have to make world-class cinema. He has no other option. In one glance his caste is identified without anyone mentioning it.

So what is this classic look of a Dalit? Is it a short, dark, fragile body? Where do these imaginary associations of optics emerge from and how do they emerge? At the same time, there are also images that are constructed which challenge these stereotypes, which remain exceptions and never enter the mainstream.

Two of our respondents argued that it is these images that feed into the needs of the market, which can be evidently seen in advertisements. Products are made for dominant caste, upper class, fair complexioned, fit and able bodies. Any difference is

seen as a deviation or not even recognised as ‘human’. This is not just an attitudinal problem; it is also a serious issue of erasing the possibilities, opportunities, access, resources, and more fundamentally, a diverse egalitarian existence. This is reflected in questions like “*you Dalits, you can go to school now, you can cross our fields and roads, wear the blouse,¹³ have education, then what is your problem, where lies caste?*” This means there is no conception of the changing nature of discrimination. What then does discrimination mean in the contemporary situation, how does it operate? This must be carefully examined and understood. For instance, let’s take the market. All that the open market says in their call for certain jobs for women would be that women should be fair complexioned. So, if one is denied a job because she is not fair complexioned, can we call it an atrocity?

The imaginary reproductions work on both sides; to construct discriminatory images of the Dalits and the marginalised to keep them in oppressed situations and also to construct and make the dominant castes powerful. In Kerala’s context, as our respondent scholar pointed out, it is the Nair domination that furthers brahminism and manifests into a more hierarchical brahminised system. These systems are further encouraged, enhanced, made into the rule of the land and culture of the land by the Left political forces that do not recognise the culture of Dalits, Muslims, Adivasis, etc. It is not only non-recognition but also invisibilisation of these cultures in making of the dominant culture as the norm of Kerala society. As shared by the same scholar, there were many reasons for this dominance of the Nairs, including reformation of the Nair community, removal of discrimination within the sub-castes of the Nairs, removal of untouchability within this community, bringing about the Nair Regulation Act, etc.

13 Sheryl Sebastian, *Kerala’s Casteist Breast Tax And The Story Of Nangeli*, FEMINISM IN INDIA (Sep. 12, 2016), <https://feminisminindia.com/2016/09/12/kerala-breast-tax-nangeli/>.

An activist respondent told us that one of the main reasons for the glorification of Left revolutionaries in Kerala was also the possibility of mobility; they got entry into the houses of the common people to be able to communicate. The same kind of access was not possible for Dalit political workers, even from the same parties. As one of the Dalit scholars told us-

“A.K. Gopalan was a communist. But the access he had to spaces and social circles in Kasargode was not because of his political leanings, but because he was a Nambiar. There were no restrictions on him entering houses or speaking to people. Nobody would have attacked or ill-treated him. What if he was a Cheruman? They would have beaten him up. Why do we not understand this contradiction?”

Scholars and activists from the South Indian states, in our conversations, all pointed out that in South India, historically, the dominant castes have not necessarily been brahmin. Dominant castes are numerically superior, landowning groups that also continue to uphold brahminical values, exercise power and perpetuate violence and discrimination. Earlier, it was very clearly the brahmin caste which practiced untouchability, caste discrimination, etc. but as time went by, the perpetrators of untouchability and caste discrimination have grown in number and in caste composition, however, the imposition of caste discrimination against the most marginalised remains the same. Later, it is this same brahminism which turns into the forms of social systems, state power, ruling power and also informal laws of the land. This power denies the space for multi-cultural expressions, lifestyles, food habits, living patterns of communities, removes dignity from physical labour, pushes different professions into being just utility occupations, everything that consists of skill and knowledge systems of the marginalised is made menial and dirty.

A feminist activist from Kerala argued that the inherent discrimination in access and opportunities forces Dalit women to fight against certain supposedly ‘politically progressive’ positions and values. She said that mainstream ‘progressive’ politics in India, be it liberalism or environmentalism, communist or feminist movements, are deeply brahminical and have been captured by dominant caste voices. For example, the position that sex work is a legitimate form of work becomes extremely problematic from a Dalit feminist position. The activist told us that 80% of street-based sex workers in Kerala are Dalit and this is not an uncritical choice as understood by the progressives. She argues that it is a situation where these women are pushed, without any options, which should be identified as exploitation by the dominant caste systems.

She also critiques ‘mainstream’ feminist positions about marriage and family. She says that a dominant caste, upper-class woman can defy the institution of marriage and speak about sexual freedom because of her social and cultural capital, and her access to education and employment. She argued that in Kerala, the position of Dalit women was very different; due to the practice of slave tradition by the dominant castes, most of the Dalit communities were not allowed to form a family till the early 20th century. Even if the Dalits were married, the wife would be sent as the slave to one place and the husband would be sent to another place. So the question of coming together as a family to have children, social security, land, wealth was impossible. In this context, would it be feminist to reject family and marriage outright? She argued that women of caste and class privilege should not attempt to speak for or judge all women, thus imposing their politics based on certain criteria, on women from different locations with different kinds of vulnerabilities.

In the context of Dalit trans identities, one of our transwoman respondents stated that the atrocities on trans persons were not just solely based on them being trans, which the society sees as

an aberration. She narrated an incident where a transwoman from a Dalit caste from Guruvayur was once walking near her village. The entire village knew about her being trans and Dalit. The boys in the village tried to force her into sex and she resisted. Immediately, the boys dragged her to the village panchayat, where it was declared that she was trying to corrupt young boys. She was punished by the villagers by being stripped and beaten up in public. This incident was understood and read only as a trans issue, while the punishment given to her was very typically one inflicted on Dalit women by dominant castes. Neither the transgender movement nor the Dalit movement activists considered to file a case or fight against this atrocity even though this clearly came from a context of multiple marginalisation. She also highlighted that even within the transgender movement, the identity of trans overshadows caste. She said that it is made to feel like there are no casteist practices in transgender communities but there is the need for that sensitive and perceptive eye to identify the caste oppressions within the transgender movement.

Brahminism and patriarchy cannot be separated from each other. One does not know which came first, it is like a chicken and egg situation. One of the activists from Karnataka said that from their position, it felt like men created brahminism to control and regulate not just women, but also men from other sections of society, and was a direct form of slavery. This system of control or regulation, initially established for the convenience of powerful men, was later transformed into a value system for generations to follow and adhere to, and transgressions of this system were punished with immense violence and stigma.

Narratives of Superiority

A scholar of Tamil literature told us that tribal chieftains in Tamil Nadu had managed to create vibrant and functional societies that were not oppressive or discriminatory. He said that it was Sanskrit

culture through the 'Vainavam' and 'Saivam' (not Hindu at that time) which introduced the varna system and included all the sections of the society.

He told us that in 1872 when the British conducted the census in Tamil Nadu, caste dynamics in the region began to change. The process of enumeration and identification made each community try to prove that they were higher than the other through their stories. The creation of stories in each community, like the dominant caste Vellala stating that all Paraiyas and other oppressed castes were their slaves, through stories, mythology and scriptures, was an effort to build historical backgrounds and justifications for their oppression. He said that this is mentioned in the in the book, 'Viveka Sintamani', written by Vellala intellectuals, which ran into nearly 800-900 pages. He said that at the end of the 18th century in Tamil Nadu, there were three main castes, which were the distinctly upper class, middle class and working class (the working class was also identified as Panchamars).

He said that this was one of the most visible seats of discrimination. Vellalas were mostly Saivas and led the Bhakti movement and through this, they also claimed that they were intellectuals. On the other hand, brahmins led the Vainava and other movements. He also said that the temple was the centre of these movements. In the 20th century, Pandit Iyothee Thass,¹⁴ a Parayar intellectual, propagated a form of Dravidian, Tamil Buddhism, opposing caste system on the basis of birth and called it Tamil Buddhism to eradicate caste discrimination.

During the British period in Tamil Nadu, when all the white collared jobs were given only to brahmins, the non-brahmin dominant

14 Bala J, *Pandit Iyothee Thass and the Revival of Tamil Buddhism*, ROUND TABLE INDIA (Jun. 27, 2014), http://roundtableindia.co.in/index.php?option=com_content&view=article&id=7569:pandit-iyothee-thass-and-the-revival-of-tamil-buddhism&catid=119:feature&Itemid=132.

caste people across South India formed the Justice Party¹⁵ in 1927 and fought against this. It was around this time in the 1930s the Periyar self-respect movement also started. He said that at that point of time the ruling class was the Congress and it was not interested in the ideas of abolishing discrimination or social reformation. On the other hand, it was communities like Naidus from Telugu background, Nairs from Malayalam background and Vellalas from Tamil background who came together and proclaimed the social reservation policy.

At the same time, Periyar asked for the representation of each community and this was against brahmins and middle-dominant castes. Thus, in this context, anti-discrimination evolved as a political movement in Tamil Nadu. The Periyar movement had a very strong impact on the people in Tamil Nadu by the end of the 1940s and this influenced the formulation of a reservation policy. This scholar said that it is because of this reservation policy that even he could access higher education. He says -

“If Periyar movement had not started in the 30’s most of the rural people like us, the first generation Dalits and other most backward classes, had no chance for education and higher education. I don’t know about other parts of India. In Tamil Nadu, it has played a very big role. Slowly, all the white collar jobs which were only brahmins were now all getting mixed.”

Through this sharing can we think as a hypothesis that at one point of time, the middle castes along with the middle class, who were oppressed, discriminated against and violated by the brahmins, organised themselves with the little power they had. This process of becoming powerful was through reforming within their castes

15 Kavitha Muralidharan, *100 Years of the Justice Party: A Movement which Defined Tamil Nadu Politics*, THE NEWS MINUTE (Nov. 20, 2016, 1:09 PM), <https://www.thenewsminute.com/article/100-years-justice-party-movement-which-defined-tamil-nadu-politics-53163>.

and creating knowledge systems based on their work, which was still unfortunately governed by the brahminical value systems. When the middle castes started becoming powerful, they did not include all the oppressed communities who once stood with them in this process. The organising also happened based on the caste composition and so the process of these middle castes becoming powerful further made the vulnerable more and more vulnerable.

At the same time, they retained the brahminism, caste hierarchy and patriarchy. They also established their own community institutions for education, health and housing. Another activist from Karnataka shared that these middle castes also created pontiffs, their own mutts and lesser forms of the brahmin gods. It was these middle castes along with the pre-existing dominant castes who retained the caste value system, lifestyle, marriage, family, education, the formation of relationships of brahminism by mixing their culture specificities to form the middle-class morality. This is in terms of 'dignity' associated with labour; it also included other characteristics like caste associations of colour, hierarchical systems, etc. which are infused in the masses and dumped on the most vulnerable castes and marginalised communities.

The scholar from Tamil Nadu argues that Tamil culture does not have religion as such when it comes to the concept of 'Hindu'. He also argues that whether it was dominant castes or middle castes, it was not like North Indian culture where these people were brought under the grand Hindu religion. In all of South India, when the states were being formed, Tamil Nadu ignored the Hindu religion. Periyar was behind this and he asked for a separate Tamil Nadu from the 1930's onwards. This scholar said that Periyar's argument was that –

“We Tamils have a different culture, different idea, we don't belong to the religion and we don't belong to discrimination of caste. So we always wanted to live separately. The North Indian people have Manuneethi,

Varnasrama, Ramayanam, Mahabharatham, all those things that are the most discriminatory materials which we don't want."

Slowly, the social power structure started changing. In the 1950s and 60s, the Ambedkar movement became very strong. This scholar noted –

"During that time, another middle caste called Vanniya and their leader Ramadas fought very strongly and got separate reservation. That is called MBC which is found nowhere else in India. Most Backward Classes were given 18% reservation. Backward class 20%. Dalits were given 16%."

He also shared that these days, caste politics is all about regionally based vote banks especially after the dominance of Karunanidhi, MGR and Jayalalitha started falling. He says -

"Even in the suppressed Dalit groups there are three main castes. Paraiyas, Pallars and Arundhatiyars. They are separate and not coming under the single umbrella. They do not allow for inter-caste marriage. They have their own political parties. Thirumavalavan belongs to one party, Krishnasamy to another and Adhiyaman to one another. Apart from them, region-wise Dalit leaders will support the associated big political party."

Within the Dalit movements in Tamil Nadu, in the areas like Cuddalore, Pondicherry and delta-based areas, there are land-owning Dalits and they are leading the movements. This scholar said that in parts like Thanjavur, Coimbatore and other areas, the population of Arundhatiyars is high and oppression of this Dalit community by the dominant castes is very powerful in these areas.

Another activist from Tamil Nadu shared that being inferior has grown in us because of the caste system. She says –

“We have come to believe in a hierarchy. Right from childhood Dalits, women and other marginalised sections have learned to believe in hierarchy and to be subservient so much so that anybody can humiliate horribly and feel good about them and call themselves a nice person. It comes from a caste-based system.”

Like many respondents shared in our conversations, this activist from Tamil Nadu also said that Scheduled Castes and Scheduled Tribes cannot be clubbed; similarly, even in Tamil Nadu, all the Dalit communities also cannot be clubbed as one. Only the Arundhatiyars who are doing the menial jobs, stitching chappals and manual scavenging, are the most oppressed and include all Madiga castes (the communities who are assigned to do all the ‘dirty’ jobs). Within the three main castes of Dalits in Tamil Nadu namely, Pallars, Pariyaars, and Arundhatiyars, Pallars are better off because they have traditionally had at least some land, of course not to the same extent as the dominant castes. There was also a movement by Pallars who did not want to be part of the Scheduled Castes. On the other hand, the Pariyars are traditionally and politically very well organised. It has been the most mobile community and has produced several Dalit intellectuals. Most people who have gone out of Tamil Nadu escaping caste systems are Pariyar who have been the first to join the British army. Pallars have developed economically because of the backing of land ownership.

From the above sharing, two things become very clear. Though all marginalised castes experience oppression, violence and discrimination in different forms and to varying degrees, what supports some sections of Dalits to be able to question these oppressive structures is one - the ownership of land, and two - access to education. The challenge that the dominant caste systems pose or rather construct is that even if these atrocious practices of the caste system are to be questioned, it is to be done through the same brahminical systems of knowledge or questioning of brahminical knowledge in dominant caste language.

Processes of knowledge production are closely linked to power; this is also the reason why brahmin families often emphasise education and cultivation of certain kinds of cultural capital. On the other hand, access to even primary education has been a struggle for marginalised communities. In this context, higher education within the same dominant caste construct of knowledge systems, has become another traumatic experience of discrimination, humiliation and violation of rights. The way in which we lost Rohith Vemula was a stark reminder of how casteist and hostile academic institutions in India are.

A strong motive for institutional discrimination and the denial of access to education is a deep-rooted insecurity of the dominant-castes; that the historically disadvantaged can use education as a tool of mobility, and use it for greater assertions and challenges to the caste order. On the other hand, there is also the brahminical belief that members of oppressed castes remain ‘impure’ all their lives, despite class mobility or changes in lifestyle. For example, when an IAS officer in Kerala retired, the other dominant caste people sprinkled cow dung water and ‘purified’ his office and car. It is this insecurity that has constantly led to tracking and forcing back Dalits and marginalised communities into positions where they cannot question or challenge dominant systems. This forcing back and tracking are often in the form of mass violence, discrimination, violation of rights, humiliation, etc.

In all systems of knowledge be it science, academia, politics or discourses of the dominant castes, there is a set language and a system to engage with it or further it. Even when we write, we write as though the present knowledge systems are the rule of the day and any other forms of knowledge, especially produced by marginalise, are always labelled as ‘other’, ‘alternative’ or ‘subaltern’. This language continues even while we are writing, words like ‘mainstream’ and ‘marginalised’, ‘oppressors’ and ‘oppressed’, ‘powerful’ and the ‘vulnerable’, as if this is the only way to communicate, reinstating the power positions of the

dominant castes. At the same time, this language is a means of normalising oppression and taking oppressed communities for granted. While labels are an important aspect of representation and have often been used by marginalised groups to make space for their politics and to resist erasure, labels also reinforce unequal positions and make it more difficult to displace dominant knowledge systems.

Vulnerable castes are forced to feel vulnerable, made inferior and made to feel inferior in the systems of not just caste, but also knowledge, skill and their contribution to the society, in almost all spheres. If marginalised castes aspire for upward mobility, their process has to be like that of a dominant caste; there is no other possibility as alternatives are not allowed to exist in this society. Even if marginalised communities want to question this hegemony of superiority, they are forced to use the same language, expression and same structures of knowledge to communicate their questioning or resistance. In this way, the marginalised castes continue to remain under the dominant caste hegemony.

In the present context, dominant knowledge systems thrive on relegating the lived experiences of the marginalised to a certain form of victimhood limited to only giving testimonies of their lived realities; they can then patronisingly ‘accommodate’ these testimonies into a ‘mainstream’ while silencing the communities’ voices. This is then used to ‘theorise’ and further protect and reproduce privilege and dominance. When the marginalised ‘theorise’ in their own voices, their work is not as easily accepted as a legitimate form of knowledge. One activist told us that when members of the marginalised communities theorise, their work is met with a silence from the dominant-castes, which means, *“you are doing our work and we don’t want to recognise that; it is also a means to demoralise you and keep you in your place.”*

This process of keeping marginalised communities ‘in their place’ is done in different ways. An activist from Tamil Nadu spoke to us

about the Dharmapuri honour killings when an entire village of Dalits was burnt down.¹⁶ She said -

“Three villages were looted, and the whole Dharmapuri issue happened because Dalits had become slightly wealthy in those villages. Every time that happens, the dominant castes find it unbearable. Then they look for an excuse, and it is usually inter-caste marriage. Then they go and loot them, ravage their property and send them back by a good ten to fifteen years.”

Violence of this kind sets these communities back by many years, and it often takes them years to recover their economic stability. She said this has constantly happened and the anger is mostly about ‘how can you be rich?’ She added -

“They can’t deal with the fact that Dalit men can wear jeans, walk with confidence in public and be educated on par, they can’t stand it when Dalit men wear a watch or go out on a bike.”

This activist also spoke about how untouchability has not left India. She said –

“For example, my family members are not violent people. They might not do any heinous thing, but I don’t think they have changed their views. People entering your house for convenience is now allowed, also you can’t find a Naidu maid no? But in principle, if it is marriage, will anybody do it? To have any kind of a blood relation with a Dalit is a huge huge problem. The definition of untouchability hasn’t changed, but the form has changed.”

Another activist and the legal expert from Tamil Nadu said –

16 R. Arivananatham, *Dalit Youth Ilavarasan Found Dead*, THE HINDU (Jun. 07, 2016, 4:51 AM), <https://www.thehindu.com/news/national/tamil-nadu/dalit-youth-ilavarasan-found-dead/article4881007.ece>.

“Caste has been the fundamental thing upon which the country has existed, and everything goes back to that. The liberal discourse against communalism takes the Hindu-Muslim thing as a deep-rooted practice, but it wouldn’t have been the same way it is, if it wouldn’t have been for caste, and caste-based discourses of purity and pollution, etc.”

She argued that even the discrimination, hatred and attacks against vulnerable religions are very much based on dominant caste morality - this is also why inter-religious marriages risk violent backlash. She further says -

“Hindutva couldn’t have operated the way it does without the atrocious caste system. The fact that the supposed ‘Hindus’ can recruit the tribal community or any marginalised community is with the promise that they will include them within the Varna Dharma.

Caste is fundamental to Hindutva, wherever it is, and in urban spaces that are most comfortable with a liberal nationalist understanding of most things, do not include caste in the conversation. In most media arguments and cinema you can see communalism being under threat, but the way you can understand it and the way it functions is through caste.

By de-casteing communalism, you are making it palatable to large sections of dominant castes and upper middle class. You need to ask them to think of their own caste politics along with their Hindu-Muslim Bhai-Bhai politics and the conversation will get far more complex.

So caste is at the base of everything. CASTE IS EVERYTHING.”

CASTE, GENDER AND SEXUALITY

Caste, family and sexual autonomy

Can one imagine patriarchy without caste? According to Babasaheb Ambedkar, there is only one feature of caste that can be said to be its true essence, and that is endogamy, which is the prohibition of inter caste marriage.¹ He writes that caste in India means “*An artificial chopping off of the population into fixed and definite units, each one prevented from fusing into another through the custom of endogamy.*”² Originating among brahmins, caste ensured an artificial closing off of walls to other communities. These walls started among brahmins, but were then adopted by other communities as well. As explained by Babasaheb Ambedkar -

*“Endogamy, or the closed-door system, was a fashion in the Hindu society, and as it had originated from the Brahmin caste it was whole-heartedly imitated by all the non-Brahmin sub-divisions or classes, who, in their turn, became endogamous castes. It is “the infection of imitation” that caught all these sub-divisions on their onward march of differentiation and has turned them into castes.”*³

He further delineates three features of Caste Hindu society that seeks to preserve endogamy. He identifies this as (i) sati,

1 B. R. Ambedkar, *Caste in India: Their Mechanism, Genesis and Development*, 41 INDIAN ANTIQUARY (1917).

2 *Ibid.*

3 *Ibid*

(ii) enforced widowhood, and (iii) the marriage of young girls. These customs seek to control the sexuality of dominant caste women to preserve endogamy. The sexual control of dominant caste women is therefore identified as a crucial step towards the preservation of the caste system.

Much of the social reform movement, as well as the early women's movement in India, focused on these forms of control of dominant caste women, primarily the reform of marriage, and developed a critique of patriarchy based on their experiences as dominant caste women. Victories such as widow remarriage, raising of the age of consent, and the abolition of Sati, were held as examples of how women's rights were being furthered. While these were important victories of the time, dominant discourse on women's rights was framed largely in the context of patriarchy, and rarely in the context of caste. A recurring theme in our conversations has been that the women's movement in India continues to fail at conceptualising or responding to Dalit-Bahujan women's experiences, and further, that a critique of brahminical patriarchy is almost absent from much of the feminist discourse in India. Dalit-Bahujan women's experiences under brahminical patriarchy is unique, and feminist discourse which does not acknowledge this fails to develop a rounded critique of patriarchy.

According to the 2011 Census, the population of Dalit women in India is 9.79 crores, which is 16.68% of India's total female population. Dalit women's literacy rate is 56.5%, as opposed to the general women's literacy rate, which is at 64.6%. The average age at death for Dalit women is 39.5 years, whereas for Hindu women (excluding OBCs) it is 54.1 years.⁴ Similar disparities in indicators can be found across maternal mortality rates, access to pre-natal and post-natal care, and access to education, both

4 *India - Survey on Morbidity and Health Care: NSS 60th Round, Schedule 25, January 2004 - June 2005*, INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH (Sept. 6, 2016) <http://www.icssrdataservice.in/datarepository/index.php/catalog/77/datafile/F16>.

primary and higher education. The fact remains that Dalit women are particularly marginalised, and that the erasure of their narratives has not done justice to their empowerment.

However, the question of “inclusion” of Dalit narratives is itself a contested one. The demand from Dalit feminist movements is not merely to be included within the broader feminist narrative, but also to challenge the epistemological structure of feminism in India, basing itself on the idea, as described by Gopal Guru that –

*“Less powerful members of a society have a more encompassing view of social reality than others because their disadvantaged position grants them a certain epistemic privilege over others.”*⁵

The question, therefore, is not what the feminist movement can learn from Dalit women, but rather, what would the feminist movement look like if Dalit women had access to the discursive spaces taken for granted by non-Dalit, dominant caste feminists?

Most of the activists we spoke to described this schism that exists in the feminist movement in India, and offered their own understanding of some established positions as well as contentious questions within the feminist movement. This includes the role of the family, the idea of sex work, domestic violence and Dalit women’s labour. Many of these questions are inextricably linked, and the following section is an attempt to document the thoughts of the respondents on these questions.

Dalit Women and the Feminist critique of the Family

The family is seen as an unproblematic “natural” unit for human bonding on one hand, and as a patriarchal unit for the control of women’s autonomy on the other. The women’s movement has fought against violence within the family, while also questioning its normative position within Indian society. Within this binary, however, the right to form a family has rarely been conceptualised

5 Gopal Guru, *Dalit Women Talk Differently*, 30 ECON. & POLITICAL WEEKLY, 2548, 2549 (1995).

as such. Dalit women's struggles to form families of their own, which involve distinct challenges as compared to dominant caste women, have been ignored. Several respondents spoke of how Dalit women have been historically denied the right to form families, either through slavery, or by being forced into sex work or other forms of sexual servitude, such as the Devadasi system.

For example, a Telugu-language writer and activist spoke to us of how the Jogini/Devadasi system amounts to a denial of the right to constitute families to Dalit women, as young Dalit girls are dedicated to the temple and forced to enter a lifetime of sexual servitude. Devadasis are not allowed to marry, and while the practice is often glorified as one of service to a deity, in reality it is inevitably Dalit-Bahujan women who are pushed into sexual servitude disguised as temple service.

Another activist from Kerala provides an example of how Dalit women are excluded from families through the slavery system. She refers to the history of slavery in Kerala, and how, only after Ayyankali, Dalits were able to make and preserve families. Ayyankali was a Dalit leader from the Pulayar community in Kerala. He led rebellions against dominant caste oppression and also established the first schools for Dalits in Kerala.⁶ One of our respondents, a Dalit feminist from Kerala, said -

“We were not allowed to make family under the slave system. I would get sold and so would the husband. So we won't see each other. So my right to make a family is denied. Making a unit, emotional bonds, thinking about future, etc. after Ayyankali, we started making families. End of 19th century we started thinking of family. Maybe beginning of 20th century we made families. So we don't have history of even a century of family bonds.”

6 Tata Sivaih, *Ayyankali: Pioneer Of Radical Revolt Against Brahmanism In Kerala*, COUNTER CURRENTS (Jan. 19, 2017), <https://countercurrents.org/2017/01/19/ayyankali-pioneer-of-radical-revolt-against-brahmanism-in-kerala/>. dominant caste

Her assertion to the right to make families echoes the pre-Civil war era prohibitions on slaves in the United States from entering into marriages or having families. Slavery rendered African-Americans into mere commodities, families could be separated at will by slave owners, with individual members of the family being sold into different households. It was only after the abolition of slavery, that former slaves could legally marry each other, and retain their families.⁷ Family law in the United States developed complex exclusionary provisions to write slaves out of the right to the family,⁸ which continues to affect black families to this date. Franklin Frazier, in his work, *The Negro Family in the United States*, argued that family instability in the Black community in the US could be traced as an impact of slavery. By denying slaves the right to marry, slavery destroyed all familial bonds, except that between a mother and a child, thus setting the template for female-headed single-parent households in the Black community,⁹ which led to increased economic and social vulnerability. While we have not encountered similar studies with respect to Dalit families, the impact of such denial is clear to see. For example, the ritualised prostitution in the form of the Devadasi systems has had intergenerational impact, and Devadasis in Karnataka have demanded reservation in education for their children, citing the persistent discrimination that they face in educational institutions.¹⁰

7 Heather Andrea Williams, *How Slavery Affected African-American Families*, NATIONAL HUMANITIES CENTER (Sept. 29, 2018, 12:55AM), <http://nationalhumanitiescenter.org/tserve/freedom/1609-1865/essays/aafamilies.htm>.

8 Margaret A. Burnham, *An Impossible Marriage: Slave Law and Family Law*, 5 LAW & INEQUALITY: A JOUR OF THEORY AND PRACTICE 187.

9 E. Franklin Frazier, *The Negro Family in the United States*, 53 (6) AMERICAN JOUR. OF SOCIOLOGY, 435, 435-438 (1948).

10 *Devadasis seek reservation for their children*, THE HINDU (Oct. 25, 2017), <https://www.thehindu.com/news/national/karnataka/devadasis-seek-reservation-for-their-children/article19914722.ece>

Any critique of the family, that is silent on the systemic alienation of Dalit women from the right to form families, is incomplete. As eloquently stated by Mary E. John:

*“Early feminists, did not, as a whole, display sufficient recognition of how differently the demand for reform might be articulated or experienced depending on the caste, class or community location.”*¹¹

However, it is also possible to risk creating a mystical egalitarianism, or demonise the Dalit man, in our conceptions of Dalit families. A child rights activist from Karnataka speaks of equality between women and men among Dalits, where women could take decisions, work independently and smoke and drink alongside men. Similarly, Dr. Kancha Illaiah Shepherd refers to a certain rough-and-ready egalitarianism that exists among Dalits. This enables Dalit women to retaliate in instances of domestic violence. According to him:

“Wife-beating is a patriarchal practice that exists among all castes. Dalit-bahujans are not exempt from this vice. But the beaten-up wife has the right to make the attack public by shouting, abusing the husband, and, if possible, by beating the husband in return. The women and the men in the community both have the right to interfere, arbitrate and take the matter to the caste panchayats.”

However, the narratives of Dalit women themselves belie this analysis. 43% of Dalit women have experienced domestic violence.¹² The most frequently cited causes for domestic violence are dowry and drunkenness, and the dominant narrative of brahminical patriarchy is why Dalit men are socialised into violence. Keeping a

11 Mary E. John, *Feminist Perspectives on Family and Marriage: A Historical View*, 40 (8) ECON. & POLITICAL WEEKLY, 712, 713 (2005).

12 DALIT WOMEN SPEAK OUT: CASTE, CLASS AND GENDER VIOLENCE IN INDIA (Aloysius Irudayam, Jayshree P. Mangubhai, Joel G. Leeed., University of Chicago Press, 2011).

woman under control thus becomes a measure of social prestige.¹³ A writer from Kerala spoke to us about the inextricable link between poverty and domestic violence. He said -

Now here (in Kerala), they (Dalit women) were daily wage workers. Men dominated then also. It was men who were mostly into drinking, and men beat their wives in those days also. It's just a misconception that Dalit women were all free because they were outside and working (earning). They used to earn and that money used to be taken by men to drink, they used to also get beaten up by the men. If you take my father, he had married thrice! Marry one woman, forsake her, marry someone else... this was how it worked. So these women were never free. Later with education, renaissance, etc., they also reformed like other families, into nuclear families and so on. It is not that in the past here woman-man relations were egalitarian as if in primitive communist era. Not even among Dalits.”

The autobiographies of Dalit women stand testimony to the ubiquity of domestic violence. Baby Kamble, in her autobiography¹⁴ speaks of the domestic violence that young married women would face in her locality. She also speaks of her own father, who would not let his wife out of the house, as it was considered a mark of great manhood to not allow women in your home to be seen outside. Baby Kamble herself, however, faced no such restrictions from her father, illustrating the possibility of patriarchal mindsets changing over time.

Dalit women experience violence as a result of the routine exercise of caste, class and patriarchal privilege by dominant caste men and women on one hand, and Dalit men on the other hand. They also face violence from brahminical patriarchy, when they

13 *Ibid.*

14 BABY KAMBLE, THE PRISONS WE BROKE (Maya Pandit ed., Orient Blackswan, 2009).

assert their rights. The violence faced by Dalit women within and outside of the home has to be therefore understood as a part of the scheme of brahminical patriarchy, encompassing all structures of exclusion and violence faced by Dalit women, perpetrated by Dalit men and dominant caste men.¹⁵

In the context of brahminical patriarchy, the family can afford a modicum of security for Dalit women - a fact that brahminical feminism can often ignore. However, while the feminist critique of the family should examine its emancipatory potential for Dalit women, it should not do so at the cost of invisibilising either the violence faced by, or the labour extracted from Dalit women.

Dalit Women and Labour

A common analysis of Dalit women's lives usually emphasizes how Dalit women have a modicum of financial independence, as they are "allowed" to go out and work, as opposed to dominant caste women who are often forced to remain within the confines of their families. Such analysis ignores how Dalit women are *forced* by economic necessity to go to work. According to a Dalit feminist from Kerala -

"In mid 90s when I entered feminism, there was a notion that lower caste women have more freedom. They can go out at night, drink, hit the husband etc. isn't this a romanticisation? When does your freedom become a freedom? Only when you know you have it and when you make a choice. You see my choicelessness as freedom, and this is the problem. If a Dalit woman is going to work, she works in construction or breaking rocks or something and comes back late then she has to go to the market at 7 pm. That is not a freedom. It's a situation that she finds herself in. That is not a choice. You cannot compare a

15 Supra Note 12.

dominant caste feminist going out as a choice with this. My father didn't want my grandmother to work after he started earning. My grandmother was also happy to be at home. She didn't say I want to work in the fields."

The relative freedom of Dalit women to participate in work outside of the home cannot be uncritically applauded, as it is rooted in necessity. What needs to be examined is the *availability* and *affordability* of the labour of Dalit women, as also the expendability of Dalit women, that is, the expectation that she will meekly capitulate to the demands of all in her life.¹⁶ A Dalit woman's labour, therefore, is not her own, but merely a necessary means to further brahminical production. Dalit women also end up occupying the most menial employment positions. An example is that of manual scavenging, where over 95% of scavengers are women.¹⁷ Human Rights Watch, in its 2014 report titled "Cleaning Human Waste: "Manual Scavenging, Caste and Discrimination in India" states that while men manual scavengers are paid in cash, women are paid in kind, which makes it more difficult for them to negotiate wages and seek employment elsewhere.¹⁸

An activist from Kerala spoke to us about the misguided notion that Dalit women have more equality -

"Dalit women mostly have agricultural labourers as husbands so they have more equality, there is an idea like that. That's not true. They have to get up early, do the women's work and then all the farm work also. There are many women like that who have suffered both."

16 Supra Note 12.

17 GITA RAMASVAMI, INDIA STINKING: MANUAL SCAVENGERS IN ANDHRA PRADESH AND THEIR WORK (Navayana Publishing House, 2005).

18 *Cleaning Human Waste: "Manual Scavenging," Caste, and Discrimination in India*, HUMAN RIGHTS WATCH (Sept. 29, 2018, 1:47 AM), https://www.hrw.org/sites/default/files/reports/india0814_ForUpload_0.pdf.

She also spoke of how, with increased mechanization of agriculture, the most menial of agricultural tasks fell to Dalit women.¹⁹ According to her -

“When we say agricultural labour, in the case of men when mechanisation came, the non-Dalits came to handle those (Machines). Dalit women do the most menial work. Whatever it is, the lowest jobs are given to Dalits. So then their capacity is also held to be like that.”

This assertion is supported by Ranjana Padhi’s work on women agricultural labour in Punjab, in which she observes that mechanisation of agriculture during the Green Revolution alienated women and Dalit farmers, as technology can do little in the face of existing class inequities.²⁰

In this context, it is important to note Baby Kamble’s assertions on the kind of work that Dalits should take up. She says -

“Now Dr. Ambedkar used to say - don’t get into jobs. Try to start some small business, which you can successfully run in your locality. Don’t start with the business of milk. Who will buy that from you? Your people don’t drink milk, and the dominant castes won’t buy milk from you. Start with something which you can manage to sell in your own community.”²¹

Baby Kamble and her husband followed Babasaheb Ambedkar’s advice and started a shop for groceries in their Mahar colony. Babasaheb Ambedkar’s exhortation can be understood simultaneously in the context of Dalit self-reliance, as well as the rejection of dominant caste appropriation of Dalit labour. In this light, Baby Kamble’s decision to run a business in the Mahar colony can be understood as a defiance of brahminical mores of

19 RANJANA PADHI, THOSE WHO DID NOT DIE: IMPACT OF AGRARIAN CRISIS ON WOMEN IN PUNJAB 37 (Sage Publications, 2012).

20 *Ibid.*

21 *Supra* Note 14, at 141.

production, and a reclamation by a Dalit woman over the fruits of her own labour.

An analysis of Dalit women's experiences in employment should not, however, omit private employment in the organised sector. Christina Thomas Dhanaraj, for example, speaks about how, similar to black women in corporate America, Dalit women do not face the same challenges as dominant-caste women in urban workplaces, and the dominant narrative of homogeneity of women's issues at the workplace needs to be challenged.²²

Dalit women and sexuality

Dalit women's sexuality is a fecund site for control, as evidenced by the prevalence of systems such as the Devadasi and the Jogini systems. There are three broad principles of brahminical patriarchy:

1. That a man, due to his superior social status, can reserve the right to give or refuse, and the woman has the duty to receive when given.
2. As the male is considered both superior to the female and the repository of caste purity, a caste-wise superior man enjoys prerogative over the body and sexuality of an oppressed caste woman, and refusal of such a man invites violence from him. A dominant caste man's use of an oppressed caste woman's body is therefore, supposed to be considered a privilege granted by him, and not to be rejected easily.
3. There is a premium based on caste identity and purity, and therefore offspring of dominant caste men and

22 Christina Thomas Dhanaraj, Dalit Women in Corporate India are being left behind, THE WIRE, (Mar. 2, 2017), <https://thewire.in/gender/Dalit-wome-corporate-india>. See also, *Quest for Equity: Urban Dalit Women Employees and Entrepreneurs*, Centre for Social Equity & Inclusion, CENTER FOR SOCIAL EQUITY AND JUSTICE (Nov. 2010), <http://csei.org.in/wp-content/uploads/2017/01/Quest-for-Equity-Urban-Dalit-Women-Employees-Entrepreneurs.pdf>.

oppressed caste women can be excommunicated from the dominant caste community. However, dominant caste men are granted latitude in matters of sexual access to women of oppressed castes.²³

What these principles translate into is that Dalit women are considered “available” for sexual exploitation and control by dominant caste men. Any analysis of sex work, therefore, cannot be divorced from a discussion of the caste implications of sex work.

Dalit feminism has long been wary of an unqualified support for sex work. For example, an activist from Kerala, speaks of her discomfort stemming from an apprehension that she herself may be identified as a sex worker:

“My problem is that I don’t want someone to think I am a sex worker. I didn’t go to drink tea with a particular sex worker because I was scared. I have made this public figure through reading, education and political articulations. With my black body I have made this. I have made this status for myself and I don’t want to discard that.”

In the framework of brahmnical patriarchy, while dominant caste women’s sexuality must be controlled to serve as vessels of caste purity, Dalit women are considered to be sexually available for the use of dominant-caste men. Seen in this context, the activist’s discomfort must be understood, not as a function of prejudice against sex work, but as a method of distancing herself from the notion of sexual availability so easily attached to Dalit women. Further, feminist engagement with sex work must be then refined to include this understanding, i.e., how does the fact that a significant percentage of sex workers are Dalit women, affect how we address sex work in our policy interventions? It is important here to refer to the report of the 76th Law Commission of India, which attempts to provide a sociological justification for the institution of sex work -

23 Supra Note 12.

“The institution of prostitution is the external manifestation of the failure of man to control his animal will set within the limits of marriage...In no period of recorded human society has any civilized society existed without the institution of marriage in some form or the other. With the help of this institution, man has tried to tame and control his brutal instincts and impulses. In this attempt there has been a fair amount of success, but not full and complete success, because man has not always remained satisfied with the company of his wife and has sometimes sought the pleasures of the flesh by straying beyond the limits of the marital wedlock, with the result that institutions like prostitution and concubinage have existed side by side with marriage since time immemorial. For the greater good of the family and society, man has tolerated these institutions as necessary social evils.”

The assertions of the 64th Law Commission, while being silent on caste, do indicate how sex work is perceived as a necessary evil required to satiate men’s untameable desire. Given how institutionalised forms of sex work have routinely exploited Dalit women, it is evident that the 76th Law Commission Report’s understanding is from the point of view of dominant caste men.

To be a recipient of dominant caste male desire is, according to the principles described above, a privilege accorded to some Dalit women. A scholar from Telangana, describes it thus -

“Dalit women are very vulnerable. If they are the conventional “beautiful” or fair, the parents are brainwashed to discourage them from sending their daughters to school. Girls who are brilliant are made Joginis. Jogini is the model of the village for Dalit women. It is a symbol of slavery. This system reinforces slavery among the Dalit community. In Hindu dominant cultures, if these women are made Joginis, the community remains

subordinate ideologically. Family and a husband are given high importance and are chaste for Indian women. Both these aspects aren't accessible to Dalit women under this system of Jogini."

The sexual control of dominant caste women is therefore, distinct and separate from that of Dalit women. Women's reform movements that have centred around dominant caste women have routinely focused on regressive institutions such as sati or child marriage, or the oppression of widows. Most such practices are aimed at restricting the sexual availability of dominant caste women, and bounding them within marriage. However, the sexual control of Dalit women is motivated by a dissimilar but connected rationale - to assure their sexual availability to dominant caste men. As described by Jenny Rowena:²⁴

"Hindu Religious traditions institutionalize the use and exploitation of Dalit Bahujan women's bodies for the sexual pleasure and entertainment of men who are placed higher than them in the caste hierarchy. This works to legitimize various other violent forms of oppression such as rape, formal and informal workplace sexual exploitation and networks of prostitution, involving Adivasi, Dalit and Bahujan women. All these firmly hold down the body of the subaltern woman within a sexualized structure of abuse, violence and exploitation."

In great contrast, the caste system approaches the dominant caste woman's body in a totally different manner. It makes her body the adored and worshipped site of caste purity. The dominant caste woman's body comes to be protected/controlled by father,

24 Jenny Rowena, *The 'dirt' in The Dirty Picture: Caste, Gender and Silk Smitha*, ROUND TABLE INDIA, (JUN. 17, 2012), https://roundtableindia.co.in/index.php?option=com_content&view=article&id=5283:the-dirt-in-the-dirty-picture-caste-gender-and-silk-smitha&catid=119:feature&Itemid=132

husband and son²⁵ under a caste Hindu morality, based on notions of chastity, virginity and docile femininity. As a consequence of such caste/gender differentiation, the sexual energies which are made to be brooked with regard to the dominant caste female body often gets unleashed onto the figure of the subaltern woman, who becomes the favoured site of male sexual pleasure, violence, entertainment and release.

While recognising the caste-based violence that underlies much of sex work, it is also essential to recognise the violence that sex workers face in their everyday lives, much of it from the State. Sex workers are constantly at risk of violence - physical, psychological, economic and sexual - from police, from clients and even from their families. Can police violence against sex workers be analysed as a caste atrocity? There are no documented cases of police violence being dealt with as caste atrocity, possibly because sex workers are rarely able to file any complaint or seek any redressal.

To understand sex work primarily in the context of livelihood and sexual autonomy is to therefore invisibilise the context of caste entirely in understanding who enters sex work and how. Conversely, a universal critique of the family does not recognise how Dalit women are systematically excluded from the familial structure. In this context, it is important to draw parallels with slavery in the United States and how slaves were legally prohibited from marrying. Slave women on plantations were, in addition to providing manual labour, also considered to be sexually available for their white masters. The unpaid manual and sexual labour of African-American women parallels the experiences of Dalit women in India, who continue to experience systemic labour and sexual exploitation.

However, a word of caution should be sounded at importing an understanding of intersectional feminism directly from the African-American experience. Among other ways, caste manifests

25 Manusmriti, Chapter 9.

itself also in control over means of knowledge production, and it is no surprise that in the subcontinent, intersectional feminism has also largely focused on the oppression of Dalit women by Dalit men. As succinctly described by Kanika S., “*can the Savarna woman talk of intersectionality without bringing up the Bahujan woman as her lab rat?*”²⁶

Can we evolve an understanding of brahminical patriarchy that looks inward, instead of at the Dalit woman as the other? Many of the respondents spoke of their frustration with the women’s movement’s inability to fully grasp or account for the experiences of Dalit women as whole human beings with dreams, aspirations and ideas, and instead, in the attempts at intersectionality, wholly caricaturise them either as the voiceless oppressed, or as born into emancipation.

26 Kanika S., *Brahmin Feminism sans Brahmin Patriarchy*, ROUNDTABLEINDIA (Feb.6, 2017), https://roundtableindia.co.in/index.php?option=com_content&view=article&id=8966:where-is-the-brahmin-patriarch-in-intersection-feminism.

LAW AND CASTE DISCRIMINATION

In India, caste was the law for centuries.¹

- K. Balagopal

Introduction

The term ‘law’ is often assumed to mean modern law or positive law; made by the legislature, interpreted by the judiciary and enforced by executive instrumentalities. However, this understanding misses out on the reality of the influence of caste on the law, which is so intense that it is often known as ‘caste as the law’.

Balagopal uses the term ‘law’ differently as opposed to modern law which has a far more decentralised, local and yet very effective means of enforcing itself, often with extreme cruelty. Babasaheb Ambedkar, said that custom (caste law) is far more effective than state made law -

“Custom is no small thing as compared to law. It is true that law is enforced by the state through its police power and custom is not. But in practice this difference is of no consequence. Custom is enforced by people far more effectively than law is by the state. This is because the

1 K. Balagopal, *Democracy and Caste in India*, REMEMBERING K. BALAGOPAL (Aug. 12, 2006), <http://balagopal.org/wp-content/uploads/2014/04/Tsundurur/Caste%20and%20Law-Balagopal%20Speech%20at%20CIEFL,%20Hyderabad%20in%20a%20seminar%20on%20Democracy%20and%20Caste%20in%20India,12%20Aug,%202006%20%20.doc>. In his speech, Balagopal goes on to say that caste even today is the law followed by many in India.

compelling force of an organized people is far greater than the compelling force of the state.”²

The state law through the constitution and other laws aims to abolish untouchability, while caste as law further crystallizes untouchability. This paradox is highlighted by Arvind Narrain, when he writes -

“When it comes to the question of caste, the caste-based rules of society enjoy the status of law, with the law of the state being consigned to being nothing more than an ineffectual commandment.”³

This understanding of caste as law is necessary to recognise the shortcomings of modern law as an instrument of change as it stands in direct opposition to the Hindu social order. Yet, when it comes to addressing and remedying caste discrimination highlighted in previous chapters, modern law has historically played an important role and continues to do so. This part of the report traces the evolution of modern law in its attempt to combat caste discrimination since the Constitution of India came into force.

The Law can, *firstly*, be assessed as an instrument of social change from the perspective of its ability to alter social reality. *Secondly*, the law can be seen as a manifestation of collective aspirations. The very text of the statute and the vocabulary used in it embodies within it a normative principle that it seeks to uphold. In other words, it sets a goal, gives direction and articulates our aspirations.

While the potential of the Law, in terms of keeping a check on violence against Dalits has to be acknowledged, it is also inevitable that any such legislation is inextricably tied to the legal machinery

2 1 BHIMRAO RAMJI AMBEDKAR, Dr. BABASAHEB AMBEDKAR WRITINGS AND SPEECES 283 (Vasant Moon ed., 1979).

3 Arvind Narrain, *What would an Ambedkarite Jurisprudence Look Like*, 29 NLSIU L. REV 5 (2017).

(Police, Judges, Lawyers, etc.) that enforces it. A legal system so thoroughly controlled by dominant castes leads to severe impediments in realising the spirit of anti-caste laws.

The purpose of this chapter is not to be prescriptive while critiquing existing laws or to offer solutions for future laws/policies but, *first*, to assess to what extent our legal framework is rooted in the lived experiences of caste discrimination as highlighted in the conversations, and *second*, to assess how have anti-caste legislation fared till date.

The conversations with our respondents reveal that discrimination can range from everyday ill-treatment⁴ and derogatory caste slurs⁵ to hate crimes, and that these forms of violence and marginalisation often evolve and differ across space and time. Discrimination, which Dalits regularly face in their day-to-day lives, can have a deeply damaging impact on their self-respect and dignity. One of the points of inquiry is the glaring absence of a private or horizontal discrimination law that penalises private discrimination in important sectors like employment, housing, education, etc.

The analytical framework for examining existing laws and judgments is based on the lived intersectional⁶ experience of discrimination highlighted in the conversations. A closer look

4 The teacher activist from Karnataka stated, “*When I was studying in high school we were friends who were from Holey, Madiga, Tigala and Idigar caste. Other men would tell their children loudly “Why do you join them, don’t you have other friends?”*”

5 The Musician activist in one of our conversations remembers his professor asking him, whether he gets stipend when he made a mistake, as a form of marking him out as a product of reservation and a non-meritorious student.

6 Intersectionality is a term coined by American civil rights advocate Kimberlé Williams Crenshaw to describe overlapping or intersecting social identities and related systems of oppression, domination, or discrimination. Intersectionality is the idea that multiple identities intersect to create a whole that is different from the component identities.

at the reality of discrimination reveals that it is not experienced through clear watertight categories, one identity at a time, but operates at the intersection of multiple axes of marginalisation.

The forms of discrimination faced by Dalit women, for instance, are significantly different from the experiences of Dalit men or dominant caste women. They might overlap or diverge at certain points, but nonetheless, have a unique character that cannot be understood as a combination or simple addition of caste and gender-based oppression. Dalit female sex workers, for example, are discriminated based on the intersection of their class, caste and gender locations. There can be several such examples. For the purposes of this report, caste has been a constant frame of analysis while the effects of its intersection with other identities like class, gender, sexual orientation, etc. are stated in the conversations; similarly, the law is examined through the same lens. It is in this context that we ask, to what extent can the law recognise these complex realities of intersectional discrimination?

Discrimination can take two forms: direct or indirect. Direct discrimination involves unfavourable treatment to a person because of a particular personal characteristic, while indirect discrimination occurs when a seemingly neutral norm or policy operates in a manner that has particularly discriminatory impact on some based on their personal characteristics of race, sex, gender, caste, sexual orientation, disability, religion, age, etc. Furthermore, since the report's primary focus is on negative discrimination, the debate around positive discrimination or affirmative action is outside the scope of this chapter.

As our respondent activist from Karnataka gives an example of indirect discrimination -

“We have a Professor friend. He is dark in complexion. His daughter and son who are journalists were looking for a house for rent. The owners agreed when the professor's children went and gave the advance. As soon as the

owners saw the professor they refused to give the house and they did not mention any reason. This was due to the dark complexion and linking it to caste.”

Here we see an example of indirect discrimination, on grounds of caste but through skin colour, how does the law then take this into account?

The laws that are going to be covered are the constitutional provisions pertinent to caste discrimination, the Protection of Civil Rights Act, 1955, Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 with subsequent amendments.

Constitutional Scheme

The constituent assembly understood the significance of eliminating the pernicious disadvantages ‘untouchables’ faced due to the caste system. Prohibition of caste discrimination had to be a priority, to ensure social justice and realise the transformative potential of the Constitution.

In line with the principle of Social Justice enshrined in the preamble, the Constitution prohibits discrimination against any citizen by the state under Article 15 (1) and against any citizen by any person under article 15 (2). Article 17 abolishes the practice of untouchability, while Article 23 prohibits trafficking in human beings and forced labour. The reason Article 23 is included despite the absence of the word caste or untouchability in the text of the Article, is that bonded labour is intricately linked to caste domination.

Article 15 (1) reads -

‘The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them’ (Emphasis mine)

The question of interest is: does this article as per its judicial interpretation cover intersectional discrimination? If not, can it be constructed within the rules of constitutional interpretation to include instances of Intersectional Discrimination?

Bhatia clarifies the question in the form of a hypothetical example: a State institution that fails to hire only *Dalit women*, but hires both non-Dalit women and Dalit men on parity with everyone else does not discriminate on the basis of caste (it hires Dalits) or sex (it hires non-Dalit women), but upon a *combination* of both of them.⁷ Is this a violation of Article 15?

Judicial trends show the use of the phrase ‘*on grounds only*’ as a way of excluding not only Intersectional discrimination but also reveal the absence of recognition of any concept of discrimination on more than one ground.⁸ For example, a state instrumentality recruits based on two criteria, caste and work experience; as this is not discrimination ‘*on grounds only*’ of caste and is coupled with other considerations it escapes the scope of Article 15.

In *Mahadeb v. Dr. BB Sen*⁹ the Calcutta High Court examined whether Order 25 Rule 1(3) of the Civil Procedure Code is discriminatory on the ground of ‘Sex’ as per Article 15(1). The Rule holds that the court had the power to demand monetary security from the plaintiff who happened to be a woman who did not possess sufficient immovable property in India.

The Court held that the rule was not violative of the Article for the reason that it did not discriminate only on the ground of

7 Gautan Bhatia, *Reading Article 15: Non-Discrimination and the Question of Intersectionality*, INDIAN CON LAW AND PHILOSOPHY (Sept. 30, 2013), <https://indconlawphil.wordpress.com/2013/09/30/reading-article-15-non-discrimination-and-the-question-of-inter-sectionality/>.

8 Shreya Atrey, *Through the Looking Glass of Intersectionality: Making Sense of Indian Discrimination Jurisprudence under Article 15*, 16 EQUAL RIGHTS REV. 160, 164 (2016).

9 *Mahadeb v. Dr. BB Sen*, AIR 1951 Cal 563.

‘sex’ but also on immovable property, and hence Article 15(1) did not strike down the provision. Mukharji J. held -

“The word “only” in [Article 15(1)] is of great importance & significance which should not be missed. The impugned law must be shown to discriminate because of sex alone. If other factors in addition to sex come into play in making the discriminatory law, then such discrimination does not, in my judgment, come within the provision of Article 15(1) of the Constitution.”

The Calcutta High Court in *Anjali Roy v. State of West Bengal*¹⁰ held a scheme restricting the admission of women into a male-only honours college as not constituting discrimination under Article 15(1). The Court held -

“What the Article forbids is discrimination and discrimination based solely on all or any of the grounds mentioned in the Article.... the discrimination which is forbidden is only such discrimination as is based solely on the ground that a person belongs to a particular race or caste or professes a particular religion or was born at a particular place or is of a particular sex and on no other ground. A discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.”

It is important to bear in mind, that the consequence of the scheme of segregation, retained the most reputed and established institutions for men, leaving the lesser established institutions for women.¹¹ Paradoxically, the scheme was interpreted within the meaning of ‘special provisions for women’ under Article 15(3) and not as discrimination.

10 *Anjali Roy v. State of West Bengal*, AIR 1952 Cal 825.

11 KALPANA KANNIBIRAN, *TOOLS OF JUSTICE: NON-DISCRIMINATION AND THE INDIAN CONSTITUTION* 339 (Routledge, 2013).

The *Nergesh Meerza*¹² case, which is often lauded as a pro-women rights case, was severely deficient in its interpretation of Article 15(1), in that it continued the trend of narrowly interpreting the Article to exclude discrimination on multiple grounds including prohibited grounds. Regulations 46 and 47 of the Air India Employees Service Regulations (Service Regulations) were challenged by the petitioners (Air hostesses) on grounds of violating Article 14 as the regulations were argued to be arbitrary and having no intelligible differentia between similarly situated classes of air hostesses and male cabin crew. The same regulations were also argued to be violative of Article 15(1) as they discriminated on the ground of ‘sex’.

Regulation 46 held that the retirement age for male cabin crew was 58 years, while female cabin crew were required to retire at 35 years, *or* upon marriage (if they married within four years of joining the service), *or* on their first pregnancy, *whichever* occurred earlier. Regulation 47 accorded the Managing Director the discretion to extend the age of retirement.

The Court found the regulations relating to pregnancy and age to be violative of Article 14, but upheld the condition of termination upon marriage within four years of service on grounds of family planning. Yet, when it came to Article 15(1), the court held that -

*“What Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations.”*¹³

The Court simply understood considerations like marital status, age and pregnancy as considerations incidental, and not integral to the category of ‘sex’ as a prohibited ground of discrimination. What it failed to do, was to ask the question, what was the

12 *Air India v. Nergesh Meerza*, 1982 SCR (1) 438.

13 *Ibid.*

basis for the initial classification into cabin crew (male) and Air Hostesses (female), upon which the different conditions of service were superimposed? Despite the fact that sex was directly used as a ground to discriminate; the court held that the regulations were not hit by Article 15(1).¹⁴

These judgments reflect an understanding of ‘sex’, as a ground that is not located within its social context, and in turn result in a visible failure to understand the discrimination inherent to ‘gender roles’. Although the case laws mentioned have to do with discrimination on the ground of ‘sex’, these interpretations are precedents, and would very likely be applied if courts are faced with a matter concerning caste discrimination under Article 15(1).

Therefore, the judicial trend shows¹⁵ that in the status quo, discrimination under Article 15 precludes both intersectional and multi-grounded discrimination that includes one or more of the prohibited grounds. In the absence of a judgment altering the current position, we are left with a law that does not address indirect discrimination and does not take into account the lived reality of caste discrimination.¹⁶

However, Bhatia¹⁷ and Atrey¹⁸ have argued that such an understanding of the term ‘*on grounds only*’ is not supported by any theory of constitutional interpretation, on the contrary they argue for an interpretation that is inclusive of the various forms of discriminations described earlier.

14 Gautam Bhatia, *Sex Discrimination and the Constitution – VI: The Discontents of Air India v. Nargesh Mirza*, INDIAN CON LAW AND PHILOSOPHY (Aug. 12, 2015), <https://indconlawphil.wordpress.com/2015/08/12/sex-discrimination-and-the-constitution-vi-the-discontents-of-air-india-v-nargesh-mirza/>.

15 Atrey, *supra* note 8.

16 Instances of intersectional discriminations stated by the interviewees to be included.

17 Bhatia, *supra* note 7.

18 Atrey, *supra* note 8.

Atrey argued that -

“The Constitutional Assembly Debates demonstrates that there was nothing in the discussions which construes Article 15(1) as either restricting the number of grounds in a claim, or considers it to be a closed list. In fact, there is no discussion on the usage or implication of the word “only” in the CAD. However, there are signs that a causative understanding of “on grounds only of” is supported in the CAD. The drafting history of Article 15 indicates that a drafting suggestion to insert “on mere grounds of” (instead of “on grounds only of”) was not opposed (this was not put to vote since it was not put forward as an amendment.”¹⁹

The causative understanding of the term is that it is not only necessary to show a causal link between the wrongful act and its discriminatory consequence but that the act and consequence flow from certain kinds of identities recognised as “grounds” or “personal characteristics.”²⁰ However, the intent of the person discriminating is irrelevant.

Kannabiran was the first to make the textual argument that -

“A re-examination of Article 15(1) leads us to conclude that the phrase “or any of them” enables a consideration of intersectionality in non-discrimination jurisprudence that need not anymore be limited to one of the stated indices alone. Article 15(1) could also be interpreted to mean that discrimination is prohibited on a single ground or on a combination of grounds, listed in the clause and not listed.”²¹

19 Atrey, *supra* note 8, at 180.

20 TARUNAB KHAITAN, *A THEORY OF DISCRIMINATION LAW* 159-162 (Oxford University Press, 2015).

21 KANNIBIRAN, *supra* note 11, at 461.

The same opinion is echoed by Bhatia, who argues that the term “*or any of them*” is used after “*only*” to mitigate two situations: discrimination on the basis of a prohibited category combined with a non-prohibited category, which therefore escapes the “*only*” prohibition; and simultaneous discrimination on the basis of two prohibited categories that also therefore escapes the “*only*” prohibition.²²

Thus, one can see how Article 15(1) and (2) can be interpreted to include intersectional discrimination, through internal aids like the text of the article itself and external aids like the Constituent Assembly debates.

Article 15(2) reads -

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

(a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 15(2) is a horizontally applicable right against discrimination between citizens. The problem of Intersectionality persists in this clause as well, however, here the focus is not so much on the forms or grounds of discriminations, but to define the arena or ambit in which any discrimination by a private person against a citizen is prohibited. This arena can loosely be understood as the public space.

A closer look at the terms mentioned in clause (a) and (b) is warranted, to ascertain the contours of the arena in which such discrimination is prohibited. In clause (a), the terms ‘public restaurants’ and ‘hotel’ are clear-cut and not subject to any

²² Bhatia, *supra* note 7.

confusion as to the meaning of the term. The meaning of the term ‘shop’ was brought up by Shri S. Nagappa in the constituent assembly debates, to which Babasaheb Ambedkar responded by stating -

*“To define the word ‘shop’ in the most generic term one can think of is to state that ‘shop’ is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service... I should like to point out therefore that the word ‘shop’ used here is not used in the limited sense of permitting entry. I am using it in a generic sense. It is used in the larger sense of requiring the services if the terms of service are agreed to.”*²³

This wide interpretation of the word ‘shop’ can certainly be useful in expanding the ambit of Article 15(2), to capture caste discrimination in important areas, like education, housing, etc. This point will be further elaborated, subsequently.

The term ‘*places of public entertainment*’ can be ascertained by looking at subsequent and previous enactments to the drafting of the article. Therefore, the Protection of Civil Rights act, 1955 (erstwhile Untouchability (offences) Act), states that a place of public entertainment includes any place to which the public are admitted and in which an entertainment is provided or held. “Entertainment” includes any exhibition, performance, game, sport and any other form of amusement.²⁴

The terms ‘*use of wells, tanks, bathing ghats*’ in clause (b), as Ambedkar stated,²⁵ is inclusive of rivers, streams, canals and other water sources. The meaning of term ‘*places of public resort*’ has divergence of judicial opinion. One view is that, a place is of public resort if members of the public are, *in fact*, allowed access

23 7 CONSTITUENT ASSEMBLY OF INDIA DEBATES PROCEEDINGS (29th November 1948).

24 Section 2(c) of The Protection of Civil Rights Act, 1955.

25 *Supra* note 23.

irrespective of any legal right to be there.²⁶ For instance, a private field where the public was invited to watch some races, a cinema house, a public park, a private house in which a public auction is held.²⁷ The narrower view is that a place is of public resort only if the public has a legal right to go there.

The term ‘*places of public resort*’ is not exhaustively defined in the constitution, and hence, Basu argues that a narrower sense of places where the public have a legal right to go is warranted, excluding clubs, cinemas, and other places of public entertainment, which do not fall under the meaning of this term, and were hence stated separately in clause (a).

Places of public worship are excluded from the meaning of the term public resort for the same reason, with separate provisions for them in Articles 25(2)(b) and 26(b).

Ambedkar clearly defined what makes a space public -

*“I should like to draw his attention to the fact that the word ‘public’ is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.”*²⁸

The dedication of property to the use of the general public would entail either a complete dedication, when the owner of the property completely divests himself of ownership and vests the property in some religious, charitable social institution or object. On the other hand, a partial dedication of property would be for a certain specified purpose.²⁹ These, in general terms, are the contours of what can be understood as public space under Article 15(2).

26 *Liberty Cinema v. Corporation of Calcutta*, AIR 1959 Cal 45.

27 3 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, Volume II, 1789 (8th ed., Lexis Nexis, 2011).

28 *Supra* note 23.

29 *Supra* note 27, at 1791.

Article 15(2) does not account for the fact that the private right of contract and association protects some of the most insidious forms of caste discrimination. Exclusionary covenants then become a substitute for official state-perpetrated discrimination or other direct forms of oppression that are no longer permitted by law.³⁰

As our transgender friend from Telangana explains in his conversation with us -

“There are a huge number of things that are discrimination. But they are seen as less important than physical violence. You can be denied a job in neutral way. Like trans people and other marginalised communities are denied like this. If you see someone else with the same qualification they don’t have that experience. It doesn’t come in terms of violence, but it ends up depriving you of a livelihood which could be seen as more serious than one might of beating up.”

The same stands true for Dalits as well.

Empirical evidence shows that discrimination against Dalits in housing, employment and to some extent in education, is rampant. The fact that the law allows discrimination to go unchecked in these sectors has wide-ranging implications, other than the obvious truth that caste discrimination is itself morally reprehensible. These practices and policies end up contributing to structures of inequality. Many observers have argued that housing discrimination (renting and buying property) is strongly contributing to the segregation and subsequent ghettoisation of marginalised communities.

Discrimination that landlords practice, is often based on stereotypes closely linked with caste. Our activist respondent from Karnataka while talking about her own experience stated-

30 Gautam Bhatia, *Horizontal Discrimination and Article 15(2) of the Indian Constitution: A Transformative Approach*, 11 ASIAN JOUR. OF COMPARATIVE LAW 87, 87-89 (2016).

“In our house everybody comes and goes. Our owner told me that if AK people come they bring bed bugs with them, because they are very dirty. AK means Adi Karnataka (Dalits) and the owner is a Gowda (non-Dalit). In situations like this I could not assert that I too was Dalit nor could tell her about her mistake.”

Further, an empirical study³¹ by the Indian Institute of Dalit Studies gives us indication of the disadvantages faced by Dalits and Muslims in renting a home.³² Several instances of discrimination in employment, on prohibited grounds, have been reported at private companies.³³

The question is, then, to what extent can Article 15(2) cover acts and policies of discrimination on prohibited grounds, in these essential sectors like housing, education and employment? With private entities replacing the state’s diminishing role in all three sectors, this question is more relevant today than ever. In *Indian Medical Association v. Union of India*,³⁴ the Army College of Medical Sciences (ACMS), located in Delhi had a policy of admitting only students who are wards or children of current or former army personnel and widows of army personnel. The institution was funded purely from regimental funds, which have

31 Sukhadeo Thorat, Anuradha Banerjee, Vinod K Mishra, Firdaus Rizvi, *Urban Rental Housing Market: Caste and Religion Matters in Access*, ECON. & POLITICAL WEEKLY (June 27th, 2015), Vol. I, Nos 26 & 27.

32 The telephonic audit had a total of 1469 home-seekers, 493 each bearing dominant-caste Hindu, Dalit and Muslim names. While not one of the 493 dominant-caste home-seekers received a negative response, about 18% of Dalits and 31% of Muslims faced outright rejection, found the study. Together with those receiving either a negative response or a positive one with conditions attached, worked out to 41% in the case of Dalits, and around 66% for Muslims.

33 Abhishek Sudhir, *Religious apartheid: India has no law to stop private sector from discriminating on grounds of faith*, SCROLL (Jun. 4th, 2015), <https://scroll.in/article/731392/religious-apartheid-india-has-no-law-to-stop-private-sector-from-discriminating-on-grounds-of-faith>.

34 *Indian Medical Association v. Union of India*, (2011) 7 SCC 179.

been recognised to be private funds and not that of the Indian Army.

The question the court faced was: does a private, non-minority, unaided professional educational institution have the right to define a social group and admit students from only those social groups, thereby excluding all other students?

The Court invoked the applicability of Article 15(2) by holding an educational institution to come within the definition of “shops”, by alluding to Babasaheb Ambedkar’s generic use of the term in the Constituent Assembly debates as stated earlier ‘*a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service.*’ Ambedkar was asked whether “shop” included a doctor and a lawyer’s chambers. His answer: “*it will include anybody who offers his services.*”

Thus, the court held -

“In as much as education, is an occupation under sub-clause (g) of clause (1) of Article 19, and it is a service that is offered for a fee that takes care of all the expenses of the educational institution in rendering that service, plus a reasonable surplus, and is offered to all those amongst the general public, who are otherwise qualified, then such educational institutions would also be subject to the discipline of clause (2) of Article 15. In this regard, the purport of the above exposition of clause (2) of Article 15, when read in the context of egalitarian jurisprudence inherent in Articles 14, 15, 16 and Article 38, and read with our national aspirations of establishing a society in which Equality of status and opportunity, and Justice, social, economic and political, would imply that the private sector which offers such facilities ought not to be conducting their affairs in a manner which promote existing discriminations and disadvantages.”³⁵

35 *Ibid.*

If “shop” merely embodies the abstract market, then the reach of Article 15(2) extends to private economic market transactions generally, and not just the business of education. This argument gives Article 15(2) the potential to address private discrimination in these sectors.³⁶

Yet, the *Zoroastrian Cooperative Housing Society* case³⁷ seems to be standing in the way of expanding the scope of Article 15(2). In this case the Supreme Court upheld the by-laws of a Parsi Housing Society that prohibited selling property to non-Parsis. It did so by invoking the Parsis’ fundamental right to the freedom of association, their rights as a minority to preserve their culture, and by refusing to apply constitutional principles to private contractual acts.

The problem with the judgment is not so much in the outcome of the case, as the strongest argument in favour of the covenant is grounded in Article 29 (protection of interests of minorities) and rightly so. This, however, is reconcilable with the *IMA* judgment, in that prohibition on private discrimination and protection of minority culture and rights are mutually exclusive. The problematic part of the judgment is when the court justified the exclusionary covenant based on Article 19(1)(c) of the Constitution - the fundamental freedom to associate. The court held that -

“Normally, the membership in a society created with the object of creation of funds to be lent to its members, was to be confined to members of the same tribe, class, caste or occupation... running right through these enactments [is the] concept of restricted membership in a co-operative society.... there should be a bond of common habits and common usage among the members which should strengthen their neighbourly feelings, their loyal adherence to the will of the society expressed by the

36 Bhatia, *supra* note 30.

37 *Zoroastrian Co-operative Housing Society v. District Registrar*, AIR 2005 SC 2306

committee's orders and their unselfish and harmonious working together. In India, this bond was most frequently found in a community or caste or groups like cultivators of a village."³⁸

Bhatia argues that this reasoning is problematic for many reasons, not least because one of the whole purposes of the Constitution was to ensure (through provisions such as Article 15) that ascriptive identities such as caste, responsible for some of the worst forms of discrimination in Indian history, were to be made legally irrelevant as far as possible.³⁹ The court further disallowed a challenge to the private contract based on a violation of a Fundamental Right via Section 23 of the Indian Contract Act which holds a contract void if the consideration and object of the contract is illegal or opposed to public policy.

The Court buttressed this claim with a repetition of Article 19(1)(c) (freedom of association), and furthermore, stressed the importance of respecting contracts freely and voluntarily entered into by competent adult individuals. In other words, it held that there was a separate public policy interest in upholding agreements freely and voluntarily entered into. Part of the Court's public policy arguments, indeed, appear to turn upon the unconstitutionality of requiring persons to "associate" with others that they do not want to associate with, which – according to the Court – would have been the outcome had the exclusionary covenant been left unenforced.

As of now, the position in the *Zoroastrian Cooperative Housing Society* case is the current position of Law. It is true that the

38 *Ibid.*

39 Gautam Bhatia, *Exclusionary Covenants and the Constitution – IV: Article 15(2), IMA v. UOI, and the Constitutional Case against Racially/Religiously Restrictive Covenants*, INDIAN CON LAW AND PHILOSOPHY (Jan 14, 2014), <https://indconlawphil.wordpress.com/2014/01/14/exclusionary-covenants-and-the-constitution-iv-article-152-ima-v-uoi-and-the-constitutional-case-against-raciallyreligiously-restrictive-covenants>.

constitutional courts have not yet clarified the position on this but it is clear that there is great potential for Article 15 to cover intersectional and indirect private forms of discrimination. Unfortunately, very few litigants have approached Constitutional courts for remedies against private persons under Article 15. Most instances of discrimination are a result of acts and not written policy, hence, proving and establishing the very fact of discrimination becomes difficult.

Article 17 reads -

“Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.”

The absence of a definition leaves the word ‘untouchability’ vague, deliberately so, because the words ‘any form’ keeps the ambit of the prohibition as wide as possible. On the other hand, the width of the prohibition is curtailed by the latter part of the Article, which leaves the power of sanction to the legislator. In other words, the legislature is responsible to penalise specific acts of untouchability.

‘Untouchability’ as per Article 17 was defined as any disability imposed upon a person simply on ground that he is born in a low caste.⁴⁰ This has to not be understood in its literal or grammatical sense, but the practices as it developed historically in India.⁴¹

The word untouchability would not comprehend grounds of temporary uncleanliness or physical disabilities such as contagious diseases which render one person untouchable to another, but disabilities that has been imposed by the social system in India.⁴²

During the drafting discussions of Article 17, the members wanted to make it clear whether the intention was to abolish

40 Devarajiah v. Padmanna, AIR 1958 Mys 84.

41 Jai Singh v. Union of India, AIR 1993 Raj 177.

42 *Supra* note 40.

untouchability among Hindus, Christians and other communities or whether it also applied to inter-communal untouchability. It was generally agreed that the purpose of the article was to abolish untouchability in all its forms - both intra and inter-community. This Article is not only enforceable against the state but also private individuals.

Untouchability is not founded on *Mens Rea*,⁴³ and the victim under this Article need not necessarily be restricted to belonging to a 'Schedule Caste' as per Article 341 of the constitution.

The state tends to define the term 'untouchability' by pointing to well-known practices of untouchability instead of demarcating specific boundaries, leaving it to the judge determine the mental framework of the accused, i.e. whether untouchability is part of it or not.

Article 17 of the Constitution abolishes untouchability, practices and forms of which have been laid down clearly in subsequent legislations dealing specifically with caste discrimination and atrocities.

Article 23 reads -

Prohibition of traffic in human beings and forced labour –

Traffic in human beings and 'begar' and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

This, just like Articles 15 and 17, is enforceable against private persons. The reason being that, just like discrimination and untouchability, often those that practice forced labour are private persons.

Article 23 does not have any direct reference to caste, yet it is included in this report because the practice of begar was a symptom of the larger disease of the Hindu caste order whereby

43 State of Karnataka v. Appa Balu, AIR 1993 SC 1126.

individuals were made to work without payment. The caste order is not only morally reprehensible because it creates a division of labourers but also that it ensures that ‘undesirable’ labour is carried out by Dalits only. This ‘undesirable’ labour includes manual scavenging, sweeping or cleaning streets, waste-picking, clearing carcasses of dead animals and so on, without which the village, town or city cannot function.

This labour is also undesirable because of the low wages it results in and a relationship of complete dependence on the employer. The respondent scholar from Telangana pointed out that-

“Most Dalits are dependent on agriculture, and that even within agriculture, a lot of the oppressed castes are bonded labourers. They are fully skilled in the art of agriculture, which is also a field-based profession, which includes knowledge of agriculture and making tools like, plough, leather tools, etc. Thus, agriculture and its tools, especially made from leather, are strongly related.”

However, such labour is necessary for the functioning of society and hence the Hindu order thrives on this forced labour. One of the most insidious forms of such labour is manual scavenging. This was not explicitly prohibited under Article 23 till the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted. This was enacted in pursuance of the object of Article 23, but was largely ineffective and problematic, as it exclusively focused on criminalizing both the practice of manual scavenging and the construction and maintenance of dry latrines alone. The act ignored the desperate economic circumstances manual scavengers found themselves in, and had a myopic view of the practice itself. Further, prosecution under the act was contingent on previous sanction of the Executive Authority and only those persons could complain that were specially authorised in this behalf by the Executive Authority. Therefore, no convictions were reported under this Act in its entire history.

Some of these lacunae were subsequently remedied by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. The preamble of the act acknowledged that connection between Manual scavenging and the ‘highly iniquitous caste system’ and this legislation aimed to ‘correct the historic injustice and indignity suffered by the manual scavengers’.

The 2013 Act expanded the definition of manual scavenger to include, manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track before the excreta fully decomposes. The term ‘insanitary latrine’ that has a broader meaning replaced the term ‘dry latrine.’

The offence of employing a person for hazardous cleaning of a septic tank or sewer is punishable with imprisonment which may go up to two years and a fine and employing a person for manual scavenging or constructing an insanitary latrine is punishable with a year’s imprisonment or a fine. All offences under the act are cognizable and non-bailable and there is no requirement of any sanction by any authority before prosecution.

Further, the Act includes rehabilitative measures for manual scavengers and various welfare provisions whereby the local authority should provide a residential plot and financial assistance for house construction, scholarship for the children of manual scavengers, one-time cash assistance and vocational training. The object of the act seems to encourage manual scavengers to leave their current work and pursue alternative work.

One of the recurring and most prominent concerns of the activists in the conversations is the perpetuation of caste discrimination by private persons. The constitutional scheme addresses this through Articles 15, 17 and 23, which forms what Gautam Bhatia calls the golden triangle of the constitution. He explains -

“Each of these articles protects the individual not against the State, but against other individuals, and against communities. And at the heart of the triangle lies Ambedkar’s revolutionary insight: that the denial of human dignity, both material and symbolic, is caused not only by public power, but by private power as well – and the task of constitutionalism is not limited to satisfactorily regulating public power in service of liberty, but extends to positively guaranteeing human freedom even against the excesses of private power.”⁴⁴

Other than the constitution, the legislature has enacted specific laws that focus on caste discrimination. First, we will be looking at the Untouchability (Offences) Act, 1955 that was changed to Protection of Civil Rights Act, in 1976 and then the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989, including the subsequent amendments of the Act.

Laws Specific to Caste Discrimination and Atrocities

The first central legislation by the parliament penalising caste discrimination as per the promise of Article 17 was the Untouchability (Offences) Act, 1955 that was renamed to the Protection of Civil Rights Act, 1955 (*hereinafter* referred to as PCRA) through an amendment in 1976. Subsequently, due to several shortcomings of the Act, The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted (*hereinafter* referred to as ‘PoA Act’ or ‘Atrocities Act’). In this section, these two legislations are examined.

44 Gautam Bhatia, *Why the Uniquely Revolutionary Potential of Ambedkar's Constitution Remains Untapped: The Heart of Ambedkar's Constitution has Remained Relatively Unnoticed and Unexamined by the Courts*, SCROLL (Apr. 14, 2016, 8:00 AM), <https://scroll.in/article/806606/why-the-uniquely-revolutionary-potential-of-ambedkars-constitution-remains-untapped>.

As these legislations are counter-majoritarian and are in direct opposition to the Hindu caste order, there is strong resistance to ensure the realisation of these laws. This part's focus is primarily on how anti-caste laws have been subverted through judicial interpretation and the reluctance to enforce these laws by the executive.

Legal Meaning of the Term 'Scheduled Caste'

Before we proceed to examine the two legislations, ascertaining the meaning of the term 'Scheduled Caste', and its inclusions and exclusions become important for both the PCRA and the Atrocities Act. More so, for the Atrocities Act, as Section 3 reveals, only those persons that are not SC/ST can be accused under the Act and that only SC/ST persons can be victims under it.

The text of the PCRA is ambiguous about who can be the accused and who can be the victim with the exception of section 12. For instance, the then Home Minister, Mr. GB Pant, stated during the debates on the Untouchability Offences Bill -

“This Bill does not apply to Hindus alone. It applies to all – we have, however, enlarged the scope of this act. It will apply not only to Scheduled Castes, but also probably to Christians in the South who are not allowed to enter Churches by those who consider themselves belonging to higher classes. There are certain Muslims who are treated in the same manner by the followers of Islam. They will have the benefit of the Provision.”⁴⁵

However, some judgments under the Act, reveal a contrary position to the above said position taken by the then Home Minister, Mr. GB Pant. The uncertainty with respect to this question has not been cleared till date.

45 LOK SABHA DEBATES (April 27, 1955) 6545-6672, in Kshirsagar, 120.

Section 2(db) of the PCRA, 1955 and Section 2(c) of the PoA Act, 1989, has the definition, namely, the term Scheduled Caste has the meaning assigned to it in Article 366 (24) of the Constitution. Clause (24) of Article 366 of the Constitution states that the term Scheduled Caste such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution.

Article 341(1) gives the President the power with respect to any State or Union territory, after consultation with the Governor (in the case of a state) by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall be deemed to be Scheduled Castes in relation to that State or Union territory. While sub-section (2) gives the Parliament power to include or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The term Schedule Caste referred above has to be understood as a purely legal category. In that sense the Schedule Caste is a modern creation. The same fact was echoed in *State of Kerala v. Hari Kishan Singh*,⁴⁶ wherein the court held that Schedule Castes are no independent caste in the Hindu fold but a mosaic of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowest and need of massive state aid and notified as such by President.⁴⁷

The Supreme Court, in *Bhaiya Lal*,⁴⁸ held that the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to part of the state where he is satisfied that the examination of the social and

46 AIR 1976 SC 490.

47 *Ibid.*

48 *Bhaiya Lal v. Hari Kishan Singh*, AIR 1965 SC 1557.

education backwardness of the race, caste or tribe justifies such specification.⁴⁹

As Article 341 (2) clearly states, the inclusion of castes or tribes, notified as per the Presidential Public Notification has to be accepted at face value and that neither the courts nor other authority, except the President and parliament, have the jurisdiction to add or delete from that List.

In *Marrichandra v. Dean, SGS Medical College*,⁵⁰ the Supreme Court has held that the phrase “In relation to the state” in Article 341 (1) means that status of the SC and ST is provincial in character and not all India.⁵¹

Religious conversion and the Scheduled Caste Category

The Constitution (Scheduled Castes) Order (Amendment) Act, 1990, holds that a person professing Buddhism can continue be a member of SC, and all those that converted to Buddhism will be treated as a member of the SC in the eyes of the law.⁵²

In case a member of the Scheduled Caste converts into any religion other than what is in law considered Hindu, and converts to Christianity, Judaism, Zoroastrianism or Islam they will legally cease to belong to the Scheduled Caste category.

This issue came up in the case of *S. Rajagopal v. C.M. Arumugam and others*,⁵³ wherein a candidate’s nomination papers for election to Legislative assembly of Mysore for an SC reserved seat was challenged on the grounds that, on the date of voting, the candidate in question was not a member of the Schedule Caste belonging to the Adi Dravida caste as he had converted to Christianity.

49 T. R. NAVAL, LEGALLY COMBINING ATROCITIES ON SCHEDULED CASTES AND SCHEDULED TRIBES (Concept Publishing Company, 2004).

50 *Marrichandra v. Dean, SGS Medical College*, (1990) 3 SCC 130.

51 T. R. NAVAL, *supra* note 49.

52 T. R. NAVAL, *supra* note 49, at 59.

53 *S. Rajagopal v. C.M. Arumugam and others*, A.I.R 1967 S.C 101.

The Supreme Court agreed with the High Court in holding that when the appellant embraced Christianity in 1949, he lost membership of the Adi Dravida caste. It further held -

“The Christian religion does not recognise any caste classifications. All Christians are treated as equals and there is no distinction between one Christian and another of the type that is recognised between members of different castes belonging to Hindu religion. In fact, caste system prevails only amongst Hindus or possibly in some religions closely allied to the Hindu religion, like Sikhism. Christianity is prevalent not only in India, but also almost all over the world and nowhere does Christianity recognise caste division. The tenets of Christianity militate against persons Professing Christian faith being divided or discriminated on the basis of any such classification as the caste, system. It must, therefore, be held that, when the appellant go, converted to Christianity in 1949, he ceased to belong to the Adi Dravida caste.”⁵⁴

The exclusion of Christians and Muslim Dalits, despite extensive evidence of atrocities against them, remains a major lacuna in the atrocities law till today. The accused have, on different occasions, used this as an argument to prevent the application of the Atrocities Act. For instance, in the *Khairlanji massacre case*,⁵⁵ the accused had argued that the Atrocities Act was inapplicable as the victims in the case were Christians. In this particular case, the accused could not fulfill the burden of proving that the victims were Christians, and hence, the court upheld the applicability of the Atrocities Act. The exclusion of entire Dalit Christian and Muslim communities clearly defeats the purpose of laws that aim to eradicate caste discrimination.

54 *Ibid.*

55 Central Bureau of Investigation v. Sakru Mahagu Binjewar, Criminal Confirmation Case No. 4/2008.

The effect of Marriage with non-Scheduled Caste and non-Scheduled Tribe Person

In *Valsamma Paul v. Cochin University and Others*,⁵⁶ the question of whether a woman marrying a SC/ST (or vice versa) or OBC citizen or one transplanted by adoption or any other voluntary act, ipso facto becomes entitled to claim reservation under Articles 15 (4) and 16 (4) was raised.

The Court observed in the negative, holding that provisions for advancement of socially and educationally backward class citizens cannot be diluted by including candidates that have married into the community, and that it would be tantamount to making a mockery of the constitutional exercise of identification.⁵⁷ The current position is that neither marriage nor adoption can confer or take away the SC/ST status.⁵⁸

One of the ways of denying victims of caste discrimination recourse to the anti-caste law is by excluding them from the definition of Scheduled Caste itself. This is best exemplified by Rohith Vemula's institutional murder. Rohith was an activist with the Ambedkar Students' Association (ASA), he committed suicide on 17th January 2016 following a controversy that had begun in July 2015, when the university reportedly stopped paying him a fellowship of Rupees 25,000 per month because an enquiry found he had been "raising issues under the banner of Ambedkar Students Association."⁵⁹

Keeping aside the question of whether there was abetment by those accused, the Andhra Pradesh Government decided to cancel Rohith's Scheduled Caste certificate. This meant that the

56 *Vasamma Paul v. Cochin University and Others*, AIR 1996 SC 1011

57 *Ibid.*

58 T. R. NAVAL, *supra note* 49, at 63.

59 Sreenivas Janyala, *Behind Rohit Vemula's Suicide: How Hyderabad Central University Showed him the Door*, THE INDIAN EXPRESS (Jan. 20, 2016, 12:31), <https://indianexpress.com/article/india/india-news-india/behind-dalit-student-suicide-how-his-university-campus-showed-him-the-door/>.

Atrocities Act could not be invoked. The reasons given were that Rohith's father came from an OBC community, while it was conceded that Rohith's mother, Radhika Vemula, fell under the Scheduled Caste category. Additionally, since Radhika Vemula was adopted by a family from an OBC community, it raised questions on what would be the caste of a child, whose father belonged to a dominant caste community and the mother from Scheduled Caste community?

The Andhra Pradesh government clearly ignored the Supreme Court's decision in *Rameshbhai Dabhai Naika v. State of Gujarat*,⁶⁰ in which the court held that in such cases the answer to the question would depend upon the circumstances in which the child was brought up and that the same was primarily one of facts. In this case, the fact that Rohith's father had abandoned him and his family and that the OBC family that had adopted them practiced 'untouchability' against them were not taken into account.

The question of which community falls under the Scheduled Caste category is a deeply political and contentious issue, especially so, when it comes to claiming benefits from policies of positive discrimination by the state. Rohith Vemula's case serves as an example of how exclusion from this category can be a means to deny the application of anti-caste legislation.

Protection of Civil Rights Act, 1955

The object of the Act is to prescribe punishment for the propagation and practice of "untouchability" for the enforcement of any disability arising there from for matters connected therewith.

The Act is a short one, containing a total of 17 sections. Section 2 lays down certain important definitions, like 'civil rights',⁶¹ 'hotel',⁶²

60 *Rameshbhai Dabhai Naika v. State of Gujarat*, (2012) 3 SCC 400.

61 Right accruing to a person by reason of the abolition of "untouchability" by Article 17.

62 Includes a refreshment room, a boarding house, a lodging house, a coffee house and a café.

‘place’,⁶³ ‘place of public entertainment’⁶⁴ and ‘shop’. The term shop is used as a generic term, just as it is used in Article 15(2) of the Constitution; it includes any place where services are rendered to customers. Sections 3 to 7 contain the substantive provisions i.e. the ‘Civil Disabilities’ the Act prohibits and penalises, while Sections 8, 9, 10A and 11 enumerate punishments in addition to the punishments prescribed by the substantive section.

Section 12 shifts the burden of proof on to the accused, in cases where the act causing a disability was committed against a member of the Schedule Caste.⁶⁵ All the disabilities in the act have a punishment of imprisonment between one month and six months and a fine of Rs. 100 or more up to a maximum of Rs. 500.

Disabilities that are Prohibited

Religious Disability

The PCRA punishes the enforcement of religious disability on the ground of “untouchability” by preventing any person from entering a place of public worship open to persons professing the same religion.⁶⁶ Before the 1976 amendment, multiple judgments by the High Courts had already concluded that the section would be applicable only when the place of worship was open to other persons professing the same religion or belonging to the same religious denomination as the complainant.

This position was taken by the courts despite the explanation clarifying that for the purposes of this section persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Adivasis,

63 Includes a house, building and other structure and premises; and also includes a tent, vehicle and vessel.

64 Includes any place to which the public is admitted and in which an entertainment is provided or held. “Entertainment” includes any exhibition, performance, game, sport and any other form of amusement.

65 The meaning of Schedule Caste is as per in clause (24) of article 366 of the Constitution.

66 Section 3 of Protection of Civil Rights Act, 1955

Veerashaivas, Lingayats, followers of Brahma, Prarthana and Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindu.⁶⁷ Since the amendment in 1976, the scope of the sections has been widened to include all those belonging to the same religion.

This does not take into account the fact that untouchability is not a mere religious phenomenon, but a social one. In situations where a person perceived to be an untouchable, converts to another religion, say, Christianity, he might still wish to follow the rituals of his earlier faith. This is not uncommon. In this respect, untouchability might still be practiced against him. However, he will not be protected by Section 3, since he is now a Christian whereas the oppressor is a Hindu.⁶⁸

Social Disability

Section 4 provides that whoever on the ground of untouchability prevents any person from entering a shop, public restaurant or place of public entertainment, using utensils and other articles kept in any public restaurant, dharamshala, sarai or musafirkhana; practising any profession; using any river, stream, well, tank or any other water body, or any cremation ground, sanitary convenience, road/passage or public resort; using any place which is used for charitable or public purpose maintained wholly or partly out of state funds; using any public conveyance; constructing, acquiring or occupying any residential premises and observing any social or religious custom or ceremony; the use of jewellery and finery.

Other Disabilities

Section 6 in turn deals refusal to sell any goods or render any services to any person on the grounds of untouchability.

67 Explanation Clause of Section 3, Protection of Civil Rights Act, 1955

68 Evaluation of Protection of Civil Rights Act, NAT. LAW SCHOOL OF IND. UNIV. (Sept. 20, 2018, 7:01 PM), 68, https://www.nls.ac.in/csseip/Files/Material%20for%20uploading/PCRA_report_II_from_intro%5B1%5D.pdf.

However, what is not covered by other sections is covered under section 7 which has the broad title of ‘punishments of other offences arising out of untouchability’ under the Act. This makes the judicial reading of Section 7 crucial of the Act is to be effective.

Section 7 includes preventing any person from exercising his/her right under Article 17; molesting, injuring, annoying, obstructing, or causing a person to lose his/her right or injuring or boycotting any person who has exercised such right; using words (spoken or written), signs, visible representations or incites or encourages any person/s to practice untouchability; or insults or attempts to insult a member of the Scheduled Castes on the ground of untouchability.⁶⁹

This section covers exploitative services like drum beating, grave digging, cremation, harbingers of death news, footwear-making, removal of carcasses, animal sacrifice, manual scavenging, etc.⁷⁰ Section 7(2) punishes a person who denies to any other person belonging to his/her community or any section thereof, the rights or privileges which the person would be entitled as a member of such community, or participates in the excommunication of such person on the grounds that such person has refused to practice untouchability.⁷¹

An important question that has often come up before the courts is the interpretation of Section 7(1)(d) of the Act which is to insult, or attempt to insult, on the ground of “untouchability” a member of a Scheduled Caste. Note that, this section limits the victim to members of Scheduled Castes only. The Act does not provide a definition of “insult”, however, Section 504 of the Indian Penal Code defines insult as “*an intentional use of abusive filthy language which is capable of provoking breach of peace on the part of the complainant.*”

69 Section 7 (1)

70 *Ibid.*

71 Section 7 (2)

The problem arises in ascertaining whether insult has occurred on the grounds of caste. Several courts have held that ‘insult’ just by itself does not come within the purview of Section 7 (1) (d), it has to be on the ground of untouchability. In *Phul Singh v. State of Madhya Pradesh*,⁷² the court held that the test is to ask whether the insult would have taken place irrespective of the fact whether the victim was or was not a member of the Scheduled Castes. On the other hand, if the insult is uttered specifically because the victim was a member of the Scheduled Castes, then the insult is on the ground of untouchability.⁷³

This test in theory might seem straightforward, but when applying it to the facts and circumstances of a case it becomes a tricky task. This is because, caste slurs and insults can only be understood in the regional and cultural context, and ostensibly innocuous statements/words can have either historical/cultural baggage that make them derogatory. For instance, the use of the terms ‘reserved’ or ‘stipend’ for students or the use of specific caste names such as Mahar or Bhangi in a contemptuous manner. These lacunae were later covered by certain judgments under the Atrocities Act. This will be referred to in a later part of this chapter.

In *Phul Singh v. State of Madhya Pradesh*,⁷⁴ the Court examined whether the insult was part of a personal quarrel that took place between a person of a dominant caste and a member of the Scheduled Castes; or whether it was offered in a malicious manner in the absence of any quarrel. It found that the complainant and the accused had quarreled in the past and were not on good terms. Therefore, the insult was not based on untouchability.⁷⁵

The point of the section is not only to penalise insults resulting from a conflict regarding caste. It also penalises instances where

72 *Phul Singh v. State of Madhya Pradesh*, 1991Cri LJ 2954.

73 *Ibid.*

74 *Ibid.*

75 *Ibid.*

the reason for conflict or incitement to insult might be personal or regarding a separate matter, but the insult itself includes ‘untouchability’. Such caste slurs do not occur in a vacuum, but in the context of unequal power relations between oppressor castes and oppressed castes, where the former could, for example, be teachers or employers.

It is when such or similar kinds of power equations are involved, caste slurs are rampant, and is often obscured under the guise of some other point of conflict, like student ‘merit’ (often Dalit students who enter prestigious institutions through the affirmative action regime are labelled as ‘reserved’, marking them out as non-meritorious). To not include such kinds of insults and slurs within the section is to strip it of its vitality. The judges in these cases have been successful in doing so.

Burden of proof, applicability and the efficacy of the Act

Section 12 comes into operation once the following two conditions are satisfied – (i) the victim is a member of the Scheduled Castes, (ii) the use of the insulting words is proved. The burden is on the accused to prove that the insult was not because of untouchability. Such provisions are an acknowledgement that the regular inquisitorial system is inadequate.

A reading of the Act will reveal that only certain sections, such as Section 12 (shifting of burden of proof) and Section 7(1)(d) (insults on the ground of ‘untouchability’ a member of a Scheduled Caste) are only applicable when the victim belongs to the Scheduled Castes, implying that the rest of the sections under the Act are to be applicable to victims outside the category of Scheduled Caste.

In *State of Karnataka v. Shantappa*,⁷⁶ it was held that where the complainant and accused are members of the Scheduled Castes, an offence cannot be registered under the PCRA as there cannot be any preaching or practising of untouchability on the ground

76 *State of Karnataka v. Shantappa*, 1997 CriLJ 2802.

of caste. The Court held that even if the petitioners proved that the respondent had indeed abused them, this would mean that he engaged in “*self-condemnation of the community to which he equally belonged.*”⁷⁷

This reading patently ignores the fact the Scheduled Caste category is a legal umbrella category and not a ‘caste’ in the sociological sense; and that graded inequality and discrimination within the category of Scheduled Castes is a reality. However, setting the precedent of allowing members of the Scheduled Castes to be accused, while not limiting the victim to Scheduled Caste under the Act, could lead to a scenario wherein a dominant caste individual can claim to be a victim of untouchability against a member of the Scheduled Caste, and thereby use the law as a tool of intimidation and harassment.

The murkiness of not defining/limiting the accused and victim under the PCRA, is rectified by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. Under this Act, the victim has to be from the Scheduled Caste or Scheduled Tribe category, while the accused has to be from outside the aforesaid categories, if the Act is to be applicable.

The Committee on Untouchability, Economic and Educational Development of the Scheduled Castes under the Chairmanship of L. Elayaperumal reported the problems in the implementation of PCRA.⁷⁸ The main reason for the enactment of the PoA Act was the failure of the Protection of Civil Rights Act to check the growing number of atrocities that were being committed on the Scheduled Castes and Scheduled Tribes.

77 *Ibid.*

78 COMMITTEE ON UNTOUCHABILITY, ECONOMIC AND EDUCATIONAL DEVELOPMENT OF SCHEDULED CASTES, REPORT OF COMMITTEE ON UNTOUCHABILITY, ECONOMIC AND EDUCATIONAL DEVELOPMENT OF SCHEDULED CASTES AND CONNECTED DOCUMENTS (Department of Social Welfare, Government of India, 1969).

The ambiguity concerning whether a non-SC/ST person can be a complainant or not, an absence of sections that ensure a speedy trial and weak punishments made the Act toothless. The levels of punishments prescribed by the PCRA proved to be highly inadequate even in comparison to the equivalent crimes in the Indian Penal Code. Further, all offences were bailable. In the wake of rising indignation among Dalits, it was realised that a more comprehensive and more punitive Act was required to protect members of the SC and ST communities from violence committed by other communities. This is the genesis of the Prevention of Atrocities Act.⁷⁹

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

It is necessary to go into the genesis of this enactment as enshrined in the Statement of Objects and Reasons appended to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989 that clearly indicated the purpose of the Act. The following extracts are relevant -

“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorize them. When the Scheduled Castes and the Scheduled Tribes try to

79 Anand Teltumbde, *Judicial Atrocity?*, 53 ECON & POLITICAL WEEKLY 14 (2018).

preserve their self-respect or honour of their women, they become irritants for dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary.”⁸⁰

The Act has a total of 23 sections, wherein Sections 3 (1) and (2) define all the offences in the Act. The first subsection describes offences that shall be punishable with imprisonment for a term above six months but which may extend to five years and with a fine. The second subsection describes offences that have their own prescribed punishments. Section 4 covers punishments for neglect of duties by public servants.

Section 5 contains enhanced punishment for repeat offenders, while section 8 presumes certain offences, specifically two kinds, first, if it is proved that the accused rendered any financial assistance to a person accused of committing an offence under this Act, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence and second if it is proved a group of persons committed an offence under this Chapter and that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the

80 Statement of Objects and Reasons appended to the Scheduled Tribes (Prevention of Atrocities) Bill, 1989.

common intention. Hence, the presumptions do not need to be proven in court.

The Act also contains certain preventive provisions; Section 10, which contains the power to remove any person likely to commit offence in any area included in 'Scheduled Areas' or 'tribal' areas, while section 17 states the preventive action to be taken by the law and order machinery by the District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police.

Section 21 states the duties of the government to ensure the effective implementation of the Act, including provision of adequate facilities, legal aid to the victims, provision for travelling and maintenance expenses to victims and witnesses during investigation and trial of offences under this Act and economic and social rehabilitation for victims of caste-based violence. Section 23 empowers the central government to make rules, and it is through this power that Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, were brought into effect. Both the Act and the Rules have to be read together to understand the procedures through which the Atrocities Act is to be governed.

The Rules make provisions for the government to effectively implement the Act. For instance, Rule 3, states precautionary and preventive measures, Rule 8 provides for the setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell, which has several duties enlisted under the rules. These include conducting surveys of the identified area, recommending the deployment of special police forces or establishment of a special police post in the identified area, monitoring the investigation and conducting spot inspections, and enquiries into willful negligence by public servants. Rules 16 and 17 constitute state and district level vigilance and monitoring committees respectively.

Rule 11 provides for a daily travel allowance, maintenance allowance and transport, facilities for victims of caste atrocities, their dependents, and witnesses. Rule 12(4) provides immediate relief in cash, kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules (Annexure-I read with Annexure-II). The Schedule provides for detailed amounts for compensation for different offences in the Act.

Procedurally, Rule 7 states that an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police (DSP) and that such an investigation must be completed within 30 days. The assumption here is that, officers below the said rank, are either insensitive or not competent enough to carry out a sound investigation. This has to be understood in the context of a strong trend wherein the police, in several cases has either been complicit in atrocities, supported the perpetrator or has been indifferent, failing to take the offence seriously and investigate it thoroughly.

Unfortunately, this Rule has been used against victims, when various High Courts have quashed criminal proceedings under the Act on the grounds that an officer below the rank of Deputy Superintendent of Police carried out the investigation. This rule in its application, instead of safeguarding the interests of victims, has further reduced the possibilities of a sound and timely police investigation. This will further be discussed along with the various judicial interpretations of this Rule and its implications on combating caste atrocities.

Another procedural innovation is Section 14 of the Act which makes provisions for the constitution of special courts for hearing cases on atrocities under the Act for the purpose of providing for a speedy trial, while, section 15 tasks the state government with appointing a special public prosecutor.

Section 18 forecloses the option of anticipatory bail, ordinarily available to an accused under section 438 of the Criminal Procedure Code, and Section 19 excludes the applicability of Section 360 of the Probation of Offenders Act to an accused under the Atrocities Act. The exclusion of anticipatory bail, has been constitutionally challenged on more than one occasion, and is often argued to be an example of the Act being violative of the rights of an accused. This aspect will be subsequently examined.

The Act, on paper, has created a regime which attempts to ensure that the criminal justice system does not fail the victims of caste atrocities. It has created a system of close monitoring of the investigation and trial by protection cells and vigilance committees, along with strict safeguards, like Section 4 that punishes public servants for dereliction of duty. It has also provided economic support system for victims and witnesses to help them pursue cases under the Act.

The foundations of this legislation are not based in the conception of a universally applicable ‘Rule of law’, but are rooted in responding to the historical experience and social realities of caste oppression. Therefore, every section or rule that is an exception from the general law i.e. the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 has to be understood in that historical context.

Offences and their Judicial Interpretation under the Atrocities Act

The sociologist Meena Radhakrishna, speaking of the Atrocities Act, said,

“What is striking is the kind of detail with which it was drafted. That such specific offences have been included and made punishable under this Act, can only mean that they were commonly perpetrated.... it is like reading an ethnographic account about the lives of the concerned people. The very existence of this painful document, with its graphically detailed clauses, is an acknowledgement

by the state that very specific kind of barbarities are committed against the SC and ST people.”⁸¹

Sections 3 (1) and (2) define all the offences in the Act, which can broadly be categorised into offences relating to social disabilities, personal atrocities, atrocities affecting properties, protection from malicious prosecution, offences relating to political disabilities, and offences relating to economic exploitation. Each of them is examined individually -

Protection from social disabilities

Section 3 (1) (xiv) prohibits denial of a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstruction of such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to.

Section 3 (1) (xiii) prohibits corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used.

Protection from personal atrocities

a) Atrocities affecting body

Section 3 (1) (i) imposes punishment if a member of a Scheduled Caste or a Scheduled Tribe is made to drink or eat any inedible or obnoxious substance. Section 3 (1) (ii) punishes acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood. Section 3 (1) (iii) imposes punishment if anyone forcibly removes clothes from the person of a member of a

81 Meena Radhakrishna, *The Dark Realities of the SC/ST Atrocities Act: An Ethnographic Reading*, THE WIRE (Apr. 4, 2018), <https://thewire.in/caste/dark-realities-sc-st-atrocities-act-ethnographic-reading>.

Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity. Section 3 (1) (xi) punishes anyone who assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty. Section 3 (1) (xii) punishes sexually exploiting a woman belonging to a Scheduled Caste or a Scheduled Tribe by someone in a position to dominate her will.

b) Atrocities affecting reputation

Section 3 (1) (iii) punishes anyone who forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity. Section 3 (1) (x) punishes anyone who intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

The phrases ‘intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe’ and ‘public view’ present in Section 3 (1) (x) have been interpreted differently by various High Courts.

Judicial interpretation of ‘Intent to humiliate’

In *Obulesu v. State of Andhra Pradesh*,⁸² the court held that in order to attract section 3 (1) (x), it is not sufficient if the assailant is a non-Scheduled Caste or non-Scheduled Tribe and the victim is a Scheduled Caste or Scheduled Tribe person, but offence must be perpetrated on the ground that they belong to a Scheduled Caste or Scheduled Tribe.⁸³

In *Ravinder Kumar Mishra v. State of Madhya Pradesh*,⁸⁴ it was held that section 3 (1) (x) is attracted only when the alleged insult or intimidation is caused with the intent to humiliate a member of a Scheduled Caste with reference to their caste. It is only such

82 *Obulesu v. State of Andhra Pradesh*, 1992 (3) ALT. 509.

83 *Ibid.*

84 *Ravinder Kumar Mishra v. State of Madhya Pradesh*, 1995 CRI.L.J. 3060

insult or intimidation that is attracted to section 3 (1) (x). The words of abuse attributed to the petitioner-accused against the complainant in this case were only ‘idiot’ and ‘nonsense’ which have no reference to the community and from those words it could not be inferred that the intention or intimidation were with reference to the community to which the complainant belonged.⁸⁵

Therefore, it is clear that the intent to humiliate or cause insult on grounds of caste is an essential ingredient of the offence. But how is this intent determined? Further, would this mean that the perpetrator had to be aware of the victim’s caste identity?

In *M.L. Ohri & Ors. v. Kanti Devi*,⁸⁶ the Punjab and Haryana High Court held -

“It is also imperative that a person who allegedly commits such an offence is attributed the knowledge of the person so abused with the offensive words as belonging to the Scheduled Castes/Scheduled Tribes. When a complaint is initiated against a person, these two ingredients automatically form essential bed-rock of the allegations and if the complaint is lacking in these prima facie the Court cannot record a conclusion that a case has been made out.... When there is no averment in complaint that complainant belonged to Scheduled Caste and that petitioners intentionally and knowing her to be a member of Scheduled Caste utter the words attributed to them so as to insult her. Thus, complaint liable to be quashed.”⁸⁷

In *Joginder Singh v. State of Haryana*⁸⁸ the Punjab and Haryana High Court held that there must be a specific averment in complaint that accused had knowledge that complainant belonged to Scheduled Caste or Scheduled Tribe.⁸⁹

85 *Ibid*, at 3061.

86 *M.L. Ohri & Ors. v. Kanti Devi*, 2010(1) Crimes 926 (P & H).

87 *Ibid*

88 *Joginder Singh v. State of Haryana*, 2009 (4) Crimes 721 (P & H).

89 *Ibid*

The question of knowledge of the victim belonging to Scheduled Caste is relevant for all the offences under the Act.

We are then faced with a host of questions, what does ‘in the name of caste’ mean or ‘with reference to the community to which the complainant belongs’? Does this mean, that the section will only be attracted if the caste slur refers to the specific community the victim belongs to? If not, what is the correct way of interpreting a caste-based insult?

The answers to some of these questions lie in the Supreme Court case of *Swaran Singh v. State*,⁹⁰ decided on the use of derogatory words like ‘Chamar’, etc. to insult people belonging to SC/ST communities and held -

“Today the word ‘Chamar’ is often used by people belonging to the so-called dominant castes or even by OBCs as a word of insult, abuse and derision. Calling a person ‘Chamar’ today is nowadays an abusive language and is highly offensive. In fact, the word ‘Chamar’; when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.”

The court then went on to set a principle of interpreting caste insults, it held -

“That when we interpret section 3(1) (x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects and; Reasons of the Act. Hence, while interpreting section 3(1) (x) of the Act, we have to take into account the popular meaning of the word ‘Chamar’ which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object

90 *Swaran Singh v. State*, (2008) 8 SCC 435.

of the Act, and hence that would not be a correct manner of interpretation.” (Emphasis mine)

That the Hon’ble Apex Court, in the case of *Armugam Servai v. State of Tamil Nadu*,⁹¹ affirmed the principle in *Swaran Singh* wherein calling a person a ‘pallan’, if used with intent to insult a member of the Scheduled Caste, was held to be an offence under Section 3(1)(x).

The court held -

“In our opinion uses of the words ‘pallan’ ‘pallapayal’; ‘parayan’; or ‘paraparayan’; with intent to insult is highly objectionable and is also an offence under the SC/ST Act. It is just unacceptable in the modern age, just as the words ‘Nigger’; or ‘Negro’; are unacceptable for African-Americans today (even if they were acceptable 50 years ago).”

The Supreme Court in the case of *Manju Devi v. Onkarjit Singh Ahluwalia and Ors.*⁹² held -

*“The use of the word; “Harijan” and Dhobi etc. is often used by people belonging to the so called dominant castes as a word of insult, abuse and derision. Calling a person by these names is nowadays an abusive language and is offensive. It is basically used nowadays not to denote a caste but to intentionally insult and humiliate someone. We, as a citizen of this country, should always keep one thing in our mind and heart that no people or community should be today insulted or looked down upon, and nobody’s feelings should be hurt.”*⁹³

The court through a series of judgments held that the correct way of interpreting a ‘caste insult’ has to be based on how the term in

91 *Armugam Servai v. State of Tamil Nadu*, AIR 2011 SC 1859.

92 *Manju Devi v. Onkarjit Singh Ahluwalia and Others*, AIR 2017 SC 1583.

93 *Ibid.*

question is used in a colloquial way, in other words what cultural meanings has the term acquired. If the said term has indeed acquired a derogatory colour to it, then it would attract the section.

Judicial interpretation of 'Public View'

In the case of *Chandra Poojari v. State of Karnataka*⁹⁴ the petitioners sought the quashing of the charge-sheet and dismissal of the complaint under Section 3 (1) (x) on the ground that the incident did not take place in public. The Court allowed the petition and held that since the incident happened in the chamber of the complainant who was working as a CTO, the provision would not be attracted. To attract the provisions of section 3 (1) (x), it is necessary that the incident should happen in a place where public could view the incident.⁹⁵ (Emphasis mine)

In case of *Karan Singh and Others v. State of Madhya Pradesh*,⁹⁶ the petitioner sought quashing of FIR on charge under section 3 (1) (x) of the Act. It was alleged in FIR that the complainant with four others were fishing from a tank in another village. At 11 pm, the petitioner abused them and challenged them to come out of the tank, without knowing their identity. The complainants told them that they were residents of Gularziri and had come for fishing. In response the accused party claimed these were Bilalas (oppressed caste), they were caught and taken forcibly to the place of petitioner where they were tied with a rope and were assaulted.⁹⁷

The MP High Court held that, only calling a person belonging to the ST community by the name of their tribe would not be sufficient to make out an offence under section 3 (1) (x). Further, as the incident took place late in the night and the accused party was only present on spot and what happened between them had

94 *Chandra Poojari v. State of Karnataka*, 1998 CRI.L.J. 53.

95 T. R. NAVAL, *supra* note 49, at 88.

96 *Karan Singh and Others v. State of Madhya Pradesh*, 1992 CRI.L.J. 3054.

97 T. R. NAVAL, *supra* note 49, at 89-90.

not taken place ‘within public view’ and hence the offence under the section was not made out.⁹⁸

The musician activist from Kerala, in his conversation with us, specifically problematised the “public view” condition -

“If someone calls by caste name, or by mentioning name if they hit you can prove. But in other cases you can’t prove. Recently after a Dalit IAS officer left the office they sprinkled cow dung water and purified the office, they court said since it was not done in public and it was done after he left, it was not caste discrimination. It is an assault on dignity and clear but it cannot be proved.”

The emphasis in this section is more on reputation in the eyes of the public, and less about the indignity inherent to such forms of oppression.

c) *Protection against Atrocities affecting Properties*

- i) Protection against atrocities affecting land - There have been numerous instances of dispossession of the members of SC and ST communities from their properties and occupying their properties wrongly.⁹⁹
- ii) Protection against wrongful occupation of land.¹⁰⁰
- iii) Protection against wrongful occupation of land or premises or water.¹⁰¹
- iv) Protection against atrocities affecting residential premises.

98 *Ibid.*

99 T. R. NAVAL, *supra* note 49, at 90-91.

100 Section 3 (1) (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred.

101 Section 3 (1) - (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water.

There are several instances where Dalit communities are forced to leave their houses, or sometimes even the town/village, because of physical violence or social and economic boycott. In urban centres, similar forms of discrimination exist in the form of evictions from rented residential premises. Even buying a motorbike, or wearing footwear, are seen as acts of assertion, and often attract a violent backlash from other communities in the village. Otherwise-petty disputes with dominant-caste residents can also have consequences, with SC/ST communities often being ostracised or driven out.

d) Protection against atrocities by Litigation

- i) Protection against False suits
- ii) Protection against Atrocities by Public Servant on False Information
- iii) Protection against Atrocities by Court on False Evidence¹⁰²
- iv) Protection against Atrocities by Destruction of Evidence of Atrocities

e) Protection against Political Disabilities

As per Section 3 (1) (vii) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law can be punished under the Act.

There have been repeated reports that members of SC and ST communities are not allowed to vote in elections. When Dalits often assert their right of franchise as made available to them by the constitution of India and the Representation of People Act, they are often beaten and their properties damaged and destroyed. This provision was made to protect them from such atrocities.

¹⁰² The punishment for this offence under Section 3 (2) (i) extends to death penalty if the false evidence causes the SC member to be punished by death.

f) Protection against economic exploitation

As per Section 3 (1) (vi) whoever, not being a member of a Scheduled Caste or a Scheduled Tribe compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government.

Landmark Judgments and its Implication on the Strength of the Act

The judgments cited earlier were primarily interpreting the Sections in the Act. This part of the chapter contains judgments that have had a strong bearing on procedure and often have the effect of reducing the efficacy of the Act. Three contentious issues have been discussed in several cases -

1) *Whether the special court constituted under the Act can take cognizance of offences under the Act directly as a court of original criminal jurisdiction without it being committed by a competent magistrate following the procedure laid down under the Criminal Procedure Code (CrPC)?*

Section 193 of the Criminal Procedure Code states that no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code unless expressly provided so by the CrPC itself or by any other law in force.

Although Section 14 of the Act makes provisions for the constitution of special courts, it does not explicitly state that the special court has the power to take cognizance of any offence, hence the ambiguity and need for interpretation.

A set of High Court judgments has held that the special court does not have the power to take cognizance directly,¹⁰³ while another

103 Hareendran v. Sarada, (1996) 1 Andh LT (Cri) 162; In Re, The Director General of Prosecution, (1993) Cr LJ 760, and Meera Bai v. Bhujbal Singh, 1995 Cr LJ 2376.

set of judgments has held the exact opposite.¹⁰⁴ This question then came up before the Supreme Court in *Gangula Ashok v. State of Andhra Pradesh*,¹⁰⁵ which set at rest contradictory judicial decisions by holding that no provision whatsoever, in either the Code or the Act, that the [Special Court] can take cognizance as a Court of original jurisdiction without the case being committed to it by a magistrate.

This was a worrying development as it directly slowed down the prospect of a speedy trial, by adding another hurdle for the victim, namely overburdened magistrates. Only recently, after the Prevention of Atrocities Amendment Act of 2015, special courts have been able to take direct cognizance of a case.¹⁰⁶

The amendment also holds that an appeal against a bail or ruling in the special court directly lies to the High Court.¹⁰⁷ Under Section 14, the right to appeal has a limitation of 90 days, extendable up to 180 days on reasonable grounds of delay, thereby checking dilatory tactics and subversion of the legal process. This amendment as whole strengthens provisions for a speedy trial.

2) *Rule 7¹⁰⁸ holds that an investigation is required to be done by an officer not below the rank of Deputy Superintendent of Police.*

104 Bhura Lai v. State, 1999 Cr LJ 3552; Anand Swaroop v. Ram Ratan Jatav, 1996 MP LJ 141(FB), and Dara Singh v. Tej Kaur, 2000 Cr LJ 3145.

105 *Gangula Ashok v. State of Andhra Pradesh*, AIR 2000 SC 740.

106 Section 14(1) - Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

107 Section 14A(1) - Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2)- Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

108 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

However, if the said DSP is unavailable and an officer below the rank of DSP carried out the investigation, is the said investigation void and liable to quashed?

The High Courts have taken two different lines of reasoning.

The Andhra Pradesh High Court, taking the position that provisions of Rule 7 are mandatory, held that investigations under the Act have to be carried out only by an officer above the rank of a deputy superintendent of police. It ruled that if conviction is based on an investigation by an officer below the said rank, the said proceedings is liable to be quashed.¹⁰⁹

In 2001 the Kerala High Court in *K. Muhammed v. K. Sukumaran*,¹¹⁰ held -

“Considering the nature of the allegations and the circumstances, and also the object of the special legislation intended to deal with the atrocities against the Scheduled Castes and Scheduled Tribes personnel the entire proceedings cannot be quashed on the ground that the case was investigated and the charge had been filed by a Circle Inspector of Police. As there was a breach of the provisions of the Rules, appropriate orders for such investigation as may be necessary has to be passed by this Court. It may not be proper to construe the provision liberally in favour of the accused resulting in the closure of the trial of such a serious offence against the petitioner. Hence a direction has to be issued to the investigating agency to proceed with the proper investigation by the competent authority and to proceed in accordance with law on the basis of the F.I.R.”¹¹¹

109 D. Ramlnga Reddy v. State of A P., 1999 Cr LJ 2918, Ramesh Chandra Das v. Kasuwth Jencu, 2000 Cr LJ 4006; M. Niranjan Reddy v. State of Andhra Pradesh, 2000 Cr LJ 3125; and E. Seshaiiah v. State of Andhra Pradesh, 2001 Cr LJ NOC 10.

110 K. Muhammed v. K. Sukumaran, 2001 Cr LJ 1664.

111 Ibid.

Therefore, the current position of law is that re-investigations needs to take place, based on the F.I.R. This is a position in consonance with the spirit of the Atrocities Act, as opposed to completely quashing the proceedings.

3) *As per section 18 of the Act, the provision of anticipatory bail to the accused has been excluded. This section has been constitutionally challenged on more than one occasion; what have the courts held with regard to the constitutionality of section 18?*

The first constitutional challenge to section 18 and the Act came in *Jai Singh v. Union of India*,¹¹² wherein the petitioners argued that the Act is violative of Article 14 as it punishes only a non-SC/ST person for committing atrocities against the members of the SC & ST communities, and that denying anticipatory bail to an accused violates Article 21 (the right to life and liberty). These arguments did not convince the full bench of the Rajasthan High Court. The Court held that the Act falls within the legislative spirit of Article 17 of the Constitution.

The very next year, the same constitutional challenge came up before the Madhya Pradesh High Court, in *State of Madhya Pradesh v. Ram Krishna Balothia*,¹¹³ the court dissenting from *Jai Singh* held that Section 18 of the Act is violative of Articles 14 and 21 of the Constitution. The Court held that the classification of offenders under the Atrocities Act and offenders under other laws has no nexus with the objects to be achieved by the Act, and hence, section 18 violates Article 14 as it does not create an intelligible differentia between the two classes of offenders. With regard to Article 21, the court held that section 18 unfair and unreasonable and offends the very soul and spirit of Article 21 and that does not conform to the norms of justice and fair play and prescribed a procedure that is impermissible under the Constitution.¹¹⁴

112 *Jai Singh v. Union of India*, AIR 1993 Raj 177.

113 *State of Madhya Pradesh v. Ram Krishna Balothia*, AIR 1994 MP 143.

114 *Ibid.*

Subsequently, an appeal¹¹⁵ was preferred by the State of Madhya Pradesh in the Supreme Court, which then went on to overrule the previous decision by the High Court, by stating that the exclusion of anticipatory bail needs to be viewed in the backdrop of the historical context of the practice of ‘untouchability’. The legislative intent reflected in the Statement of Reasons of the Act and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders.¹¹⁶ Further, the court found it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21.

Therefore, the court held that there is a nexus with the object of the Act, which is to prevent the intimidation of victims and witnesses. This object is rooted in the acknowledgment of the fact that intimidation and coercion, by perpetrators and their associates, is a regular occurrence.

Despite the Supreme Court upholding the constitutional validity of the Section 18 of the Act, various High Courts watered down the exclusion of anticipatory bail.

The Rajasthan High Court in *Rakesh v. State of Rajasthan*¹¹⁷ ruled that section 18 does not create a complete bar for anticipatory bail. It has asserted that liberty of a person, by denying anticipatory bail, should not be left to whims of an unscrupulous complainant or a police officer.

The Bombay High Court in *Yunus Daud Bhura v. State of Maharashtra*¹¹⁸ held that section 18 does not prevent a session or high court from granting anticipatory bail unless statements recorded by police, material in the case diary, or the FIR, disclose

115 *State of Madhya Pradesh v. Ram Krishna Balothia*, AIR 1995 SC 1198.

116 *Ibid.*

117 *Rakesh v. State of Rajasthan*, 1995 Cr LJ 472.

118 *Yunus Daud Bhura v. State of Maharashtra*, 2001 Bom LR 181.

a prima facie case under the Atrocities Act. The same was also held in the Kerala High Court in *A.M. Ali v. State of Kerala*.¹¹⁹

The judicial pronouncements on section 18 show that it has been watered down from a complete and absolute denial of anticipatory bail to a denial only when a prima facie case is made out, after judicial scrutiny. These judgments were per in curium,¹²⁰ as it ignored the binding legal precedent.

The absolute denial of anticipatory as per section 18 was also examined in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*,¹²¹ which is now popularly known as the case that diluted the Atrocities Act as a whole. A division bench (bench consisting of two judges) of the Supreme Court¹²² dealt with an appeal of one Subhash Kashinath Mahajan, against the order of the High Court of Bombay of 5 May 2017, which had declined his prayer to quash the complaint of a Scheduled Caste employee under the Atrocities Act. The court allowed the appeal and reversed the decision of the Bombay High Court. However, the court did not merely decide the case on merit; it went ahead and laid down certain guidelines on the use of the law, which diluted the victim-centric focus of the law.

The Dilution of the Atrocities Act

In *Subhash Mahajan*, the court was motivated by what it perceived to be a trend of ‘fake cases’ and the patent arbitrariness and unreasonableness of the denials of anticipatory bail under the Section. It finally gave four directions that would have major consequences for the operation of the law -

119 *A.M. Ali v. State of Kerala*, 2000 Cr LJ 2721 (Ker).

120 A finding of per incuriam means that a previous court judgment has failed to pay notice to relevant statutory provision or precedents.

121 *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*, AIR 2018 SC 1498.

122 Comprising of Justice Adarsh Kumar Goel and Justice Uday Umesh Lalit.

1. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act, if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
2. In view of acknowledged misuse of provisions for arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP that may be granted in appropriate cases if considered necessary for reasons recorded. The Magistrate before permitting further detention must scrutinise such reasons.
3. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
4. Any violation of above direction will be actionable by way of disciplinary action as well as contempt.¹²³

How the court justified these directions are of relevance to us. These directions broadly stem from two main concerns, first, section 18 itself and second, the abuse of law of arrest in cases under the Atrocities Act and ‘fake cases’ under the Act. Although, Direction 1, as discussed earlier, had been upheld by various high courts, the Supreme Court cements it into the law in this case.

The Court justifies Direction 1, by reading into Article 21¹²⁴ the right to anticipatory bail, that any deprivation of personal liberty offends Article 21 unless the law for deprivation is reasonable, just and fair. The court while explicitly overruling *Ram Krishna Balothia*, held -

123 Supra note 121.

124 Article 21 of the Constitution reads - “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

“Exclusion of anticipatory bail has been justified only to protect victims of perpetrators of crime. It cannot be read as being applicable to those who are falsely implicated for extraneous reasons and have not committed the offence on prima facie independent scrutiny. Access to justice being a fundamental right, grain has to be separated from the chaff, by an independent mechanism. Liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty. Thus considered, exclusion has to be applied to genuine cases and not to false ones. This will help in achieving the object of the law.”

Directions 2 and 3 are again based on the perception of a strong trend of fake cases and arbitrary arrest specifically under the Atrocities Act, among other offences like domestic violence, corruption cases, etc. wherein through different judgments, a preliminary enquiry before arrest has become mandatory. The question then is how did the court arrive at such a conclusion?

The Court did this, in two ways. Firstly, it looked at five judgments of various High Courts that acknowledged such instances of misuse of the Atrocities Act - *Jones v. State*,¹²⁵ *Dr. N.T. Desai v. State of Gujarat*,¹²⁶ *Dhiren Prafulbhai Shah v. State of Gujarat*,¹²⁷ *Pankaj D Suthar v. State of Gujarat*,¹²⁸ and *Sharad v. State of Maharashtra*.¹²⁹

What the courts held in these cases can essentially be summed up by a paragraph of the judgment in *Pankaj D Suthar* -

“Whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities

125 *Jones v. State*, 2004 Cri LJ 2755.

126 *Dr. N.T. Desai v. State of Gujarat*, (1997) 2 GLR 942.

127 *Dhiren Prafulbhai Shah v. State of Gujarat*, 2016 Cri LJ 2217.

128 *Pankaj D Suthar v. State of Gujarat*, (1992)1 GLR 405.

129 *Sharad v. State of Maharashtra*, 2015(4) Bom CR (Cri) 545.

can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents?’ The answer to this question is undoubtedly and obviously not.”¹³⁰

Secondly, the court pointed out at the National Crime Records Bureau, Ministry of Home Affairs under the headings “Police Disposal of Crime/Atrocities against SCs cases (State/UT-wise)-2016” (Table 7A.4) and “Police Disposal of Crime/Atrocities against STs Cases (State/UT- wise) – 2016” (Table 7C.4).¹³¹ In the year 2016, 5347 cases alleging atrocities against SCs and 912 alleging atrocities against STs were found to be false. It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction.

The court infers gross misuse of the Act only on these two grounds. The rest of the judgment, the judges cite a strand of cases on the law of arrest. This was delved into to justify the need for a preliminary enquiry as per Direction 3. The court held -

“Law laid down by this Court in Joginder Kumar,¹³² Arnesh Kumar,¹³³ Rini and Siddharam Satlingappa¹³⁴ to check uncalled for arrest cannot be ignored and clearly applies to arrests under the Atrocities Act.”

For example, in *Arnesh Kumar v. State of Bihar*,¹³⁵ it was directed that arrest may be justified only if there is ‘credible information’ or ‘reasonable suspicion’ and if arrest was necessary to prevent

130 Supra note 128.

131 *Crime in India 2016- Statistics*, NATIONAL CRIME RECORDS BUREAU- MINISTRY OF HOME AFFAIRS (2016), <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete-%20PDF%20291117.pdf>.

132 *Joginder Kumar v. State of Uttar Pradesh*, AIR 1994 SC 1349.

133 *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

134 *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694.

135 *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

further offence or for proper investigation or to check interference with the evidence. Reasons are required to be recorded.

In *Lalita Kumari v. State of Uttar Pradesh*,¹³⁶ it was observed that while registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest.

Hence, the court pointed at two sets of cases; one, where the general law of arrest imposed on police officers' minimal due diligence before making an arrest and, two, cases wherein a preliminary enquiry was mandatory before arrest. The purpose was to drive home the point that arbitrary arrests are unlawful and that exceptions can be carved out for further inquiry before arrest as per these precedents, however, what the court didn't do sufficiently, was to show how the Atrocities Act, falls under these exceptions.

Critique of the Subhash Mahajan Judgment

At its core, the judgment lays the perception that the Act has been rampantly misused. All the justifications for the directions are contingent on the establishment of the fact of abuse. If the perceived fact of the fake cases and abuse of the Act is rebutted, not much is left in terms of justification for the directions given.

Certain glaring omissions and silences in the judgment need to be highlighted. Firstly, even if one takes the fact of misuse to be true, the court does not explain how victims will be affected when arrests have to be approved by the SSP with reasons recorded and subsequent scrutiny by magistrates.

Khora argues that the senior superintendent of police (SSP) has a busy schedule, and that it is, difficult to visualise the SSP being able to do due diligence before giving or withholding an arrest

136 *Lalita Kumari v. State of Uttar Pradesh*, (2014) 2 SCC 1.

order.¹³⁷ In any case, the PoA Act does not have any specific guidelines regarding arrest. It does not say that arrest is a must if a First Information Report has been filed. Making the SSP's prior approval necessary may only further delay the process. Further, the rule leaving approval only with the SSP seems unnecessary and excessive even if one were to contain fake cases.

Secondly, it is important to note that the due diligence Police officers must do before an arrest are still applicable to the Atrocities Act, as laid down in judgments like *Joginder Kumar*¹³⁸ -

“In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer.”

Further, as *Lalitha Kumari*¹³⁹ held that while registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. If all these general safeguards are still available, why does the court paint a picture wherein none of these are applicable to the Atrocities Act?

The law has to be understood as an instrument or tool at the disposal of those who have the power to use it. Misuse of any law (including this one) is possible and pervasive, especially on the part of resourceful people. The court seemed to be apprehensive about the possibility of misuse of such a stringent law, but in order

137 Sthabir Khora, *Misconstruction of the Anti-Atrocities Act's Misuse*, 53 ECON. AND POLITICAL WEEKLY (2018).

138 *Supra* note 132.

139 *Supra* note 136.

for a tool to be misused, the user must wield the ability to misuse it. The court’s silence on this subject is deafening.

Thirdly, the acknowledgement of abuse cannot be based on five judgments cited and NCRB data for the year 2016. The sample size is certainly too small to conclude rampant abuse at an all India level. Further, the terms ‘fake cases’ and ‘abuse of law’ have been repeatedly used several times, but never explained nor defined. This is a symptom of the fact that the NCRB itself does not define it. The question then is, what does one means by ‘misuse’ and ‘fake cases’ in the context of the criminal justice system?

Khora interpreted the data used by the Supreme Court and offered a response to it based on a study of final reports done for a state in north India.¹⁴⁰ This is because false cases form a large part of “final reports,” popularly known as closed cases.

Table 1: False Cases and True but Insufficient Evidence: Comparison between Indian Penal Code and PoA

	Total Cases Disposed Of by Police (Col 15)	False	False Case as % of Total Cases Disposed Of	True but Insufficient Evidence	True but Insufficient Evidence as % of Total Cases Disposed Of	Mistake of Fact	Mistake of Fact as % of Total Cases Disposed Of
Total cognisable IPC crimes— Table 17a.1	28,74,811	1,05,546	3.67	5,70,941	19.86	77,353	2.69
PoA in conjunction with IPC (SCs)—Table 7a.3	39,577	5,344	13.50	2,148	5.43	867	2.19
PoA in conjunction with IPC (STs)—Table 7c.3	6,483	912	14.07	119	1.84	150	2.31
When data of SCs and STs is combined	46,060	6,256	13.58	2,267	4.92	1,017	2.21

Table relied on by Supreme Court, NCRB 2016

In other words, it is only through the final reports or closure reports submitted after police investigation, do we know that a case is false. Thus, looking at table 7A.4, titled “Police Disposal of Crime/Atrocities against STs Cases (State/UT- wise) – 2016”, the court on uncritical and complete faith on the police investigations held that 5347 cases were found to be false. Further, pointing to the high acquittal rate in the atrocities cases, the court interpreted it as another proof of false cases.

¹⁴⁰ *Supra* note 137.

This interpretation by the court is both erroneous and dangerous. Firstly, a perusal of Table 7A.4 reveals those final reports are categorised into true but insufficient evidence, mistake of fact and false cases.

How each category is distinguished from each other is a mystery. What makes a case true but insufficient evidence as opposed to false is unexplained in the NCRB report. The category “*true but insufficient evidence*” basically provides a safe passage for the accused with the benefit of doubt being given by the police, while false case in the final report is nothing but the opinion of the police that a complaint is not true.

However, if a case is false, then it must attract relevant IPC provisions (Sections 182 and 211).¹⁴¹ Majority of the cases categorised as false are simply not prosecuted in practice, a simple categorisation of false by the police was enough for the court, instead of affirmation of the same after judicial scrutiny of evidence. If so, then as Khora argues -

*“If one is entitled to presumption of innocence even at the trial stage, then the complainant is fully entitled to the presumption of innocence at the stage of the false case in the final report. It must be emphasized that if presumption of innocence holds, the charge of misuse cannot hold.”*¹⁴²

Secondly, the unquestioned acceptance of final reports by the police and the interpretation of acquittal rates as proof of false cases is appalling it reveals apathy and a lack of awareness by the court of police functioning in general and the history of institutional denial of justice to the oppressed castes. These include all institutions of the state involved in the criminal justice system, namely - the

141 Section 182 of the IPC punishes provision of false information with intent to cause public servant to use his lawful power to the injury of another person. Section 211 protects people of the SC/ST community from false charge of offence made with intent to injure.

142 *Supra* note 137.

police, medical officers, Special Public Prosecutors and the court itself. The Court's refusal to acknowledge the role of the state instruments in suppressing and perpetrating caste atrocities (Sometimes in collusion with dominant caste perpetrators), is, as Anand Teltumbde put it, a *judicial atrocity* itself!¹⁴³

This judicial atrocity has sparked protests by Dalit groups all over India,¹⁴⁴ as the court had even refused to examine several government reports like the SC/ST Commission Report of 2016 or the K.B. Saxena report of 2004. Neither did it examine non-government (civil society) reports, like the 20 years report card of the Atrocities Act by the National Coalition for Strengthening the Atrocities Act. These reports, among others, trace victims' experiences with the criminal justice system as a whole and enquire into why the system has repeatedly failed them.

It is pertinent to note that the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 was brought in by the Parliament specifically to undo the damage *Subhash Mahajan* inflicted on the Act. It simply reverses the direction in *Mahajan* by stating that, first, under section 18A, the preliminary enquiry shall not be required for registration of a First Information Report against any person under the Atrocities Act. Second, the investigating officer shall not require approval for the arrest; and third, the provisions of section 438 (anticipatory bail) of CrPC shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.

Dalits and the Criminal Justice System

This part will demonstrate different hurdles victimis from oppressed castes/families face with the criminal justice system, while pursuing any semblance of justice. Government Statistics,

143 *Supra* note 79, at 14.

144 *Dalits in India hold Protests Against 'Dilution' of SC/ST Act*, ALJAZEERA (Apr. 2, 2018), <https://www.aljazeera.com/news/2018/04/dalits-india-hold-protests-dilution-scst-act-180402082213061.html>.

civil society reports and personal anecdotes of our respondents will explain the hurdles faced by marginalised communities.

As per the 2016 NCRB statistics, the number of atrocities against Scheduled Caste persons was 40,401 in 2014; 38,670 in 2015 and 40,801 in 2016.¹⁴⁵ NCRB reports of the year 2013 reported 39,408 cases of cognizable crimes committed against SCs in India.¹⁴⁶

What is clear is that there has been no clear reduction in atrocities against Dalits. It will be inaccurate to only rely on registered FIR's, as several atrocities do not come to light for reasons of non-registration of FIRs by the police, or suppression of the incident by the perpetrators through threats or the push to compromise with the perpetrator, even though offences under the Act are non-compoundable.

Teltumbde¹⁴⁷ explains just how the pursuit of justice by a Dalit victim is suppressed. He argues -

“The state administrative machinery, under the hegemonic control of local politicians who invariably belonged to the perpetrating communities, too, would shrug off these crimes. The police, in charge of registering complaints under the act, most often obstruct cases from being registered at all; if not, they fail to register it under the act unless there is social pressure to do so; if not, they fail to apply appropriate sections. If this primary node is crossed, they seek to weaken the case in the course of investigation. When the case goes to trial, the prosecutor handles it shabbily. The judge in the lower court, even if they are well meaning, may not have much choice apart from acquitting the accused. This is the general pattern

145 *Supra* note 131.

146 *Crime in India 3013 Statistics*, NATIONAL INFORMATION SOLUTIONS COOPERATIVE (2013), <http://www.nisc.gov.in/PDF/NCRB-2013.pdf>.

147 *Supra* note 79.

of the aftermath of these cases which gets reflected in the abysmally low rate of conviction.”¹⁴⁸

Sometimes the police assist perpetrators by filing counter-cases against the victim. Dominant castes utilise this method in a concerted effort to make the SC/ST Act dysfunctional. This behaviour by the police can perhaps be explained by the caste affiliations of the police officers themselves or the fact that the Indian police have typical characteristics of being strong towards the weak and weak towards the strong.

Once the case reaches the stage of investigation, different problems crop up. The K.B. Saxena Report explaining reasons for ineffective investigations states that -

“Ignoring the complaints of SCs, discouragement and even rejection of them, giving no credence to the version of victims but believing in the version of the victimizers, shoddy investigation, deliberately creating loopholes to benefit the accused persons, discouraging victims from pursuing the case, pressuring them to compromise, failing to expeditiously conclude investigation and above all failing to provide necessary protection either before or even after the atrocity, are some expressions of these biases.”¹⁴⁹

The delay in filing the charge sheet is also another a regular phenomenon when it comes to atrocities cases. Data on the filing of charge sheet was submitted to Supreme Court in *National Campaign on Dalit Human Rights and Others v. Union of India*.¹⁵⁰

148 *Ibid.*

149 *Report on Prevention of Atrocities against Scheduled Castes*, NATIONAL HUMAN RIGHTS COMMISSION (Apr. 7, 2002) 131 <http://nhrc.nic.in/Documents/Publications/reportKBSaxena.pdf>.

150 *National Campaign on Dalit Human Rights and Others v. Union of India*, W.P (Civil) 104/2006.

Serial No.	Charge Sheet filed within	Percentage of cases
1.	30 days	9.3%
2.	31-90 days	22.1%
3.	91 – 365 days	40.7%
4.	365 days +	27.9%

The Supreme Court in this case acknowledged that the material on record proves that the authorities concerned are guilty of not enforcing the provisions of the Act. In the courts, there is a very high pendency rate of atrocities cases; there were 1,29,831 cases pending trials in courts at end of 2016 as per the NCRB report.¹⁵¹ This takes the pendency percentage to 89.6%. The pendency has only increased as compared to 2007 when there were 99,659 cases pending (79.0%). Further, state governments, which have largely failed to set up exclusive special courts in the districts, have also contributed to this problem.

Once a case reaches the court, it is a common perception that Dalits misuse the Atrocities Act against their rivals and adversaries. As a result of this impression most of the Judges are sceptical and wary of awarding convictions further, witnesses turning hostile is another regular phenomenon due to the threats and pressures by the perpetrators.

Throughout the chapter, we have seen the tendency of judges to not view violence against Dalits as caste atrocities, either through technical reasons, like the accused not knowing the caste of the victim, or the judge himself locating the reason for the conflict outside caste. For example, in the infamous Khairlanji case,¹⁵² where a Dalit family of 4 was hacked to death over a land

¹⁵¹ *Supra* note 131.

¹⁵² *Supra* note 55. See also Khairlanji: The Crime and Punishment, THE HUNDU, (Aug. 23, 2010 updated on Nov. 10, 2016), <https://www.thehindu.com/opinion/Readers-Editor/Khairlanji-the-crime-and-punishment/article16149798.ece>

dispute, the Court said that the killings were not caste violence as the accused had no knowledge of the victim's caste, and hence, SC/ST (Prevention of Atrocities) Act charges were not sustained, although the perpetrators were found guilty under the Indian Penal Code. The same line of reason was taken in Jajjhar¹⁵³ where five Dalits were lynched to death by a mob led by members of the Vishva Hindu Parishad.

The conversations with activists have confirmed the earlier stated observations. A disability rights activist from Chennai reveals -

“Police and the court are not on our side. They belong to administration side. They don't want a black mark. They want to say they are doing well, no discrimination, or cases under them. Some officials do some action but not always. This is what we see in a number of cases. Even after a crime happened, when a girl was admitted in hospital with marks on private parts, the doctors were not ready to examine her. Then on the next three days the victim roamed all over the police station to lodge a complaint. After hearing news on the fifth day we got involved and threatened with agitation, only then they filed FIR. It was a gang rape. In this case, they instead involve IPC section 376 D but they are putting petty cases of IPC Sec. 323 and 321. This is how they dilute.”

An activist ML leader from Tamil Nadu, elaborating on the violence faced by inter-caste families, stated -

“In a hill village named Ettamarachi in Tamil Nadu, the caste composition includes Naidus, Vanniyars and Dalits. In the village a Vanniyar (dominant caste) boy named Suresh married a Dalit girl named Sudha. They even had kids, and the Dalit girl was a bit economically well off, but

153 Ravinder Saini, *Dalits attacked, tension in Jhajjar village*, THE TRIBUNE, (Oct. 7, 2017), <https://www.tribuneindia.com/news/haryana/dalits-attacked-tension-in-jhajjar-village/476116.html>.

because this became a trend, they were getting targeted by PMK (Pattali Makkal Katchi) goons. The goons asked Sudha her caste certificate. Due to continuous harassment the girl went and beat up the person who asked her for the certificate. She said that they didn't want to know her caste for five years, now why are they interested? He made a fuss saying this Dalit girl dared to touch me and chased them off. ...So, because of fear the couple went for protection to the SP. The police, some of them, had links with the Vanniyar boys. They gave protection to the Vanniyar boys harassing the couple and allowed them to beat the couple. Sudha and Suresh complained about how the police officers are working against them. So, to take revenge the police recorded the complaint made by Suresh. SC/ST commission was also approached for protection by the couple. They did one enquiry. Suresh came to know about this and complained about this. 10 mins after the officer started investigating the case, the whole village came and attacked them, the whole family. Sudha was arrested in put in jail for one month for attempt to murder for hitting that boy.”

The ML leader narrated another case, where the police took the side of the perpetrator, she stated-

“In a village called Dharmapuri, one Dalit girl and a Naidu boy fell in love. The village and parents accepted and arranged for wedding. The PMK (Pattali Makkal Katchi) goons entered into the ceremony and said such a wedding should not be done in a temple. They created a fight, broke the pandal, etc. they said go out of the village and do it. The police was there. Police stopped the wedding by saying it's creating a problem but didn't take action against the miscreants.”

Till this point, we have only discussed how state instruments have either abdicated their responsibilities or colluded with the

perpetrators. However, there are several instances wherein the police have been the perpetrators themselves.

For example, the police fired indiscriminately in *Ramabai* colony (a Dalit colony), *Ghatkopar*, in Mumbai, on July 11, 1997. 10 persons were shot dead, and 14 suffered bullet injuries, with the partisan role of the police being evident. It was also reported that during 1992-96 the police had direct involvement in 191 cases of atrocities on SCs & STs. Out the 191 cases 25 cases were of death of SC/ST persons in the police custody, 15 of rapes in police custody, and 127 cases of police atrocity and 24 cases of police excesses.¹⁵⁴

In 2009 February in Etawah, Uttar Pradesh, two policemen were caught torturing and beating a six-year old Dalit girl for allegedly stealing 280 Rupees from a woman. On the night of 2 June 2009, a 48-year-old Dalit woman (resident of *Jambada* village) was allegedly gang-raped by four police personnel, including Head Constable Mishra at Amla police station in Betul district of Madhya Pradesh.

These examples make it clear that the police, is not only responsible for omissions when investigating offences under the Act, but is also responsible for committing atrocities against Dalits! However, subsequent amendments have strengthened the Act, as the parliament felt that the Act in its current form is clearly not enough deter caste atrocities.

THE 2015 AMENDMENT TO THE ATROCITIES ACT (enforced with effect from January 26, 2016)

This amendment was very significant in strengthening the Act, both procedurally and substantively. With respect to the procedure, a separate chapter on the rights of victims and

154 *National Commission for Scheduled Castes and Scheduled Tribes Third Report*, THE NATIONAL COMMISSION FOR SC (1994-95 and 1995-96), 211-213, <http://ncst.nic.in/content/third-report-ncscst-1994-95-and-1995-96>.

witnesses was introduced. This chapter includes provisions that make it the state's responsibility to ensure the protection of victims, their dependents, and witnesses against any kind of intimidation, coercion, inducement, violence or threats. Section 15(3) provides the right to receive notice for all relevant proceedings, while Section 15(4) provides the right to apply to the court to summon parties for production of any documents or material, witnesses or examine the persons present.

Section 15 (5) is indeed a huge leap in securing the interests of victims, as it allows the victim, through their choice of advocate, to be heard at any proceeding under this Act with respect to bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submissions on conviction, acquittal or sentencing. In criminal proceedings, the victim's advocate can only assist the Public prosecutor. This section however, makes an exception to the rule.

Section 15 (6) states the court should provide to the victim, their dependent, informant or witnesses the cost travelling and maintenance expenses during investigation, inquiry and trial; social-economic rehabilitation during investigation, inquiry and trial; complete protection to ensure justice. The victims, under Section 15(8), can also make an application to the court securing anonymity.

The amendment has included several new offences under Section 3, namely, tonsuring of the head, moustache, or similar acts which are derogatory to the dignity of members of Scheduled Castes and Scheduled Tribes, garlanding with *chappals*, denying access to irrigation facilities or forest rights, dispose or carry human or animal carcasses, or to dig graves, using or permitting manual scavenging, dedicating a Scheduled Caste or a Scheduled Tribe women as Devadasi, abusing in caste name, perpetrating witchcraft atrocities, imposing social or economic boycott,

preventing Scheduled Castes and Scheduled Tribes candidates from filing of nomination to contest elections, hurting a Scheduled Caste/Scheduled Tribes woman by removing her garments, forcing a member of Scheduled Caste/Scheduled Tribe to leave their houses or villages, desecrating objects sacred to members of Scheduled Castes and Scheduled Tribe, touching or using words, acts or gestures of a sexual nature against members of Scheduled Castes and Scheduled Tribe.

These new offences take into consideration the evolving ways in which the dignity of Dalits can be assaulted. As the activist ML leader from Chennai, pointed out that in Tiruchi, dominant castes attacked Babasaheb Ambedkar's statue, she pointed out that his posters are torn regularly. This kind of assault to what is considered sacred by Dalits, is a regular phenomenon now. Importantly these practices are now covered by the amendment.

Conclusion

The Laws covering caste discrimination are well-drafted progressive pieces of legislations that are sensitive to the changing nature of discrimination. The recent amendments to the Atrocities Act exemplify this sensitivity. It acknowledges not only the power imbalance between Scheduled Castes and other castes with respect to the legal system but also recognises traditional socio-economic systems that have historically perpetuated caste oppression, like the devadasi system or manual scavenging. The cognizance of this reality is reflected in the several procedural innovations brought in by parliament with regard to, witness protection, victim financial support, victim's right to be heard, victim compensation, punishment for dereliction of duty by public servants and so on.

The protections in law, though comprehensive, are merely on paper. State Law (or positive law) by itself is futile, especially when it is in direct opposition to the customary law of caste. In this context, the role of peoples' movements/civil society is

crucial to bring what is written in text to life. Singularly state law is an ineffectual commandment, but if combined with the force of groups and associations with interest of ensuring Dalit rights, then it can be a potent force for Dalit assertion articulated through the law itself.

I use the term Dalit assertion, because ensuring that a law like the Atrocities Act is followed does not only help the cause of individual victims in cases of atrocities but also becomes a form of political assertion. A case in point is the *Golana* Massacre; wherein four Dalits were killed by dominant caste Rajputs in Golana, a village in Gujarat. These killings were a part of a mass attack wherein eighteen Dalits were injured and several Dalit houses were set ablaze.

Narrain and Uma explain how Dalits in Golana and neighboring villages were mobilised as a response to the massacre -

*“Dalits mobilized thorough the legal process and filed complaints in the police station. In addition to initiating the legal process, Dalits also vocally protested against the massacre and demanded justice on the streets. Social mobilization was done by getting people from hundreds of villages around Golana.”*¹⁵⁵

They further explain how mobilising such large numbers cause, as Martin Macwan¹⁵⁶ put it, a sense of powerlessness amongst dominant castes from a sense of omnipotent power -

“After the massacre, members of dominant castes would use it as a form of threat in all the villages: “Be careful or else we will do to you what was done

155 ARVIND NARRAIN & SAUMYA UMA, BREATHING LIFE INTO THE CONSTITUTION: HUMAN RIGHTS LAWYERING IN INDIA, 42-43 (Alternate Law Forum, 2016).

156 Martin Macwan is a human rights activist from Gujarat who founded the grassroots Dalit organisation, the Navsarjan Trust that works for Dalit empowerment in Gujarat and beyond.

in Golana!” However, the use of Golana as a threat by the dominant castes changed after the decision thirteen years later in which eleven of the accused persons were sentenced for life. After the sentence, it became possible for Dalits to say that if you perpetrate atrocities like Golana, you will go to jail.”¹⁵⁷

157 *Supra* note 153, at 45.

CASTE AND EDUCATION

So says Manu...

*“Dumb are they who plough the land,
Dumb are the ones who cultivate it”,*

So says Manu.

Through religious diktats,

The Manusmriti to the Brahmin tells,

“Do not your energy, on agriculture, waste!”

“Those born as Shudras, All these Shudras!,

Are paying in this life,

For the sins of their past lives”

Thus they create

A society based on inequality,

This being the inhuman ploy,

Of these cunning beings.

The Plight of the Shudras

*Haunted by 'The Gods on Earth',
For two thousand years,
The perpetual service of the Brahmins,
Became the plight of the Shudras.
Looking at their condition,
The heart screams its protest,
The mind blanks out,
Struggling to find a way out.
Education is the path,
For the Shudras to walk,
For education grants humanity
freeing one from an animal-like existence.*

- Savitribai Phule

Introduction

As mentioned in the introduction of the book, one of the aims of this project is to see if there can be a bottom-up approach to develop an anti-discrimination policy or law. Coming up with such a policy or law would also require us to examine discrimination as it occurs in different environments, like the home, public spaces, educational institutions, workspaces, etc. The next two chapters look at two sites or spaces that have emancipatory potential, but are also themselves mired in discrimination – education and livelihoods.

This chapter specifically focuses on the Dalit community and education. There is a lot of quantitative data based reports already published on the same. This chapter uses these reports as a basis for understanding the information provided to us through detailed conversations with members of the community and with activists working on countering discrimination. This chapter will foreground the voices of the respondents by focusing on their narratives of how education has changed their lives, how the school environment/college environment made them feel alienated, how caste affected their relationship with teachers and students and their reflections on the systemic issues which still lead to Dalits being denied quality education and what needs to be done to resolve the same. This chapter also synthesizes opinions expressed during the consultations organised in the course of this research project. The focus will largely be upon school education and to a lesser extent, higher education.

Importance of Education

“*Educate Agitate Organise*” is seen on the letterheads, pamphlets and banners of almost all Dalit organisations. This is Babasaheb Ambedkar’s call to the Dalit community. Education was fundamental to his dream of equality. Savitribai Phule, Jyotiba Phule, Ayyankali, Babasaheb Ambedkar – all of them felt education was key to liberation. Babasaheb said -

“The backward classes have come to realize that after all education is the greatest material benefit for which they can fight. We may forgo material benefits of civilisation, but we cannot forgo our right and opportunities to reap the benefit of the highest education to the fullest extent. That is the importance of this question from the point of view of the backward classes who have just realized that without education their existence is not safe.”¹

For him, education was key² not just to individual upliftment but for the upliftment of the community, it was a necessity if we had to move towards substantive equality. Education was a central demand even for Ayyankali; it is evident³ by the fact that when he led the first ever agricultural workers’ strike, one of the key demands was that the children from his community should be allowed to enter school. In fact, one of our respondents recalled how during the freedom struggle, when there was a boycott of schools and colleges, Ayyankali asked his community students not to do so as he wanted at least 10 people with a B.A. degree from his community.

Even in contemporary times, education is required for social mobility, to assert one’s rights, to work for the upliftment of others, for social change. Two activists from Kerala even said that education has contributed more to social mobility of communities in comparison to land reforms. Education, they said, also gave them the courage to reject some benefits from the government. They stressed that education has always been in the

1 2 DR. BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES 62 (Hari Narke ed., 1982).

2 Upendra Sonpimple, Amritha Mohankumar, *Amplifying ignored voices through education: Drawing lines with Ambedkar*, ROUND TABLE INDIA (Oct. 4, 2014) https://roundtableindia.co.in/index.php?option=com_content&view=article&id=7668:amplifying-ignored-voices-through-education-drawing-lines-with-ambedkar&catid=119:feature&Itemid=132.

3 *Ibid.*

forefront of the Dalit movement in Kerala. Education is also seen as being important to social movements. One of the activists from Telangana, told us that in the Naxal movement, the educated members from dominant castes became leaders by reading Marx, Lenin and Mao and the largely uneducated Dalits became the cadres with guns.

Another activist from Kerala spoke of how she felt education should be made compulsory for all because the community needs to attain its political rights. She also felt that education helps in standing on one's own feet, giving the example of her family. She told us that even though her grandfather was an agricultural slave, her father was able to become a bank manager because of education, and in turn, provided the means to ensure that she was independent today. A teacher-activist from Karnataka spoke about how he considered education as a medicine for the wound of casteism and that education is important for empowerment. He also spoke of the efforts he and like-minded teachers have undertaken in sensitising children on caste and how it is actually working.

Thus, it is clear that education is required for and has helped the Dalit community get independence, social mobility, taking leadership of movements and in fighting casteism.

Status of Education of Dalits in India

Before we proceed to share the views of the respondents about education and the Dalit community, it is appropriate to see an overall picture of where the community stands, as far as education is concerned. The first few five-year plans placed a lot of emphasis on providing facilities for public education. While literacy has increased and enrollment also has increased, we see that the children of oppressed castes are still far from obtaining quality education.⁴

4 NCERT *Position Paper on SC/ST Children's Status on Education*, NCERT (May. 6, 2005) http://epathshala.nic.in/wp-content/doc/NCF/Pdf/position_paper_on_sc_st.pdf.

What do the numbers say?

A respondent activist shared how in 1992, they did a study of 100 Dalit women and found that only four were literate. This is not surprising given the status of education. The latest National Family and Health Survey 2015-16 (NFHS-4) and the latest statistics⁵ from the Ministry of Human Resources Development, Government of India gives us an idea of where things stand. For instance, literacy in the age group of 7+ years is still at 66.1% for Scheduled Castes when the overall literacy figure stands at 73%.⁶ Similar is the case with Adult literacy figures as well.

Next, let us look at an extract⁷ of a table of schooling attained across age groups –

Caste	No Schooling	<5 years complete	12 years or more schooling
Other Backward Class	31.9	16.0	13.2
Scheduled Caste	36.2	16.7	9.6
Schedule Tribe	42.5	18.2	6.4
Other	21.5	15.2	20.4

This data is compiled from a survey that covered households across India. The row ‘Other’⁸ refers to those households who do not identify themselves as SC, ST or OBC. This data covers age groups 6 to 65+ years. Thus, what we have is a consolidated figure. What is significant to see is that currently, only 9.6% of the total percent of Schedule Caste people surveyed have completed 12+ years of schooling and 36.2% have never completed schooling.

5 *Educational Statistics at a Glance- 2016*, MINISTRY OF HUMAN RESOURCE AND DEVELOPMENT (2016), http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/ESG2016_0.pdf/

6 *Ibid*, Table 3.

7 *National Family Health Survey (NFHS-4)*, NATIONAL FAMILY HEALTH SURVEY (2016-17), <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>.

8 *Ibid*.

Each of the figures above shows that as we move across the caste hierarchy, indicators change accordingly. Scheduled Castes and Other Backward Classes are worse off than others, with Scheduled Tribes being the worst off.

While enrollment figures are high at a primary school level (111.9 for SC and 100.1 overall),⁹ for higher education there is a steep drop (19.1 for SC and 24.3 for overall). As can be seen, there is a significant difference between the figures for Scheduled Caste and for all others.

It is clear that while a larger number of Scheduled Caste children are joining school, very few of them are completing it and moving on to higher education. While the fact that all those who join primary school do not go to high school is true for dominant castes as well, for oppressed castes, the gap is much bigger. Our conversations with the respondents and consultations seem to shed some light on the possible reasons.

Caste and the school system

Acts of discrimination in the School system

While the state has to some extent succeeded in setting up schools and getting children to enroll, it has not succeeded in creating a conducive environment for children of oppressed castes. An environment that isn't conducive is created both due to deliberate hostile acts by fellow students and teachers and also failure of the state in taking sufficient steps to create an enabling environment.

One of our respondents, who is a slum-rights activist from Karnataka, said that when he was in class three, they made uniforms mandatory and since his father couldn't afford it, he had to drop out. Another respondent activist from Kerala spoke of how because Dalit children couldn't afford to pay on time, the repeated humiliation of being singled out for not paying fees made

9 *Ibid*, at Table7.

them drop out. He said that this in fact caused the Dalit kids to be conscious of their caste from a young age. A respondent activist from the fishing community in Kerala recounted how the entire schooling system actually made her drop out. She started off by saying how people in the convent she studied in, looked down upon her because she smelt of fish and they would make her sit at the back. They had only few uniforms and in the rainy season they (the uniforms) wouldn't dry so they would make them stand outside. She said that by 9th standard she could not study more and her two sisters were married and her parents didn't oppose her dropping out. Her sister's husband would come and enquire in school and he kept saying she should study and suggested she change schools if she didn't like the current one. She tried to take the transfer certificate but the school wouldn't give one. She then became frustrated with the system and dropped out of school altogether. Another respondent activist from Kerala also said clearly that the humiliation she faced due to her caste made her drop out from school.

These narratives are consistent with what is being reported to this date. A recent report by National Council for Dalit Human Rights (NCDHR) highlights the several forms of discrimination faced by Dalit children in schools across the country today.¹⁰

Some of them are listed below –

- i. SC children (especially girls) are forced to do menial jobs. They are forced to clean toilets and other school premises.
- ii. The students do not use bathrooms, but the teachers make the SC children to clean them.
- iii. Teachers make only the SC children to clean their utensils and many a times they were asked to fetch water, tea etc.

10 *Exclusion in Schools - A Study on Practice of Discrimination and Violence*, NATIONAL DALIT MOVEMENT FOR JUSTICE (2017), http://www.annihilatecaste.in/uploads/downloads/doc_171008102333_2922.pdf.

- iv. SC children are subjected to caste abuse from the peer group and school staff.
- v. Teachers don't support/encourage the SC children in various aspects while they encourage the Caste Hindu students.
- vi. Teachers don't answer to the questions/doubts raised by the SC children in the classroom.
- vii. In Mid-Day meal, SC children are made to receive the food at the end (when formed queues).
- viii. Caste Hindu students sit separately and eat during the Mid-Day meal.
- ix. Cook often serves food second time to the Caste Hindu students but not to the SC students.
- x. SC students were beaten up continuously for being late to the school while the Caste Hindu students receive less or no punishment.
- xi. SC students are made to sit in the last benches.
- xii. Often, teachers abuse the SC students by mentioning they come to school just for the mid-day meal.

In addition to these forms of discrimination, the report also mentions instances of violence against Dalit students – sexual assault, being beaten because Dalit students dared to drink water from the principal's earthen pot, etc. This kind of hostile behaviour is one of the key reasons that Dalit students drop out of school.

Even our respondents testified to this. Speaking of the status in schools currently, the teacher activist from Karnataka told us how there are times when the clothes that the Dalit student wear are torn. Even though they try to cover it up, teachers target them and ask impossible questions. They ask the students how they could come there dressed in such clothes. This leads the students to then drop out. In addition to this, Dalit students are made to sit at the back of the classroom, he said.

Teachers in schools are expected to nurture students, guide them and provide an enabling environment. However, for Dalit students several times it is the teachers themselves who are the source of discrimination. The prejudice that teachers have about Dalit students gets reflected in several ways. One activist from Karnataka shared how teachers give examples of Dalit students who scored high marks to shame dominant caste students, thus entrenching stereotypes that Dalit children are not capable of doing well. The respondent teacher-activist shared several ways in which his teachers discriminated against the Dalit students – keeping them at a distance and asking them to sit in the last row. He narrated an incident where the teacher had said he would give a reward of five hundred rupees to the highest scoring student. But when the teacher realised that the student who scored highest was a Dalit, he did not give the reward because he felt that something was wrong and there was no way the Dalit student could have scored the highest.

One of our respondent activists from Tamil Nadu recalled how caste wreaked havoc in the schools that he worked in. He said that children are taught in 4th standard about their caste. While in the text books there are promises of overcoming caste barriers, due to the stereotyping of Dalit students based on looks, caste is reinforced. He spoke of how Dalit teachers are also excluded. If the Head Master/Mistress is a Dominant caste member and a Dalit is a teacher, she or he will be used as a peon sometimes. Others will not even use their tumbler, he said. The way Dalit teachers and non-teaching staff are discriminated also makes Dalit students more conscious of their caste and makes them feel uncomfortable.

For girls, there is double discrimination. Dalit girls fare worse than Dalit boys. The teacher activist from Karnataka shared how most of the students and teachers in government schools are Dalits, and that they are mostly girls. This is because boys are sent to private schools, while the girls are sent to government colleges and schools, including the Zilla Panchayat president's daughter.

This discrimination extends to non-formal teaching spaces also. A respondent activist from Karnataka shared an incident that happened in her typing institute. When she was learning typing, the instructor was very friendly towards her and even looked like he was going to propose marriage to her soon. However, one day when she was typing out her bio-data, she typed out her caste as ‘SC’, he saw that and got shocked and asked her multiple times, if she really belonged to a Scheduled Caste. He stopped talking to her after that.

Systemic Biases in the School System

The lack of proper infrastructure in government schools and the lack of trained teachers is the fundamental systemic bias. These issues of infrastructure are dealt with elaborately in the NCERT position paper referred to in earlier sections and several government reports, so we will not go into detail into those issues here, but we will highlight some other issues which our respondents shed light on.

Two of the municipal cleaning staff we spoke to in Telangana said that quite a few children in their slum are not sent to school as the school is some distance away and parents don’t send their children to school in the fear of them facing accidents while crossing the road. They also mentioned that as a result, many children are pushed into begging and rag-picking. What we do have to wonder is why are the parents afraid of children crossing the road? Isn’t it probably because both parents have to go to work early and cannot afford to walk their children to school? For instance, cleaning staff have to often report to work between 6am – 6.30am. And in all probability, both parents need to work which is why they are not able to walk the children to school or send them in an auto, unlike those who can afford to. A respondent activist from Kerala also shared how the fact that when they were growing up, since there were not enough buses, it inhibited students, especially girls from accessing high schools.

The fact that there are several private educational institutions controlled by dominant castes is another systemic barrier. Activists from Kerala shared how the non-Dalit communities like Catholics, Nairs, Ezhavas, with their capital started schools in Kerala early on, and how these schools are meant mostly for students of their communities and therefore they don't open up for the Dalits. Even if Dalits do get in, they are treated badly in these schools they said. They also shared how, for example, the Syrian Christian community opened up private English medium schools even in small villages through the international funds they have access to, and then this led to the closure of government schools, which affected the Dalits who could only afford the government schools.

The privatisation of education that resulted from the new economic policy also affected Dalits in a big way. The teacher-activist from Karnataka shared how brahmins and other dominant communities can access these new private schools and colleges but the Dalits cannot. Another activist from Karnataka, now a member of a statutory commission, also stated that the privatisation of education is a big barrier to OBC, SC and ST education. While this is a class issue, in India, it is well known that the class divide falls along caste lines and privatisation has negatively affected the Dalit communities.

The NCERT position paper on SC/ST children also speaks of how structural adjustment followed by the state post liberalisation affected Dalit children. The report quotes a study by Velaskar¹¹ which states –

“However, the commercialisation and commodification of education that privatisation entails, results in poor educational effects for SC/ST children. In a desperate bid to stay in the struggle for mobility, they avail private

11 Padma Velaskar, *Community Participation in Education: A Critique*, 5 (1) SHIKSHA VIMARSH 23, 23-28 (2003).

education in the faith that it is better quality education. In actuality however, private education for the poor is largely of an inferior quality. The cost is exorbitant and the sacrifices made to meet them are not eventually worth them.”

Speaking in one of our consultations, the moderator of one of the sessions said –

“Public education has slipped out of our hands, and we are not investing in government education – we have given up on it. Private universities and colleges are growing in number, and everything continues to move out of our hands. There is still hope, and it is because of what campuses have been showing us in the last 10 months. The young want something more.”

The attempts of the state to overcome systemic issues are also not working. The state is making attempts to address the low educational levels of Dalit children, through several schemes such as scholarships, mid-day meals, etc., however the results as we saw earlier have not materialised. The NCDHR report, after evaluating the various government schemes concludes as follows¹² -

“In conclusion, the Department of School Education and Literacy seems to be mechanically allocating funds under SCSP/TSP without any proper needs assessment of SC/ST children in school, planning of schemes and programmes for children, and accordingly budgeting under SCSP/TSP.”

It is not as if the government does not know it, the government is aware and says it will act, as shown by this paragraph from the report -

“The Ministry itself has acknowledged the need to ensure better planning for SC/ST children under the SCSP/TSP

12 *Supra* note 10, at 76.

in 2012, when it set up a taskforce to generate guidelines for the implementation of MHRD education programmes and schemes under SCSP/TSP. The challenge, therefore, is to reorient the school system and centre stage equity in DSEL schemes. All this would contribute towards ensuring accountability for SC/ST children’s learning, as vital future citizens of the country.”¹³

Many of our respondents also raised concerns over people in social movements and dominant caste intellectuals pushing for education in the mother tongue. They said, how the same people who got educated in the 80s who now have jobs and have social capital, speak of the need to learn in the mother tongue; but for many Dalits, it is English that will give access to social mobility. The teacher activist said while he understood the need for a call to educate children in their mother tongue, he wondered why this call was applicable largely to children of marginalised communities and never to dominant castes who send their children to ICSE or CBSE schools. He said he wanted to send his daughter to a school where she will not be discriminated against and that’s what matters most to him. Speaking of this unjust burden on the Dalit community, one of the activists from Kerala said –

“During Jaseela’s protest,¹⁴ her kids didn’t go to school and went with her for the protest. All Kerala liberal feminists yelled at the State when it said it would take the kids and make them study. Many of the dominant caste feminists said, that it’s the mother’s choice. They are all established and have education. This is hypocrisy because we don’t have access to education. My father lived through naxal movement. He said we must learn Malayalam. He could have put me in English medium

13 *Supra* note 10.

14 Protest: Doctor takes OP to Hospital Veranda, THE HINDU (Jun. 4, 2015, 06:00 AM), <https://www.thehindu.com/news/national/kerala/protest-doctor-takes-op-to-hospital-veranda/article7280772.ece>.

but he put me in Malayalam medium. However, many communists put their kids in English medium. So, these contradictions are not peculiar burden of the Dalit community. So when we do a protest, we must be environmentalist, anti-capitalist. But they will drink foreign whiskey and coke, etc. These double standards have to be addressed.”

The syllabus also acts as a barrier to accessing education. Dalit children, once they enter school also face issues because the syllabus and the way it is taught are all moulded based on dominant caste community’s thinking. A scholar from Telangana shared how for instance in schools, children are indoctrinated to stop eating beef, by relating it to low intellect, which then affects their healthy diet. She shared how the production of knowledge, the culture of contribution to the society by the Dalit community has not been acknowledged since the British period. This larger issue gets reflected in schools and syllabi as well.

The NCERT paper in fact states¹⁵ as follows –

“In India, curriculum and the content of education have been central to the processes of reproduction of caste, class, cultural and patriarchal domination-subordination. In post independence educational policy, modification of content supposedly aimed at indigenisation resulted in brahmanisation as a key defining feature of the curriculum. Brahmanisation has been evident in the emphasis on (1) ‘pure’ language, (2) literature and other “knowledge” of society, history, polity, religion and culture that is produced by higher castes which reflects brahminical world view and experiences and brahmanical perspectives on Indian society, history and culture, and (3) high caste, cultural and religious symbols, linguistic and social competencies, modes of

15 *Supra* note 4, at 26.

life and behaviour. Furthermore, the overarching stress has been on eulogizing mental as against manual labour.

...Curriculum is thus urban elite male-centric and bereft of the country's rich cultural diversity. There has been a corresponding devaluation of "lesser" dialects, cultures, traditions, and folklore of Dalits and Adivasis as also of peasantry."

The position paper also talks of how the curriculum in fact invisibilises the historical oppression and fails to offer any critique of dominant knowledge and value systems and of social relationships based on dominance/subordination and exclusion.

The paper quotes Prof. Kancha Ilaiah as also saying that –

*"Knowledge and language are rooted in and structured around productive processes of lower castes and around socio-cultural surroundings of their habitat. This knowledge and skill based vocabulary, which is very highly developed, finds no place in the school curriculum. Nor do stories, music and songs, values, skills, knowledge, traditions, cultural and religious practices."*¹⁶

In fact, referring to the way the school system and syllabus is made in such a way that the system further alienates disadvantaged communities, one of the moderators at our conference said that while we see the transformative value of education, if the system that we give communities access to is discriminatory, then this will prove to be an additional battle. She mentioned that what the children learn is alien to them. She observed how they are taught in a language that is different from what they speak at home, or that are taught the Ramayana and Mahabharata, from which they feel disconnected due to their different personal experiences. She asserted that when teachers come in with their own biases, and

16 KANCHA ILAIAH, WHY I AM NOT A HINDU A SUDRA CRITIQUE OF HINDUTVA PHILOSOPHY, CULTURE AND POLITICAL ECONOMY 6-10 (Samya, 1996).

the culture of the class is built in terms of biases, the whole system is built against the minority student. She also mentioned that there are efforts to bring about changes in the system: rewriting of syllabi, rethinking of curriculum and organisation of trainings and that there is a lot of critical pedagogy happening with regard to this, but wondered about the impact on the ground of all of these measures. She also asked, aside from the law, what other ways of addressing these issue does one have?

Impact of Discrimination in Schools

As shared by our respondents and as mentioned in the NCDHR report, a major consequence of the caste discrimination students face is that children drop out. In fact, the teachers' attitude towards Dalit children also contributes to their drop-out as recorded in several studies done by the government¹⁷ and non-governmental agencies.¹⁸ However, the government's unwillingness to address these issues is also clear from the fact that the government does not even collect data on a large scale as to why Dalit students are dropping out. However, the data collected by several Dalit groups as shown above should be enough for the state to act on if it was willing to do so. NFHS-3¹⁹ and NFHS-4²⁰ cite distance, education not being considered necessary, required children for work at home or outside for cash/kind, high costs of education, lack of interest in studies, and repeated unsatisfactory performance as reasons for why children drop out of school.

17 *Supra* note 4, at 23.

18 Robert Jenkins & Eimar Barr, *Social Exclusion of Scheduled Caste Children from Primary Education in India*, UNICEF (2006), 10, https://www.unicef.org/files/Social_Exclusion_of_Scheduled_Caste_Children_from_Primary_Education_in_India.pdf.

19 Ministry of Health and Family Welfare of Government of India, *National Family Health Survey, India-3*, INTNL. INSTITUTE OF POPULATION SCIENCES (2005-06), <http://rchiips.org/NFHS/nfhs3.shtml>.

20 Ministry of Health and Family Welfare of Government of India, *National Family Health Survey, India-4*, INTNL. INSTITUTE OF POPULATION SCIENCES (2005-06), <http://rchiips.org/NFHS/nfhs4.shtml>.

Most of the children who dropped out (42.5%) dropped out because they are not interested in studies, according to NFHS-3. The problem, as pointed out in a UNICEF report on exclusion of Dalit children²¹ is that this data is not available by caste and gender. The other problem with this data is that, there is no understanding of why this ‘lack of interest’ as a reason for dropping out, came about. For example, was caste discrimination a factor? One of the activists we spoke to clearly said that the discrimination she faced led to a loss of interest in continuing school education.

Another impact of caste discrimination against students is that it affects relationships between students. An activist from Kerala spoke of how, in class when the teacher is discriminating against Dalit students, the non-Dalit students do not feel the violence and the Dalit students also stay silent, because there is no space. He says -

“We become silent because there is no space to say anything. We don’t want to make a difference between us and other students. They all know but we have a different friendship. The people who speak about caste become casteist according to them. This is the kind of practice in all things in college.”

The teacher-activist from Karnataka says -

“People would refuse to become my friends because of my caste, and my marks would be constantly compared on the basis that I was of a lower caste.”

An activist from Kerala states how in the Christian run colleges, most of the students and teachers are dominant caste Christians and they have a prejudice against students coming through reservations and they are seen as enemies. He also said that some of the families from the Nair community teach their children to hate students coming through reservation.

21 *Supra* note 18.

Caste affects the friendships between students too. The teacher-activist from Karnataka shared –

“When I was in high school, some of us boys who belonged to different castes would get together. And people started talking about it. They would scold them and not us. They would scold them saying ‘Can’t you find other friends? Why are you with these boys?’”

A respondent activist from Karnataka shared how her friends would patronisingly tell her she doesn’t ‘look like’ a Dalit.

In the consultation we conducted, a speaker shared how his daughter was embarrassed to write her father’s name while filling out a form, and then a girl who happened to see what was written stopped talking to her.

The fact that caste affects inter-student dynamics is also recorded in the report by NCDHR, where one of the forms of discrimination reported²² is that ‘Caste Hindu students don’t make friend ship with the SC children.’

Changing nature of Discrimination

The forms of discrimination are also changing. While calling Dalit students by their caste name to harass still goes on, they also get harassed by their identity, but without using the caste name, as can be seen by this incident narrated by one of the activists from Kerala –

“I learnt mridungam. I got in through reservation. In class, one professor said, “play”. I made a mistake. He asked, “Are you getting stipend?” I said, “yes”. Then he said, “Yeah. That’s why.” So, with that one word, when he uses the language of stipend, a new language is being used. Earlier it would have been caste names, so they are using

22 *Supra* note 4, at 46.

rights or reservation to then use it for discrimination. It changes the language. I didn't say anything, I didn't complain or anything."

Caste and Higher Education

Acts of Discrimination in Higher Education

Colleges also turn into hostile environments for Dalit students. The teacher-activist from Karnataka mentioned that once Dalit students enter a college through reservation, just the reservation and scholarship is not enough and unless they have support they drop out. There is a lot of public shaming as several respondents testified. Several times, Dalit students also get lesser marks once the teachers realise the students are Dalit, they shared. While reservation is required, the way it is being implemented makes a lot of Dalit students feel conscious of their caste identity. Respondents also shared how Dalit students are often asked to identify themselves in class and they do so hesitatingly. Respondents also shared that private colleges pose a challenge because students must present the college with a caste certificate, and once their caste identity is known, they are mocked. In a consultation we organised, one of the moderators recalled an instance when a Dalit feminist was studying Sanskrit; there was talk about how she should not be studying the language, and how she was not supposed to have access to it. She also only got a job when she took on her husband's Maratha name.

A section of Dominant caste teachers in the 'best', premier colleges too harass Dalit and Adivasi students. As reported²³ in the blog 'Death of Merit' the Prof. Thorat Committee that was formed to look into the caste discrimination faced by students in the All India Institute of Medical Sciences (AIIMS), clearly

23 *Who Killed Dr. Balmukund Bharti in AIIMS?*, DEATH OF MERIT (May 21, 2011), <https://thedeathofmeritinindia.wordpress.com/2011/05/21/who-killed-dr-balmukund-bharti-in-aiims/>.

recorded the discrimination faced by Dalit and Adivasi students at the hands of the faculty.

Here are a few excerpts from the report as shared in the blog post –

“The problem seems to be deep rooted. This relates to the very attitude of some high caste teachers, if not all, who carry with them the attitude of non-cooperation, and at times of contempt, which results in differential treatment towards SC/ST students. The AIIMS authority needs to address this issue more carefully. This probably requires some education to make the faculty of AIIMS more sensitive to the problems of SC/ST students and their responsibility to be supportive. Denial by the faculty will not serve the purpose. If the SC/ST students feel differently, in that situation, there is a need for open dialogue with them in a non-intimidatory environment and come with some understanding to build confidence in the system.”²⁴

Here are a few personal testimonies as received by the committee, which shows the point –

Case I

“The student reported that “The attitude of the faculty is also biased, the student belonging to the reserved category are failed. Many a time it is impossible to prove the caste discrimination and there is also no administrative authority that can deal such matters.”

Case II

“After the final professional examination, one of the Professor asked me as to which place I came from. I

24 Report of the Committee to Enquire into the Allegation of Differential Treatment of SC/ST Students at AIIMS, NATIONAL LUTHERAN HEALTH AND MEDICAL BOARD (2007), 29, <http://www.nlhmb.in/Reports%20AIIMS.pdf>.

told him that, I am from Ghaziabad. In front of a Senior Resident (doing DM in IRCH), he said that, this fellow is a bad character (Badmash) and he need to be stopped from clearing the examination. There after I was continuously failed in medicine. I may mention that I had never failed in that subject during the preceding three semesters. I had also secured 60 per cent marks in this course in pre-final examination. When I checked my question paper, I felt that nobody had probably checked my examination copy. Then I repeated this examination after six months in which I again failed and also continuously failed in subsequent examination. I kept on giving examination for next one year and finally cleared after one year. In the end I passed and cleared four papers including this paper in one attempt. This was possible because the concern doctor had gone on a leave and another faculty took the examination. The repeated failure had damaged my image and affected me psychologically.”

Case III

“Always the students belonging to reserve category are failed. Last years no scheduled caste students was allowed to cleared in first year final professional examination. For instance, Sujo Attari had got 70 per cent in 1st Professional and 55 per cent in second professional examination, but was not cleared in last professional examination. Due this he suffered from mental depression and received psychological treatment. Many students from first year were not cleared in the final examination of first year. In fact those who did well in earlier examinations were kept hanging in last examination. It appeared that by not clearing the deserving SC/ST students, the institute used them as buffer, under the pretension that, in any case no body

will raise any objection as there is stereotype about the under performance reserved category students.”

Caste vitiates the student-teacher relationship, causing more hurdles for the Dalit students, something that oppressed caste students do not have to face. That they have to face these hurdles in a space which ideally should help liberate them, should level the playing field, is ironic.

Systemic Issues in Higher Education

Most of our respondents spoke about the conditions faced by Dalit students inside the colleges, which has been detailed in sections above. This section focuses on systemic impediments being faced by Dalit students, largely caused by acts of commission and omission from the state. We will share a few points that emerged from our conversations and also detail the kind of systemic issues that are documented elsewhere.

Mr. P.S. Krishnan, a retired IAS officer of the 1956 batch, who has been working continuously, even post retirement, for the advancement of Dalits, Adivasis and Backward Classes, wrote letters to the Chairman of the new committee to draft the new education policy and to the Human Resources Development Minister, Government of India pointing out the issues that prevent ‘Socially and Educationally Backward Classes’ (SEBC) from having quality education.²⁵

Here is a table reproduced from his letter, which shows the wide gap between different caste groups in accessing higher education –

25 Important Points on the Removal of SC/ST Education Deprivation for Inclusion in the New National Education Policy and also Important Points Regarding Socially and Educationally Backward Classes (Oct. 3, 2018, 3:05 PM), <https://groups.google.com/forum/#!topic/unityinstruggle/zzCWbcv1UWE>

PERCENTAGE OF GRADUATES AND ABOVE IN DELHI (As per NSSO 55 th (1999-2000) and 61 st (2004-05) Round Survey data)				
Social Group	Delhi Male		Delhi Female	
	55 th Round	61 st Round	55 th Round	61 st Round
SC	5.5	5.2	1.3	1.3
SEBC	12.5	11.3	3.9	3.4
Socially Advanced Classes. (SAC)/ NSCTBC	32.9	31.4	26.9	26.2

One of the issues he raises is that of Post-Matric Scholarships. On this issue, he says in Annexure 2 of the letter -

“There is a new alarming development in recent years. Huge amounts of arrears of Post-Matric Scholarship (PMS) and Maintenance Allowance have piled up in the last three years. As a result, a number of SC and ST students have been forced to drop out at advanced stages of their higher education. Many others, who have managed to hang on, have to pursue their studies under conditions of severe stress and distress on account of non-payment of fees to their educational institutions and non-availability of maintenance allowance. Post-Matric Scholarships, introduced through Dr. Babasaheb Ambedkar’s initiative as a Member of the Viceroy’s Executive Council in 1943 and extended to STs after Independence, is an open-ended scheme. The concept of “Open-endedness” is that the Government is committed to provide whatever funds are required, even though in excess of the outlay in the BE, and the additional outlay should then be formalised in the RE. The present Government is rightly paying tributes to Dr. Babasaheb Ambedkar and paying homage to him. It will be in

keeping with this that his concept of ‘open-endedness’ continues to be honoured as it was till recently.”²⁶

He continues -

“Delay in timely disbursement of PMS to SC and ST Post-Matric students hampers the full achievement of the purpose of inclusive development and fuller development of India’s human resources, for which this scheme is intended. I have pointed out these to the Finance Minister through my letters. The Kasturi Rangan Committee’s Recommendations in this regard will help. It is to be emphasised that, as mentioned in para 3.3.9 of the Task Force Report on Educational Development of SCs, Scholarships and Maintenance Allowance are released at the beginning of each month or quarter.”²⁷

He also draws the attention of the government to the non-implementation of the Report by the Task Force on Educational Development of Scheduled Castes of the Ministry of HRD, of which he was a member.

In addition to the issue of Scholarships, another big systemic factor that impacts Dalit students as referred to by the respondents, is the commercialisation and privatisation of education. For instance, while interrogating the reason for the difficulties faced by Dalits in getting into IITs, one of the probable reasons as written in the blog ‘Death of Merit’²⁸ is also the enormous coaching industry. As reported in the blog, a stint in the coaching centres cost around 1 lakh for 8 months. While many dominant caste students can access this, how many Dalit students can access the same?

26 *Supra* note 25.

27 *Supra* note 25.

28 Anoop Kumar, *Caste Discrimination in IIT Delhi: A Report*, DEATH OF MERIT (May 1, 2011), <https://thedeathofmeritinindia.wordpress.com/2011/05/01/caste-discrimination-in-iit-delhi-a-report/>.

This issue is applicable to all the prestigious professional courses now, where the coaching industry is huge and given that the majority of Dalit students are not well-off financially, this is a huge impediment in getting access. Another recent impediment in getting access to higher education is the privatisation of colleges and universities. Private colleges and Universities charge high fees, which further inhibits access. Given that the huge gap between Dalits and dominant castes as far as income still persists²⁹ even as per NSSO data, this definitely is a factor in ensuring that access to education varies widely between the Dalits and dominant castes. Additionally, private universities do not also offer reservation, thus making it difficult for Dalit students.

In addition to these issues, Dalit youth also face several external impediments – for instance, an activist from Telangana shared how minor youth among the Dalit community have TADA (Terrorist and Disruptive activities Prevention Act) cases against them, just because they were born in Telangana, which has a history and a current movement of Naxalism. She also shared how Dalits try and enter employment and education in Telangana, but they become suspected people in the state, due to which this entrance into mainstream becomes difficult for them.

Reservation in educational institutions is one of the biggest systemic interventions by the state in ensuring access to education therefore this will be dealt with separately in the next section.

Impact of discrimination in Higher Education

The environment in colleges is so casteist that, as chronicled widely, several Dalit and Adivasi students have committed suicide unable to bear the torture inside colleges. While several dominant caste students and teachers are hostile towards Dalit and Adivasi

29 Subodh Varma, *Economic Gap between Upper Castes and Dalits Persists*, TIMES OF INDIA (Apr 14, 2015, 06:26 AM), <https://timesofindia.indiatimes.com/india/Economic-gap-between-upper-castes-and-dalits-persists/articleshow/46914577.cms>

students because they come in through reservation and not on 'merit', the real reason for the hostility is not 'merit' but just casteism. This is evident when we consider the case of Ajay Sree Chandra, a second generation literate from a Dalit family, who scored enough marks to get in the general quota, but because he was a Madiga (Dalit sub-caste) he was admitted in the reserved category. He was in the top twelve in India to get into Ph.D in Biological sciences in IISc. Here is an excerpt of a report from the blog, 'Death of Merit' on Ajay's death in August 2007 –

“The diary that Ajay maintained was possibly tampered with at the time of his death and it is quite probable that this must happened at the behest of the institute with the help of police. The suicide note had disappeared. The only clue of the circumstance that would have led him to commit suicide is given in his diary where he described the atmosphere of his lab in the following words - “Those eyes, they scare me, they look with such inferiority/superiority complex at you. They tell everything (most of that time). Those eyes scare me... those scares me a lot. My legs are paining...”³⁰

The report further reveals -

“According to his friends at IISc, Ajay was undergoing tremendous mental torture by couple of professors, who are non-cooperative and often humiliated him on caste lines. But according to the Institute, Ajay committed suicide, because of his 'personal' stress. When informed by the IISc authorities, Ajay's father came there to receive the body of his son and at that time he did not have any clue about caste discrimination. Later, after some time when the SC/ST union from the institute informed him of the caste discrimination, he

30 K.P. Girija, *On Suicides, Caste and Higher Education*, THE DEATH OF MERIT (Apr. 26, 2011), <https://thedeathofmeritinindia.wordpress.com/2011/04/26/84/>.

was shocked..... As a middle class student, Ajay had all the tools to be a meritorious student, to compete well with the mainstream upper caste students. But failed, as merit is not the percentage of marks one secured, it seems to be the mark of caste.”³¹

What we therefore see is that the college environment is many a time hostile and therefore not conducive for Dalit youth. The state seems to be doing little in terms of addressing this problem. While they provide scholarships, etc. there are no active steps to stop the discrimination. This needs to be addressed.

Reservation

Given the importance of reservation as an emancipatory measure, it is being dealt with in a separate section by itself.

Reservation on the basis of caste, to set right the oppression of the caste system has been implemented even prior to Independence. The princely states of Mysore in South India, Baroda and Kolhapur implemented caste based reservation system prior to independence³². Prior to Independence, based on Babasaheb Ambedkar’s memorandum to the British Government³³ ‘On the Grievances of the Scheduled Castes’, he listed in detail the grievances of the community and demanded reservation in public services, scholarships and stipends for studies within the country and other measures. Hence, the Scheduled Castes were allowed 8.5% reservation in central services and other facilities.

Reservation is one of the few state interventions that have actually led to social mobility as testified by several of our respondents. Reservation is also an intervention that many dominant castes are vehemently opposed to.

31 *Ibid.*

32 *Bhagwan Das, Moments in a History of Reservation*, 35 *ECON. & POLITICAL WEEKLY* 1, 1 (2000).

33 *Ibid.*, at 3.

In this section, we report what the respondents have said about the impact of reservation and also how reservation is being implemented in a manner that causes hardships to students.

Several activists from the Dalit community asserted that the gains Dalits have made in education are largely due to reservation. The respondent teacher-activist from Karnataka in fact feels that reservation needs to exist as long as discrimination exists. He also narrated an interesting analogy to talk about why the state needs to provide reservation -

“Let’s say, there’s a man who owns a car, and a man who washes it. There’s a difference between them. According to me, the son of the man who owns the car already has a reservation. That is still reservation. It may not be the reservation that has been constitutionally handed down to him. See two people walking on the road, saying that he’s the son of big business man is itself a reservation. When this kind of hierarchy goes, that’s when we no longer need reservation. This is what even Ambedkar also would have thought about.”

The teacher-activist also spoke of how, because of the way reservations are implemented, it causes a lot of discomfort to Dalit students. This is detailed in earlier sections of this chapter. Because of the hate and negativity attached to reservation by dominant caste communities, students who avail of reservation are hesitant to be identified by caste. In fact, these issues prompted him to ask for the government to appoint someone to continuously check if reservation is being implemented correctly. When asked if there needs to be a re-look at reservation since it’s also causing a lot of identity-based issues for Dalit students, he very clearly replied that these discussions on re-looking at reservations are unnecessary right now and what we need is better implementation of reservations.

He also clearly pointed out that once students get reservation and get into colleges, unless they are nurtured, they will drop out.

Others also shared how it might be useful to in fact appoint an official to make sure that reservation is being implemented strictly and in a manner that does not alienate those availing it.

The problems faced by Dalit and Adivasi students post admission are well documented in the blog, the Death of Merit; they are also well documented in the Thorat Committee report on Caste Discrimination in AIIMS and are also referenced in an earlier section in this chapter.

In fact, while we very well know the kind of hardships faced by Rohith Vemula in Hyderabad Central University, a report in the Hindustan Times³⁴ shed light on how even his brother had to struggle in his higher education. Raja Vemula, who wanted to do his M.Sc. secured the 11th rank in the Andhra University exam and joined the course. However, two months later he cleared the result of Pondicherry University as well and since it was better, he wanted to shift there. However, Andhra University asked him to pay 6000 rupees, for which he had to struggle. He finally managed to raise the money with contributions from several friends and shifted. However, once he went there, without any accommodation, he had to stay in an ashram for destitute AIDS patients for 20 days. There were times when he even struggled to have food, he said.

The lack of reservations in private sector as referenced by the activists from Kerala earlier is also a serious issue. In fact, in Mr. P.S. Krishnan's letter, he pulls up the union government for not acting to ensure that private institutions start following the government mandate on reservations. Here is an excerpt from annexure-2 of his letter –

“Legislation for Reservation for SCs, STs and SEBCs in Private Educational Institutions to Secure the long-

34 Sudipto Mondal, *Rohith Vemula: An Unfinished Portrait*, HINDUSTAN TIMES, <https://www.hindustantimes.com/static/rohith-vemula-an-unfinished-portrait/>.

evaded Implementation of the Constitution (Ninety-third) Amendment 2005 inserting new Clause (5) in Article 15.

This is dealt with in para 3.1 of the Task Force Report on Educational Development of SCs. The following are the further developments in this regard-

*At the 3rd meeting of the National Monitoring Committee (NMC) for the Education of Scheduled Castes (SCs), Scheduled Tribes (STs) and Persons with Disabilities (PwDs) held on 21.12.2014 under the Chairpersonship of HRD Minister Smt. Smriti Irani, the official note circulated showed that all official action for enacting this legislation had been completed in the office of the Ministry and all that was required was a political decision from the Government. I pointed out this specifically to the Minister in my remarks at that meeting. This legislation is yet to be enacted. The Kasturirangan Committee may emphasise this.*³⁵

He then goes on to state that even when the Supreme Court has upheld the constitutionality of the amendment providing reservation in private educational institutions, the state has not acted on the same -

“In para 3.1.4 of the Task Force Report, there is reference to the issue of Constitutionality of the Constitution (Ninety-third) Amendment of 2005 in the High Court. The subsequent development is that the Supreme Court has upheld the Constitutionality of this Amendment in the Pramati Educational and Cultural Trust v. Union of India.³⁶ Thus, there is nothing standing in the way of enacting the legislation for which the Ninety-third Amendment was passed by the Parliament. The evasion that has already taken place during the pre-2014 Government and the

35 *Supra* note 25.

36 Pramati Educational and Cultural Trust v. Union of India, (2014) 8 SCC 1.

post-2014 Government and any further delay is a breach of the Constitution.”

This is how reservations are being implemented in our country. Hence, what is required is that reservation needs to continue, but it needs to be implemented in a manner that does not make it uncomfortable for those availing it. The state also needs to act fast in order to ensure that the private education sector too implements reservation stringently.

Addressing Discrimination in Education

Schools and colleges will require different approaches in order to ensure that a conducive environment is created, something the state is not doing. The respondent teacher-activist from Karnataka spoke of how they have a forum of about 30 teachers who work on addressing caste in schools. One of the simple things he said they do is when students sit; they don't ask what caste the five other students sitting next to them belong to. He said they tell them to continue the same thing in society, outside the classroom. They use the existing syllabus creatively to address discrimination and this has started working.

He shared a letter written by one of his students who belongs to a land-owning caste, in which she speaks of how her caste itself has perpetrated caste atrocities against Dalits, and expressed shame regarding the same. If such a change takes place inside the minds of children, then the entire community can change, he felt and that's why they pay more attention to children. He also raises questions about the discrimination meted out to Dalit students, but when he does that he said he is accused of being casteist. Or if he talks about Ambedkar, he said they get upset and feel that he is raising the issue of reservation and creating problems.

During the conference, a moderator shared how we might need to set up internal mechanisms to handle caste discrimination, like the mechanisms to handle sexual harassment and ragging. She

shared how the University Grants Commission (UGC)³⁷ mandates an anti-discrimination cell, but this has not yet been implemented, it must be worked towards. She also added that questions of intersectionality must also be addressed. She also said there is a need to think of other ways to move forward, and resolutions that will make people feel comfortable outside of the law.

Civil society and Peoples Movements need to do a lot more too, to address this issue. Speaking of this critically, the respondent teacher-activist from Karnataka said -

“We spoke so much about struggles and people’s movements. But what have they done till now? Get caste certificates made in your name, give you loans to buy sheep and cows, SC/STs get an 18% reservation fund seeing to that the fund is utilised. They too are trying only at the surface level... Maadigas in the state have the most number of dropouts. If a Maadiga or some other Dalit organisation goes and works in these areas, something can be done. Maybe a school could be built for these kids or something. Then these children automatically can understand why they deserve reservation.”

The state seems to be failing in coming up with workable, inclusive alternatives to ensuring discrimination free institutions. In fact, a report in the online news portal Scroll.in states that in Telangana, a small section of activists think that setting up separate institutions³⁸ (schools and colleges) for Dalits, Adivasis and Muslims is the way to go for ensuring access to education in a discrimination-free

37 The University Grants Commission of India is a statutory body set up by the Union Government in accordance to the UGC Act, 1956 under Ministry of Human Resource Development, and is charged with coordination, determination and maintenance of standards of higher education.

38 Shreya Roy Chowdhury, *As States Push Separate Educational Systems for Backward Groups, Debate about Ghettoisation Grows*, SCROLL (Jul. 23, 2017, 09:06 AM), <https://scroll.in/article/844253/as-education-institutions-fail-inclusion-test-states-push-separate-systems-for-backward-communities>.

environment. However, as several activists pointed out, as reported in the same article, this will lead to further ghettoisation. What we need is an inclusive common-school system and not ghettos.

The NCDHR report offers a number of recommendations to be undertaken at the national and state level to counter discrimination. Their first recommendation is that –

“The Central Government should enact a Legislation on Anti-Discrimination/National Guidelines at all India level in order to foreground the principles and targets laid down in Convention on Rights of Child; and realize the fulfillment of constitutional legal safeguards enshrined as Articles 14, 15, 17, 21, 21A, 23, 24 such as right to freedom, equality, freedom to express, abolishment of untouchability and right to education etc. are upheld.”³⁹

They make a number of other recommendations including strengthening of capacities of statutory commissions to handle complaints of children, about timely disbursements of scholarships, of changes in syllabus to reflect diversity and the history of anti-caste struggles, implementation of the RTE Act, provision of transport and schools, etc. The state must ensure that these recommendations are examined seriously.

Similarly, the Dalit community has several demands as far as education is concerned. The government need not look far to learn how to set right the education system. They just need to listen and have the will to act.

Conclusion

In writing about the murder of Rohith Vemula, the writer Sudipto Mondal⁴⁰ asks –

39 *Supra* note 10.

40 *Supra* note 35.

“Did a lifetime of unequal treatment add to the conditions at the university in leading Rohith to take his own life?”

He then quotes Rohith’s childhood friend Riyaz as saying -

“His family story haunted Rohith all his life. He faced caste discrimination in the house where he grew up. But instead of succumbing, Rohith fought it out. He broke many barriers before he got to the final stretch, his PhD. He gave up when he realised he could go no further.”

Rohith was an extraordinary person, who broke all kinds of barriers to reach where he was. He wanted to do his Ph.D to break fresh ground with his research, which was at the intersection of social sciences and technology. But his caste ensured that he was pitted against MPs, MLAs, ministers and the University management and that ultimately killed him.

In his last letter he says –

“The value of a man was reduced to his immediate identity and nearest possibility. To a vote. To a number. To a thing. Never was a man treated as a mind. As a glorious thing made up of star dust. In every field, in studies, in streets, in politics, and in dying and living.”

Rohith’s murder is a crushing reminder of all that Dalit students have to face.

It is clear that the state seems to have succeeded in getting most Dalit children to enroll into school today – not all, but the vast majority. It is also very clear that once the students are in school, there is a huge difficulty in ensuring that they stay in and complete their education. While state sponsored schemes like scholarships and mid-day meals do succeed partially, the hostile environment deters many children. The individual hostility by teachers and students needs to be addressed. It is clear from our conversations that Dalit students are made to feel that they are lesser, made to feel uncomfortable and this is pushing them out or making them

endure a lot of pain if they are able to stay in and complete their education.

Our Constitution aims at achieving Justice, Liberty, Equality and Fraternity for all. The Preamble says -

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this 26th day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Education has the potential to help us achieve these aims, but the current system of education is failing in doing so. With privatisation, we have ensured that Dalit children who are largely economically disadvantaged do not even have equal access to opportunities, given that government schools are not in a good condition. The discrimination that Dalit children face in schools and colleges makes them feel like second-class citizens, drives a wedge between them and the other students. In such conditions, how do we expect that we will achieve fraternity? The fact that a majority of Dalit children do not even get to complete their education due to the discriminatory acts and the system, means that they are unable to pursue livelihoods, careers of their choice, thus impeding their liberty as well. An unequal education system only means that Dalits are ill equipped in fighting for their rights,

in fighting for scarce resources. The fight for Justice thus becomes an unequal one, right from the start.

Unless we are able to provide discrimination free schools and colleges and access to institutions of higher education, we will not be able to able to achieve our constitutional goals.

A Dalit activist from Tamil Nadu said that her daughter, after learning about Ekalavya in school, asked her mother why Drona was not punished. This emerging consciousness and the increasingly assertive students' movements across the country such as in HCU, FTII, Allahabad University and elsewhere offer hope that the Manuvadi system can still be annihilated and equality brought in.

Oh Eklavya,

If you had kept your thumb,

history would have happened somewhat differently

But you gave your thumb,

and history also became theirs.

Ekalavya, since that day they have not even given you a glance.

Forgive me, Ekalavya, I won't be fooled now by their sweet words.

My thumb will never be broken.

- Shashikant Hingonekar

CASTE AND ITS GRIP ON LIVELIHOODS

“They (Dalits) are seen as victims of untouchability and their role as productive forces in the economy of the village is ignored.”

- Gogu Shyamala

“In the caste society the difference between science and technology became more pronounced. Science, as the formal knowledge acquisition process was the monopoly of the Brahmans whereas technology as “doing” was assigned to various castes under Shudra and the non-caste Dalit categories. The latter, being the producing castes, had developed their respective technologies and knowledge systems for their own part of production... As far as Indian sub-continent is concerned, Dalits were certainly the first technologists. It is only when technology became the basis for commodity production and gained in importance in the trade and commerce that their monopoly started getting eroded. When technology became an applied science, they started getting marginalized.”

- Prof. Anand Teltumbde

In the previous chapter, Caste and Education was examined – the way caste still impedes access, caste discrimination in educational institutions and the status of emancipatory strategies like reservation. In this chapter, we look at the barriers that caste places in the way of freedom in pursuing livelihoods and other structural barriers that perpetuate caste such as the behaviour of dominant castes and the impact it has on Dalits in the workplace. We will also examine the thoughts of Dalit activists about the traditional roles that are imposed on the community, and resistance from the Dalit community to the same. While looking at livelihoods, we are

not restricting ourselves to only jobs being done for an income but also careers in politics and in the public sphere.

Access

For marginalised communities, getting access to jobs of their choice and resources to make a living continues to be a barrier. There are barriers at various levels at different places - education, reservation, access to land and common resources. Access to quality education is one of the biggest entry barriers and that has been discussed in detail in the previous chapter. Even those who seek to make a living through occupations such as agriculture (which does not need formal education), face obstructions.

Many of the Dalit activists spoke of the failure of land reforms in Kerala in ensuring Dalits had access to land. They spoke of how, when the land reforms were introduced and implemented, most of the land was allotted to tenant farmers of middle castes, while Dalits, who were working on the land as labourers, got only 0.04 acres to 0.10 acres, just enough for their housing, and not enough for farming. In fact, even till today, the Dalit community (along with the Adivasi community) is fighting for land rights in Kerala.

While the caste structure in the previous century prevented them from being anything more than workers, it is a sign of continuing oppression that because of their caste, till today, they do not have their own land and are forced to till land owned by someone else. Anand Chakravarti in an essay titled - '*Caste and Agrarian Class: A view from Bihar*' has chronicled how the land reforms in Bihar too were similar, with the middle castes getting ownership of land and Dalits continuing to remain agricultural workers with no land.¹

In fact, access to common resources is sometimes disallowed for the members of the Dalit community. An activist from Tamil Nadu shared how the fight over common resources led to the formation of *Vidudalai Chiraithegal Katchi* (VCK), a radical Dalit party –

1 Anand Chakravarti, *Caste and Agrarian Class: A view from Bihar*, 36 ECON. & POLITICAL WEEKLY 1449, 1449-1462 (2001).

“The VCK, the largest Dalit party, was started because of Chennagarampatti, a village, and its fight over resources. A village will have a common tree, common kolam or pond, which is always auctioned every year. If you get it in the auction, then you pay some money but can fish in the pond and keep the profits, etc. For the first time a Dalit went to the auction. He was killed later. That is the kind of history each of these riots have. It starts when a Dalit tries to stake claim to public space and resources - stake claim to common property, common resources.”

News reports² from across India record the fact that the denial of access continues - when Dalits try to access common lands it leads to backlash from the dominant castes, and the state does not always step in to ensure justice is done.

Because of the lack of access to land as well as common resources, several Dalits migrate to cities in search of livelihoods, but sometimes even aspiring to gain access to livelihoods elsewhere can lead to violence against the community. In southern Tamil Nadu, when Dalits left for cities, earned better and were also no longer available to work in the fields, it angered the land owning Vanniyar community, who indulged in violence against the Dalits. This has been testified to in conversations with activists from Tamil Nadu. The violence takes many forms - houses and belongings are burnt, people are attacked and beaten up. The remaining Dalits are not given work or no services are offered. This again makes it difficult for Dalits to escape the narrow pathways set out for them.

Discussing measures that enabled access, activists were very clear that reservation in education and jobs has been of immense support in accessing livelihoods for Dalits. An activist, whose

2 Bharat Khanna, *Panchayat Land Still Out of Reach, say Dalits*, TIMES OF INDIA (Jul. 3, 2018, 8:28AM) <https://timesofindia.indiatimes.com/city/ludhiana/panchayat-land-still-out-of-reach-say-dalits/articleshow/64834868.cms>

grandfather was a slave, stressed that it was due to reservation that her father got entry into a banking job, which not only helped him but also ensured that she was also able to come up and challenge the established order.

However, some activists testified that poor implementation of reservations has also denied Dalits their jobs. Two activists from Kerala shared in detail about their ongoing campaign to get private colleges to implement reservation and how the state and the dominant castes work together to deny Dalits and Adivasis their right to jobs. Several government colleges in Kerala, run by non-Dalit, non-Adivasi communities get public funding. UGC guidelines require these colleges to implement reservation in employment but they do not do so. Therefore, the activists took these colleges to court. In court, while the UGC filed affidavits stating that reservation must be provided to Dalit and Adivasi communities, the state government did not take that stand. Dominant communities like the Nairs and Christians run many of these colleges. Speaking of the reluctance of the government to upset these dominant communities and the resultant discrimination against Dalits and Adivasis, the respondents shared -

“These people (dominant castes) decide who should rule. So they (the government) don’t want to make them angry. So they refuse to implement the UGC guidelines just to please them. They have decided that SC/STs should not enter these jobs. They are not ready to give affidavit for the same reason. UGC guidelines are there but they are not implementing them, this is direct discrimination. Principal Secretary not giving the affidavit is also direct discrimination. They would have made an ordinance if Nairs or Syrian Christians needed it. When rubber price decreased, immediately, the government released an order to increase the price of rubber by Rs. 5 and take it since it is in the hands of Christians. When the law exists (UGC guidelines) they are not implementing it. The laws

that are not there (rubber prices ordinance), they are making for the already powerful. This is direct violence.”

They noted that the state works actively to deny Dalits access to jobs –

“This reservation if they implement, of the 4 lakh people in teaching posts, 40,000 people will come from SC/ST backgrounds. It will change the lives of Dalits and Adivasis. So that’s why they have blocked that upward mobility.”

They also shared how the dominant caste run institutions exploit legal loopholes, and along with the state, work to ensure that reservation is not implemented -

“Self-financing colleges’ managements have taken each High Court order for the last 20 years and they bring judgments from the Supreme Court in their own favour. Many loopholes are made when the cases are made, so that they can get away with it. So that they cannot be caught. That is why the state government cannot give an affidavit in the HC.”

While the above instances dealt with direct denial of reservation and access to jobs, the procedural issues around reservation which also prevent access was spoken of by others. For instance, the Madiga sub-caste is referred to as Adi-Karnataka in some parts of Karnataka and Adi-Dravida elsewhere. When an activist from another Dalit sub-caste, the Holeyas, who had a name which sounded like a Madiga surname, applied for a job, the official who had to process the application was hesitant. The activist also shared that the officer was hesitant because the officer wanted to ensure people from his sub-caste got through and was not concerned much about people of other sub-castes.

Respondents in our conversations also highlighted how different means are used to scuttle the entry of Dalits and Adivasis - for

instance, when Dalits or Adivasis secured positions under the general category, they were pushed into the reservation quota, thus limiting the number of Dalit or Adivasi candidates who enter professional fields.

Several activists condemned the brahmanical notion of ‘merit’ that is often used to attack reservation to scuttle the entry of Dalits. Merit was critiqued as a concept that is anti-democratic and one that creates an unequal field. The activists also highlighted the fact that representation was important to democracy and ‘merit’ hurts representation. The belief that all children can shine, provided they are given the right opportunities, was stressed upon.

One can see how these kinds of attempts to scuttle reservation have succeeded. For instance, the All India Survey on Higher Education conducted by the Department of Higher Education (2015-16) shows how lopsided the representation of Dalits, Adivasis and Muslims is among the faculty in the country. According to the report, dominant caste Hindus occupy 65% of all faculty profiles while Scheduled Caste faculty occupy just 7.5% of the total posts and Scheduled Tribe faculty occupy just 2.1% of the total posts!³

Among the range of factors affecting access, appearance is significant. Two activists from Kerala shared how for certain jobs only fair-skinned women are chosen and that it acts as a deterrent for Dalits. They shared the observation that in cinema also, dark-skinned women are rarely shown and the concern that it’s difficult to prove that these acts are discriminatory. Appearances matter so much that even award winning filmmakers are subject to this form of discrimination. In an incident shared by an activist, a Dalit filmmaker approached a few actresses for films, which later won a national award for one of the actors. The filmmaker was later told that he was refused dates, even though they were available because he didn’t “*look like a director*” and that his “*face did not belong to that imagination.*”

3 ALL INDIA SURVEY OF HIGHER EDUCATION, Ministry of Human Resources Development, India, 2015-16 <http://aishe.nic.in/aishe/home>

Aside from jobs, even starting businesses on their own is a challenge. An activist shared that bank managers are loathe to give loans to Dalit women. The discrimination starts just based on the appearance several times -

“The bank manager’s assumptions about a woman with oil in her hair, who looks like an agricultural labourer, are very different from the assumptions they make about a woman from an OBC caste who looks like a housewife.”

In conversations with *Powrakarmikas* (municipal cleaning staff) in Telangana, they shared how the contracts for waste management are always with Reddys but the workers are almost always Dalits.

These barriers to access also mean that far fewer Dalits are there in the private sector, which also means that there are no social networks of Dalits in these places. Whereas, dominant caste people have well-meshed social networks which allow them entry. Activists spoke of how these closed networks impact how news is created – that dominant caste media personnel interact with counterparts from elsewhere and discuss and create news and that even if there are possibilities of including Dalit activists or Dalit individuals, this does not happen.

While accessing spaces is challenging for members of marginalised communities, the field of politics and social change is no less challenging. Access within seemingly egalitarian and progressive political spaces has been difficult for Dalits. The fact that the communist movement in India ignored caste for several years is well known. But what also happened in the movement, as testified one of the scholars from Telangana is that people of the dominant castes who had access to reading Marx, Mao, etc. became the leaders whereas Dalits and Bahujans became the foot soldiers of the movement. But even acquiring education and knowledge does not seem to allow Dalits to break some ceilings.

A young activist from Kerala stated that dominant caste intellectuals felt challenged by the Dalit intellectuals –

“...when we push for recognition or search for our identity or make an intellectual contribution, etc. the Kerala intellectual space makes it impossible for us.”

Unable to digest their own privileges and the control they have had over speaking about caste, the dominant castes make the spaces problematic, he said. His anguish is clear when he says -

“We should not write articles, or question their arguments etc. or they will brand us as Dalit intellectuals or Dalit writer. So they are all general. They can speak about anything at all. It is also their identity crisis when they are upper caste. They have a big problem with being born with privileges.”

The formal public sphere is not free of barriers. As far as seats to legislatures and parliament are concerned, the fact that there are so many dominant caste women who will fight for 33% reservation for women but not for internal reservation within it was an example of caste pride which acts as a barrier to access as well.

But even when one crosses all barriers and becomes a leader too, there are challenges. Different activists deplored the fact that Dalit activists are not allowed to speak for all. An activist shared as much –

“When we go and see representatives, an articulate (Dalit) woman will be made to come across as a Dalit woman. They are not allowed to represent all women. Public thinks I am a Dalit organiser. They don’t allow you to decide who you are.”

Continuing on how Dalits are not allowed to represent, a respondent from Kerala shared how she is not allowed to speak for Adivasis also since her community got minuscule amounts of land. (Post land reforms, Dalits got a minuscule portion of land - 0.04 acres - 0.10 acres, Adivasis got none.)

Stereotypes also prevent one from entering a space as a leader and working your way forward, as articulated accurately by another activist from Kerala. She said that those who go to the leadership space, whoever it may be are expected to behave like dominant caste men. This she said, needs to be challenged -

“What you are saying is that we don’t need more Dalits, more sexual minorities, more women to come and think in the same mainstream way. We need them to come and think for themselves. We want them to change the system, not replace the same characters in that box.”

Thus, what is evident is that to this day, caste operates in creating barriers to access jobs and other resources to make a living, in ensuring access to spaces of leadership. While reservation has helped immensely, the state and dominant castes make every effort to scuttle the same. It is also pertinent to note that indirect discrimination through appearances and construction of stereotypes continues to block access. Until all of these barriers are tackled, the number of avenues open to Dalits will continue to remain limited while dominant communities will grow stronger.

Behaviour and Consequences

The Prevention of SC/ST Atrocities Act lists a series of offences punishable under the Act, ranging from dumping excreta to touching a Dalit/Adivasi woman in a sexual manner without her consent. All of these offences have been criminalized based on the historical oppression by the people of dominant castes in their interaction with Dalits and Adivasis. People belonging to dominant castes behave in a manner that causes offense and hurts the dignity of oppressed castes, which has substantial consequences for them.

Our respondents have narrated several types of behaviour by people from dominant castes in workplaces and its impact. It is important to understand both the behaviour and the consequences to understand discrimination. The behaviour is

targeted at individuals as well as entire groups – like a village, or the Dalit employees in a place of work, etc. This chapter discusses both these kinds of behaviour.

Broadly, the discriminatory and abusive behaviour causes two types of consequences – it offends and hurts the feelings of marginalised communities and additionally may lead to a denial of access to certain benefits and services which others are entitled to.

Several instances of discriminatory behaviour are influenced by a casteist perspective of ‘purity,’ where Dalits are considered impure. The practices of segregation and untouchability at home for domestic workers were shared by several of the activists. Narrating how untouchability works now, an activist said –

“Dominant caste people hire Dalit women for domestic work. However, as people practicing untouchability, they make the Dalit women do the work from outside the house.”

An activist narrated how, in parts of Delhi, there are two types of Domestic Workers – one for cleaning and one for cooking and that there is untouchability between the two. Another activist from Kerala shared how when she asks domestic workers to sit with her or eat with her, they are shocked and say they will just eat in the kitchen. The activists said that the fact that domestic workers are given separate plates, not allowed access to bathrooms is nothing but untouchability. Another significant observation by her was that discrimination is normalised for the domestic workers and they do not even feel it is discrimination. This normalisation is a consequence of constant oppressive behaviour by dominant castes. She also shared how even in the government’s Kudumbashree Programme (a state-run self-help group initiative) Dalits are given separate plates. But, instead of questioning it, they just get their own lunch. This is because they are not yet ready to complain, she said, again as a consequence

of centuries of facing such oppressive behaviour. An activist from Karnataka shared another example of such behaviour – she said that among the municipal cleaning staff, the few dominant castes get the relatively cleaner work like hotel collection. Those who are aged and do not ‘look clean’ get dirtier work and lesser pay. Cleaning staff we spoke to in universities also shared that people from other communities, including students, do not respect them.

This concept of purity does not just affect those in the traditional cleaning roles but outside too. An activist working with a science forum narrated the experiences of three Dalit women who did outreach programmes in one of the centres of the science forum. The women explained how many women from OBC castes who took health care information from the outreach workers would always try to sniff out their identities. They would ask the outreach workers their names, which villages they are from, etc. She said that OBC outreach workers did not face this issue. The result of the sniffing out was always some consequence, she said. It might not be as drastic as asking them to leave the village but subtler forms like not offering tea for those who had walked up to 2 kilometres in the sun to get to their house, etc. These subtler forms of discrimination, as explained in the two instances above, show that discrimination is taking newer forms.

Several of the instances of discrimination against Dalit individuals have made them come close to leaving the job or in some instances leaving it. A respondent teacher narrated his experiences with his colleagues. They make it seem that he will get a promotion even if he doesn’t deserve it, because of his caste; they speak well in front of him but ill of him when he is not around, he shared. He felt that there is a lot of indirect discrimination he faces because of his caste, making him want to quit –

“I should be true to my job but they try to impose this complex on me. I think they want me to leave the job.”

As an activist shared, the problem is also because the “burden

of reservation falls on his (Dalit) head.” He said that while many communities get reservation (for example, reservation serving 68% of the population of Tamil Nadu including OBCs), the Dalits have to bear the cross. It is made out to seem that Dalits get reservation without deserving it and the Dalits are made to feel guilty, he said.

For people who chose to stay in the job, countering the discrimination is very tough. A Dalit journalist recounted her struggle with the character assassination she had to face, for reporting on the anti-Dalit violence in Dharmapuri. Her reporting led to abuse on social media, slander that she was in a sexual relationship with her editor. There were even lies circulated that she was involved in a relationship with the Dalit youth Ilavarasan who was killed. These personal attacks on her affected the credibility of her reporting. Her friends and colleagues also moved away from her, afraid that their association with her would lead them to be targeted too. When a senior reporter from a newspaper wrote about her being harassed, stories of him and her being in a relationship started appearing too. The fact that her parents were also there on social media made it more difficult for her. She felt that while this targeting happened to Dalits or those who wrote in support of Dalits, it was also especially targeted at women. This harassment almost made her quit media, she said.

Speaking of the well-known case of an IAS officer, whose chamber was sprinkled with ‘holy water’ to cleanse it after he was transferred from his post, a young activist from Kerala shared his anguish –

“It is an assault on dignity and clear but it cannot be proved... But in these cases, SC/ST officers face, nobody talks about it because it becomes a problem in office. Or they label us as a caste sectarian. So how to speak about it is the first question, only then the laws will be useful.”

The respondent teacher-activist from Karnataka in fact shared that if Dalits started speaking about Ambedkar, they are labelled ‘Casteist’. The discrimination by dominant castes has even forced people to take their own life. An incident from Karnataka, where a government school Head-Mistress was repeatedly discriminated by the teaching and non-teaching staff of a school, forcing her to commit suicide was shared. At other times, the Dalit staff is forcefully moved out. After the violence in Tamil Nadu, the respondent left activist said, while the majority of the police force was Middle Backward Classes (MBC), 3 Dalit policemen were suspended for the failure to protect Dalit homes! Thus, even though the Dalits left their caste-based occupations, their caste still followed them.

This discriminatory behaviour of dominant castes is not just against specific individuals, but also entire groups of people, as shown through instances shared below.

When the Dalits of southern Tamil Nadu moved to the cities in search of better incomes and out of the grip of the landlords in their village, that was met with backlash by backward communities like Vanniyars as mentioned earlier. Activists from Tamil Nadu narrated in detail as to how this happened. Explaining the recent history from her perspective, a left activist said –

“The Vanniyars were upset because the Dalits had built slightly better houses, were getting educated, that they lost their feudal power. (Earlier) Because the ML Party was behind them, they didn’t do much because the party would punish them. They didn’t come forward that time. Class question was prime then, not caste. In 2002, POTA Act was put on us. We went down then, the party. Then the mid castes with the police started torturing. The people started backing from fighting for their own rights. Last ten years nobody to talk on behalf of Dalits. PMK started working there. They didn’t have a seat or anything. So they decided to burn these 3 villages.”

Testifying to this, another woman activist from Tamil Nadu said –

“Three villages were looted, and the whole Dharmapuri issue happened because these people had become slightly wealthy. Every time that happens, the dominant castes find that very very unbearable. Then they look for an excuse, and it is usually inter-caste marriage. Then they go and loot them, ravage their property and send them back by a good ten to fifteen years. Violence is one thing, but when you bring them economically back, it takes a long time to get back.”

There have been other attacks against Dalits and their properties over the last few years, where property has been targeted.⁴ Prof. Anand Teltumbde, analysing these attacks on the property of Dalits, in a fact-finding report⁵ after the Dharmapuri violence, offers this detailed explanation on the newer forms of violence -

“Killings always have a gory association. In the sixties and seventies when Dalits did not have any property or assets, killing was the only means to teach them a ‘lesson’. But over the decades, there has been significant cultural advancement among Dalits with the spread of education. They have striven hard to better their living standards. Today a Dalit homestead is not a dilapidated thatched hut sans any asset. The three hamlets in the subject case had all pakka houses... The physical distinguishing marks between them and the caste Hindus have almost disappeared. Their property and not the bodies therefore become a more effective target for ‘teaching the lesson’. It represents their accumulated labour for years, almost

4 Vinita Govindarajan *The Backstory: Crossing an Invisible Barrier to Report on Caste Violence in Tamil Nadu*, SCROLL (Dec 31. 2017, 06:30 AM), <https://scroll.in/article/861665/the-backstory-crossing-an-invisible-barrier-to-report-on-caste-violence-in-tamil-nadu>.

5 *Tamil Nadu – A Fact finding Report*, Sanhati.org, (Dec. 6, 2012), <http://sanhati.com/excerpted/5889/>

objectification of their lives. Killing may not necessarily devastate the entire family (unless the person killed is the only earning member) but property surely devastates the family. There is no insurance culture among Dalits to aim at partial compensation. No amount of compensation by anyone is going to restore their lives. It is therefore the property becomes the most effective target, which singularly comes out in the subject case.”

What emerges clearly is that even as the Dalit community reaches out for better livelihood options, there are attempts by the caste structure to drag them down.

Activists report the discriminatory behaviour by middle castes against Dalits from Kerala too. Earlier we have showed how educational institutions of the middle castes deny Dalits entry through non-implementation of reservation. This domination, which is no different from brahmanism, extends to the social-cultural sphere too, they said. Activists from Kerala spoke of the Nair domination in films, literary fields and in feminist circles too, and pointed out how the use of cultural capital to dominate over other communities was not discussed enough -

“...if you challenge this Shudra domination, there will be consequences here. If we had said brahmanism, they would have accepted us but we have talked about neo shudra-ness. Their cultural capital. If you oppose Ezhavas or Muslims, it's not the same at all. This cultural capital is not discussed. Because of this caste is not discussed.”

Traditional Roles

Caste has imposed traditional roles and work on Indian society. In the interviews, activists shared the impact of the imposition of these traditional roles and how they see the way ahead.

Dalits have been forced to perform certain roles traditionally, largely based on the sub-caste and, to an extent, the region.

These roles include but are not limited to the following - working in agriculture as slaves / bonded labour / workers; cleaning of material that others will not touch – animal carcasses, human and animal excreta; working with animal hides, etc. Many of those roles involved full time work. Additionally, they were also made to perform other roles like beating the ‘thamate’ and making announcements, playing specific instruments, etc. Dalit women also had to undergo forced prostitution through the Devadasi and Jogini system.⁶

Activists from Kerala have spoken in detail about the slavery that Dalits were traditionally subject to and the impacts it had. Dalits were made to work as slaves in agricultural fields and were treated as properties of landlords. The interviews also brought out the fact that Dalits could never have families, since father and mother would be sold and the kids would become orphans.

In Tamil Nadu too, many of the Dalits were traditionally forced to work in fields of dominant caste landlords and many continue to still do so. As described earlier in this chapter, the fact that they are moving out of these traditional roles is one of the provocations for the middle castes to indulge in violence against the Dalits.

Sanitation is another role that has been traditionally imposed upon Dalits. Speaking at the National Consultation that was part of this research, Bezwada Wilson, founder of the Safai Karmachari Andolan, stated that sanitation is caste-based work, even within Christian and Muslim communities. We must also remember Babasaheb Ambedkar’s words, at this time –

“In India, a man is not a scavenger because of his work. He is a scavenger because of his birth irrespective of the question whether he does scavenging or not.”⁷

6 *Forced Prostitution*, INTNL. DALIT SOLIDARITY NETWORK (Feb. 24, 2015), <https://idsn.org/key-issues/forced-prostitution/>.

7 B. R. Ambedkar, *What Congress and Gandhi have done to the untouchables* (1946).

Several Dalit communities have been made to take up manual scavenging. The IPD Salappa Committee report⁸ lists the communities that had taken up the profession of sweeping and scavenging – Madiga, Golla Madiga, Madure Madiga, Mahar, Madar, Bovi, Vodda, Holey, Dombari, Chaluvadi, Mochi, Koraga, etc. Manual Scavenging, which is the worst form of oppression imposed on Dalits, is something that seems to have started a few centuries ago. The BBMP Guttige Powrakarmikara Sangha,⁹ in its position paper sheds some light on this –

“It is not certain when manual scavenging and untouchability got linked to sweeping and other filthy occupations. Excavations in Lothal in the Harappan civilizations dating back to 2500 B.C. indicate that people had water-borne toilets in each house, which were linked by drains covered by burnt-clay bricks. The drainage system had manholes and chambers to facilitate operation and maintenance. In a later period, people who were considered as slaves were given filthy occupations, one of which was scavenging; the Narada Smriti enumerates 15 kinds of slaves. In Vajasnayei Samhita ‘Chautalas’ were referred to as slaves engaged in the disposal of human excreta. Untouchability seems to have got linked to filthy occupations at a later period during reorganization of the Chatur Varnashrama and manual scavenging got entrenched during urbanization.”

The paper also shows how the British made this caste bound work into a ‘profession’ for the Dalits –

“All British institutions, the army, railways, courts, industries, mining and towns were equipped with dry

8 IPD SALAPPA, Report of the Committee on the Improvement of living and working conditions of Sweepers and Scavengers Report of the Committee on the Improvement of living and working conditions of Sweepers and Scavengers (1976), <https://bit.ly/2BZgMtD>

9 A registered trade union of Contract Powrakarmikas in Bangalore, affiliated to the All India Central Council of Trade Unions.

toilets instead of water borne sewage. Municipalities Act, 1911 and the United Provinces Municipalities Act, 1916 prescribed fine up to Rs. 10/- for those involved in sewage, scavenging and sanitation work for failing to perform their scavenging duties in a proper way on the complaint of the occupier of the house or the building, scavenging is a legal obligation imposed upon the untouchables, a form which they cannot escape.”

Aside from these occupations, Dalits are made to play certain other roles too, like playing instruments – either during festivals, or to make announcements, etc. An activist from Karnataka shared how the dominant castes keep the Dalits forcibly linked to this role. Many Dalits were given 2 acres of land in earlier times as ‘*Inamathi Zamin*’. Since the family still owns that piece of land, the dominant castes insist that the activist’s father plays the traditional instrument, made of animal hide, the ‘*Are*.’ He shared how his father plays the instrument because of two reasons - the pressure to play from the dominant castes and also because his father loves the instrument and it pains him that there is no one else who has learnt it. He narrated the pain of the family, caused by the dominant castes insistence on performing this role -

“He (the father) doesn’t realise that this is also part of the discrimination. He’s not allowed into the temple even if he’s playing. The Brahmins have to perform their (pooja) offering first, ours has no value. He knows all this. But the dilemma hurts him more. I tell him not to go. But he says it’s not easy to let it go. He feels it’s his right/responsibility given by the entire village.”

Prof. Anand Teltumbde gave a historical perspective on the role of Dalits in a village in his essay titled, ‘*Science, Technology and Livelihood of Dalits*’ -

The village system however demanded their labour through the prescribed vocations that were considered ritualistically

and otherwise impure by others. The kind of tasks that they performed in a typical village setting ranged from dragging the corpses of village cattle, skinning them, tanning the hide, making shoes, drums, harness and Pakhal (water carrying bags) and other articles for the use of farmers, scavenging village roads, making ropes, broom sticks, etc. Many of these tasks were not of regular nature and did not absorb entire Dalit population. Hence, many Dalits were also required to labour on farms as landless labourers. In medieval times, under the Jajmani system some came to possess small patches of lands as a part of their remuneration in the form of Enami lands. Cultivation of these lands supplemented the remuneration in kind that they received from villagers to some extent. However, being invariably insufficient, most of the Dalits laboured on others' fields.¹⁰

While the Dalits were dehumanised and forced to perform their roles, Prof. Teltumbde also says that is not the only perspective to see. He spoke of how Dalits were the original technologists of India -

“The Dalits, as it seems, apart from managing their caste vocations that were marked by notions of impurity, provided menial labour to the production processes managed by the Shudra castes. This extensive participation in social production lent them unique advantage to collectively possess large numbers of production technologies. In their own vocations however they were exclusive developers and owners of these technologies which being stigmatized with impurity were not tried by any one. For instance, the leather related technologies that made use of the hide of animals for wide ranging applications for society and are regarded as the

10 Anand Teltumbde, *Science, Technology and Livelihood of Dalits*, 98, <http://el.doccentre.info/eldoc1/setdev/020201zzz1B.pdf>.

first significant technology developed by mankind were the proud creation and exclusive possession of Dalits.”

Similarly, a scholar from Telangana gave a historical perspective saying that the Dalits who are the original productive forces of the village, got dehumanised. She shared with pride that –

“They are fully skilled in the art of agriculture.”

She explained that the community is very agriculture centric. She also very well narrated the organic links between their profession, culture and untouchability, which was later brought in -

“Why do they consume beef, why the non-vegetarianism? It’s primarily because they work with leather. During celebrations, beef is a very prominent dish and eating food is also a community gathering, a festival in itself. There is this festival where they chase a running bull and slaughter it. They also know when and where to kill it. They then have a community feast by cooking the meat. But, since the meat is beef, untouchability is also deeply entrenched in it. Given their powerful beliefs and skills, the aim is also to dehumanise them.”

She narrated in detail how Madigas were skilled in helping the entire village use cattle for agriculture. Getting young bulls to impregnate the cows, castrating the bull and hooving them to make them suitable for agricultural work, etc. She also narrated how Dalits were skilled in tanning and making leather and also tools for the goldsmiths, potters, etc. She asserted that the Dalits occupy a very important space in the functionality of the structure and culture of a village.

It is thus apparent that while Dalits were productive forces, the caste system ultimately dehumanised them and cast a burden on them by sealing their fate within traditional roles. Across the conversations, activists spoke of the need to address the problems caused by these traditional roles.

An activist from Kerala called out the stereotypical representation of Dalits in what he felt was largely leftist media -

“Doolnews translated a speech by Arundathi Roy. It had as headline, Dalit take excreta. Are all Dalits doing that still, have we not changed at all? Is this what you highlight? This focus on caste occupations and humiliating symbols instead of the many changes is very problematic. This is because of Savarna leadership and also left liberalism, they deny us our political agency.”

All the activists we spoke to were clear that the delinking of castes from traditional roles should happen, for several reasons outlined below. An activist from Kerala said that people tended to infer the caste of a person from their occupation and that leads to discrimination and therefore the delinking should happen. It was felt that a lot of jobs such as cleaning, fishing, etc. generate stigma and that if people of all communities did these jobs it would remove the stigma. Activists also pointed out how certain risky jobs are reserved for people of oppressed castes and this needs to change. With occupations like domestic work, it was felt that there is a need to remove the inferiority associated with it so that there is dignity in the job. Dignity was underscored as a very important reason to move away from traditional occupations.

A young activist from Kerala said –

“In many places, government jobs are held highly, it’s better than traditional jobs. In a society, dignity is a fight. When I went to see a friend, I went to a place near Kottarakkal, he is a government officer, peon post, but people call him sir. The upper caste workers call him sir; they might think something else inside. So he has more dignity when he walks.”

There were different thoughts on how the delinking should happen. One activist said that as Ambedkarites, the Dalits must

leave all caste bound occupations. A call was made for gender and caste linkages to jobs to be removed and jobs to be opened up to all. In this way, important occupations like weaving, basket making, etc. could be continued, without people from the same caste having to take it up. As an example of opening up jobs, it was mentioned how climbing coconut trees in Kerala has become democratised across caste and gender.

Mechanisation is another strategy that was spoken of. For instance, one of the activists from Kerala called for agricultural work to be mechanised and modernised. Her reasoning was that this would bring dignity to the job and also open the space for all to enter. Another activist from Kerala however shared how the mechanisation of agricultural work pushed Dalit women to do even more menial jobs in the field. This happened because the ones who came to operate the machinery were non-Dalit men, she said. As a result, the Dalits started looking for other work, but failed to find remunerative work. The impact of mechanisation of agriculture on oppressed castes has been analysed in Punjab, the heart of the green revolution. Prakash Louis¹¹ has showed that after two decades of the green revolution, the share of Dalit owners of land fell by half, whereas for non-Dalits, the reduction of land-ownership was far less. In the same period, the percentage of Dalits doing agricultural work increased slightly. He states that due to an enormous demand for cash-crops and mechanisation of agriculture, the Dalits could not afford to hold on to the small plots of land. They therefore sold their small plots and joined the large section of agricultural workers, he concludes.

11 PRAKASH LOUIS, SOCIAL EXCLUSIONS OF DALITS AGONY AND ASSERTION OF AN OUTCASTED COMMUNITY 162 (A. K. Lal ed., 2003).

Workers Profile of Punjab:¹²

	Cultivators	Agricultural Labourers	Business	Other Services
Scheduled Caste Population				
1971	10.68	57.95	2.20	11.16
1991	4.80	59.83	4.86	13.15
Non-Scheduled Caste Population				
1971	52.88	7.84	10.17	12.37
1991	41.76	9.87	12.75	15.29

Mechanisation in cleaning operations, especially cleaning of septic tanks, sewers, etc. was strongly pushed for by Bezwada Wilson during our consultation. While the demand for mechanisation in scavenging is much required and demanded, the fact that the state invests little in this was pointed out. On the issue of mechanisation of sweeping though, there are challenges. In Bangalore for instance, Powrakarmikas also fear job-loss¹³ once mechanical sweepers are introduced. While all unions are opposed to loss of jobs, there are unions who have suggested to the local government that mechanical sweepers be introduced on dangerous roads like flyovers and ring roads and that the Powrakarmikas who work there can be redeployed elsewhere without job loss. However, some unions are completely opposed to the introduction of the machines. One of the lawyers we spoke to struck a note of caution on mechanisation, saying that mechanisation might not really remove caste from occupations, stating that the machine for cleaning might still be operated by Dalits only and dominant castes may not touch them.

12 *Ibid.* at 168.

13 K.V. Aditya Bharadwaj, *As dust level rises, so does demand for mechanical sweepers from residents*, The Hindu, (Dec. 14, 2017), <https://www.thehindu.com/news/cities/bangalore/as-dust-level-rises-so-does-demand-for-mechanical-sweepers-from-residents/article21616607.ece>.

Modernisation and marketing of products were also suggested. An activist from Kerala said –

“Making baskets has become modernised and so middle castes have taken it up. It’s a conscious and political activity. If a shoe-maker can market it, then it will change. They don’t have skill to market it. Maybe state has to help or NGO has to help. Both have to be done. The shoe-maker’s son should become an IAS officer also.”

Provision of skill-based education by the state was another strategy suggested. An activist shared that because Industrial Training Institutes (ITI) have now been set up by the government, anyone can learn carpentry and it need not be that a carpenters’ son only learns it from his father.

In terms of other roles too, similar sentiments were expressed in the interviews. An activist from Karnataka shared about the tension between his love for the ‘*Thamate*’, the musical instrument played by the Dalits, and the need to delink it from caste to remove the discrimination attached to it -

“Because I’m doing research in areas related to culture... I would feel bad if the art of playing Are or Thamate were to die completely. I feel like it needs to be continued. But instead of binding it to a particular caste, one should look at it as an instrument. An instrument is honoured for what it is. The tradition of playing Are can continue on its own, if you give this particular art form also the dignity that it deserves just like any other art form... It’s a great instrument. We can’t and won’t let it die away. But because of this sentimentality we can’t force anyone to play. Telling a particular caste that they need to play this because the art form and the tradition need to be saved. Those who are educated won’t understand it, hence you have to continue with the tradition, is also cruel.”

He also felt that if the government appointed teachers teach the Thamate, then the form would stay alive and need not be played only by Dalits who learn it traditionally.

The conversations clearly establish the need for action to be taken by the society and the state, to delink professions from caste. Till such time, dignity will remain elusive.

Structural Issues

The conversations shed light on a number of structural aspects which ensure that the caste system continues to impact the livelihood rights of oppressed castes. These aspects include the larger neo-liberal order, state and central governments, political movements such as the women's movement and the left movement, the judiciary, etc. In this section, we discuss in detail the impacts of these aspects.

A leading slum-rights activist from Bangalore shared how dominant castes are the ones shaping society even now –

“During the 1950s it was these brahmins, the ruling class which decided the literature and economy. Later on, the OBCs took it into their hands with the socialist movement. They followed the Lohia movement. The landowning people were liquor barons who established the hospitals and educational institutions. They also took over journalism like major newspapers in Karnataka - Deccan Herald and Prajavani. Later it was mines and real estate mafia ruling the state. Now back to brahmins and corporate world.”

He said that we must study history and look at these structural issues before we proceed to understand discrimination. The Law is the first structural issue we shall look at. An activist from Tamil Nadu rightly said that many times, the marginalised do not have anything but the law, and people seek recourse to the law to set right this discrimination. The Safai Karmachari Andolan had filed

a petition in the Supreme Court in 1993 on the issue of manual scavenging and in 2014, as a result of the petition, the Supreme Court passed favourable orders including a compensation of 10 lakh.¹⁴ However, in spite of the court order, and manual scavenging being banned, it continues to exist. Not just that, the courts are hostile to the issue.

Speaking at our consultation, Bezwada Wilson narrated an incident –

“A DM in Haryana wrote to the SC saying that while there are sewers, and people cleaning the sewers, it cannot be called manual scavenging because they are not carrying shit on their heads. The Supreme Court saw this, laughed, and the judges did nothing.”

This hostility was highlighted by a young activist from Kerala also. With reference to the incident where dominant castes had sprinkled cow urine and ‘purified’ an IAS officer’s seat, he said that –

“The court said since it was not done in public and it was done after he left, it was not caste discrimination.”

The journalist activist from Tamil Nadu, who was facing violent abuse online also mentioned that she got a court order to protect her from the abuse, but nothing happened. Despite this, one has no option but to go to the law, again and again.

If the law and courts sometimes fail marginalised communities, many times the governments do so too. This is best illustrated by the flagship Swach Bharath programme. Not only is there nothing in the program for those who do the actual work of cleaning, but the program is also actually going to increase manual scavenging because of its design. As Bezwada Wilson rightly pointed out in the consultation, Swach Bharat is building

14 Safai Karamchari Andolan And Ors. v. Union of India And Ors., 2014 (4) SCALE 165.

lakhs of toilets, which are connected to septic tanks and not drainage systems, and the people who will be made to clean these tanks are again Dalits!

Even the earlier flagship land reforms programs bypassed Dalit communities and ensured that they have no land, whereas middle castes became landowners, as has been discussed earlier in this chapter.

The economic and governance policies of the state have also negatively impacted the livelihood rights of Dalits. The state through its support for privatisation has also widened the caste divide. The Powrakarmikas interviewed in Hyderabad spoke of how their jobs are all now contractual, with no job security, no bonus and no PF. All the Reddy contractors get a lot of benefits while the Dalit workers don't get anything, she said. Other activists from Karnataka also spoke of how Dalits have been the worst hit after education and health were privatised and therefore argued that privatisation of these services must stop. The policy of globalisation pursued by the state also came in for much criticism. The scholar from Telangana said that after globalisation a lot of focus is shifting away from agriculture. The deforestation, reduction in importance for agriculture, droughts, crop failures and higher subsidies for business and industries, have all resulted in small farmers committing suicide. If that's their condition, imagine the plight of the people who work as bonded labourers (Dalits) on these lands, she asked.

Moving on to non-state actors, an activist from Karnataka deplored the fact that religious institutions have built everything from “*babysitting to medical and dental colleges, schools, health institutions.*” He said that this results in privatisation and the people who have access to these spaces get the best facilities. The marginalised communities have access only to the government services which have become below average, he said. Kerala activists too have pointed out how dominant castes and religions have opened several educational institutions and deny access to

education and employment in these spaces to Dalits. This has been discussed earlier in the report. The Kerala activists also specifically said that the Dalits who are poor, have no option but to go to the government schools which have decreased in quality because of privatisation. Other structural issues such as family, reservation and impacts of caste hierarchies have been discussed earlier in the chapter and hence not elaborated on in this section.

Resistance

As mentioned earlier, the scholar from Telangana had shared how Dalits, the productive forces were deliberately dehumanised and seen only as victims. This section looks at how the community is fighting this dehumanisation and the stereotyping, of course in addition to resisting active discrimination and fighting for an equal share of resources. Various strategies suggested by and adopted by the activists are presented below.

Activists from Kerala recalled one of the earliest resistance movements, that led by Kochu Poykayil Appachan¹⁵ who problematised slavery in the nineteenth century. They recalled how Appachan got educated, moved out and started mobilising those forced into slavery. Collectivising and organising are strategies being followed currently too. The Powrakarmikas from Hyderabad spoke of how things improved for them after they formed a union. They mentioned that they managed to get a hike in wages from Rs. 3000 to Rs. 8500, but that for a few years after that it was not hiked again. Due to collectivisation, they also get a pay-slip, are able to ask for bonus and they all now work together towards common causes, they said. The experience of unionising powrakarmikas in Bangalore also shows the benefit of the same, as documented in the pamphlet of the BBMP Guttige

15 Ajay S. Sekher, Poykayil Appachan, Practitioner of Critique and Co-Option, DECCAN CHRONICLE (Feb. 18, 2018, 1:53 AM), <https://www.deccanchronicle.com/lifestyle/viral-and-trending/180218/poykayil-appachan-practitioner-of-critique-and-co-option.html>.

Powrakarmikara Sangha. These workers are now paid around Rs. 14,500, the highest among sanitation workers anywhere in the country and have managed to get the contract system abolished.¹⁶ When the union was started a little more than a decade ago, the wages were not even Rs. 1000 a month. In Mumbai, contract sanitation workers unionised and managed to get the state to regularise their jobs.¹⁷

An activist from Kerala also said that they must organise and rebel to counter caste pride. Caste pride is what prevents dominant caste feminists from agreeing to internal reservation in the 33% reservation demand for women in legislatures. She said -

“This caste pride is there in every upper caste woman. The people who experience it also accept it naturally. We don’t rebel. Only when we rebel there will be a change. We have to get our message to many people. What all methods we adopt for that. We need to spread it more. By talking, by writing magazines, by many means. We need to do that, and organise.”

Tamil Nadu activists also spoke of how, due to the collectivisation of agricultural workers through the Naxal movement, they were able to fight for minimum wage. Recalling the left led collectivisation, another left activist shared how, till the ML party was present in some of the southern districts, there was no caste violence. She said that after the party presence went down, the Vanniyars started attacking the Dalits. She mentioned that till

16 *BBMP civic workers end protest after govt agrees to demands*, Citizen Matters, (Jun. 14, 2017), <http://bengaluru.citizenmatters.in/bbmp-civic-workers-end-protest-after-govt-agrees-to-demands-19207>. See also Government to pay pourakarmikas through bank transfer, Deccan Herald, (Jun. 24, 2017), <https://www.deccanherald.com/content/618966/government-pay-pourakarmikas-through-bank.html>.

17 Aarefa Johari, *Victory for 2,700 Sanitation Workers in Mumbai as Supreme Court Grants them Permanent Jobs*, SCROLL (Apr. 11, 2017, 10:30 AM) <https://scroll.in/article/834168/victory-for-2700-sanitation-workers-in-mumbai-as-supreme-court-grants-them-permanent-jobs>.

the party was there, the mobilisation was on class lines and not caste lines. This is probably one of the reasons why the caste contradiction was not resolved. This coupled with the fact that Dalits were probably better off after collectivisation, led to the attacks by Vanniyars.

Across conversations, activists shared their thoughts on countering stereotypes. An activist from Kerala narrated an incident where the Kerala Women's Commission had come to participate in a meeting. The members proceeded to tell the organisers that if some Dalit women were present, they could have got the Dalit women to clean the place. The activist said that this is because of the stereotype that Dalit women are fit for such types of labour only. She shared that it is very difficult to change people's hearts and that the only way to change this is by taking power, by asserting. Another activist from Kerala addressed the stereotyping of Dalit women as sex workers. She shared her apprehension that people would identify her as a sex worker, because of the colour of her skin. She narrated an incident involving her nephew, a social worker, and a senior colleague of his. They were out in the streets, doing awareness work on HIV. The senior colleague asked the nephew of the activist to approach a dark woman with a shopping bag at a bus stop and ask her to use condoms. When the cousin approached the woman, she was deeply hurt. Quoting the exchange, the activist said -

“The woman cried and said - I am coming back after coolie work, you are one of us and you told me this. So he also cried and wanted to quit the work.”

The activist said if this happened to her, she would also be shattered. Therefore she said –

“Dalit women resist and oppose this stereotype, even if it means it conflicts with their own politics. So when we talk about discrimination, you see Nalini Jameela's

autobiography. In that, she complains that we didn't let her stay in a Dalit colony. In a society where all Dalits are characterised as dirty, all Dalit women are sex workers, we cannot let her stay there. So it might be coming from a predefined notion of dignity. This is a dilemma. It's a conflict in our own politics."

Explaining why she would also not go to have tea with a sex-worker activist whereas, dominant caste women can, she said -

"Nobody will suspect her. They will think a fair, beautiful lady is helping her. But with me, they will think I am a new sex worker, who was brought into the field. There is that difference. A feminist should not give importance to image theoretically, but I will give importance to that, because my location is different. So there is conflict within me as well."

She also explained why Indian Dalit feminists don't support sex-work, a departure from the broader feminist stand -

"There are 80% Dalit women in street-based sex work in Kerala. If it is a free choice anyone can pick it. There is no dignity, so the caste plays out. So it is lack of choice that leads women to it... Dalit feminist groups and sex workers groups will have a conflict. Dalit women will say that sex work should not be legalised and sex workers will say that it should be."

The stereotype that Dalits have to look wretched is also something that communities have to fight. An activist from Karnataka shared how in Bangalore, there was a Dalit women sanitation worker, who would dress well and come in a Kinetic Honda Scooter. On the day that there was a public event in the area, the activist said that the Powrakarmika had dressed up wonderfully. This led a woman in the neighbourhood to taunt her for dressing well. To this, the Powrakarmika is said to have responded -

“Whatever it is, even if I dress up well and have taken bath you won’t give a glass of water from your house.”

The activist further shared -

“This woman leads a very different kind of life. At home, she does not cook nor does her husband. They both buy their food always. Even our people who are working with Powrakarmikas sometimes joke with her about her bike, eating hotel food and dressing up well. This is because the people working do not have the perspective of what it means to have a holistic perspective to politics.”

This is an active resistance to the negative stereotyping of Dalits. The negative stereotyping of Dalit women is being resisted as shown above, as is the romanticisation, explained next. The fact that some dominant caste feminists saw Dalit women as having more ‘freedom’ for instance, to be out at night, whereas in fact, they are forced to do so out of necessity, was called out -

“In mid 90s when I entered feminism, there was a notion that lower caste women have more freedom. They can go out at night, drink, hit the husband, etc. Isn’t this a romanticisation? When does your freedom become a freedom? Only when you know you have it and when you make a choice. You see my choicelessness as freedom, this is the problem. If a Dalit woman is going to work, she works in construction or breaking rocks or something and comes back late, then she has to go to the market at 7 pm. That is not a freedom. It’s a situation that she finds herself in. That is not a choice. You cannot compare an upper caste feminist going out as a choice with this.”

Activists also shared how there are attempts to split the Dalit community, by painting them as elites who are destroying their own community. Vested interests said that there will be a class war between Dalits (those who got into small government jobs through reservations versus the vast majority of the poorer Dalits).

Dalit activists countered it by asking how come this question was not posed to the Muslim community (which had in its midst estate owners also), but only the Dalit community. Being vocal like this is a strategy employed by other Dalit activists as well. Activists shared how vocal Dalits are a challenge to any others wanting to enter Dalit spaces. Narrating how they held a left party to the account, an activist shared -

“When a meeting for SCs was organised by communists, we questioned that. They have to answer our question as to why after 90 years of socialism and trying to make a revolution, they are calling for an SC meeting. There are many such questions that the Dalit intelligentsia has kept forward like this. Only if they engage with this can they enter into a Dalit place.”

Similarly, dominant caste people also brand Dalit activists who raise fundamental issues of caste as ‘casteist’ said activists from Kerala. They shared how while OBCs and Muslim also get reservation, the burden is solely on Dalits. This happens because the intellectuals from these communities distance themselves and are seen as unmarked. The intellectuals who are from backward communities stand as casteless, universal figures while Dalits are branded. In order to counter this, Dalit activists also spoke of the need for rediscovering anti-caste campaigners like Narayan Guru.

Other strategies used for resistance are, of course, taking recourse to the law. Earlier in the chapter, the legal challenge mounted to counter the aided universities’ refusal to implement reservation has been discussed. An activist from Tamil Nadu, while discussing the impact of slum evictions wondered if the principle of ‘reasonable accommodation’ could be brought into the law so that courts can take all angles into consideration before any dispossession has to occur.

Aside from these strategies, every day, millions of Dalits resist discrimination in their individual capacity. These were shared as

well. Earlier in the chapter, the online harassment meted out to a journalist from Tamil Nadu for covering the anti-Dalit violence was discussed. She mentioned that due to the harassment, for a year she was inactive on social media, and in her journalism, covered other topics. However, after a year, she decided to fight back and started covering issues she wanted to focus on again. Post the caste violence in southern Tamil Nadu, when the houses of Dalits were attacked, the government was slow in moving on rehabilitation. A leftist activist from Tamil Nadu said that one year after the attack, when two members of the community shouted at the Tahsildar for not building houses for the Dalits, it was only then that the construction started.

Stereotypical notions are also resisted by many Dalit activists. While many feminists might be critical of marriage and the family structure, a feminist from Kerala stated how she has embraced family and enjoys the benefits of family making. She said that due to slavery, her forefathers could not do so, but now Dalits are embracing family. She said that while dominant caste feminists can and will reject family, she doesn't want to -

"I have enjoyed the benefits of this family making. My father's father was an agricultural slave. My father was a manager in Canara bank. He got an education, got reservation thanks to Ambedkar, got a job, and became middle class. I can challenge all that. I am a byproduct of that. But for many people entering into the established order is itself difficult. Wearing good clothes, speaking in English, making wealth, etc. Making wealth is very important if you look at a community. I will say I am a family woman. Because I have a family, all the strengths of having a family are there for me. J. Devika can say she doesn't want a family. She has the power of her caste, her family, her community... We have not been able to make emotional bonds as family, or wealth, or an important place for ourselves. We are only making this now."

Activists also spoke of ways to end the caste system itself. An activist from Karnataka, who belongs to the Holeya sub-caste (higher in the hierarchy than the Madiga sub-caste of Dalits), narrated how, when he wore a red shirt, his father would say that red shirts are worn by ‘them’ (Madigas). The activist said -

“This attitude of ‘this thing is used by THEM, this word is spoken by THEM, this name is kept by THEM’ should be done away with completely. In order for this to happen, we need to start some kind of revolution. But it shouldn’t look like a revolution. If it appears obviously like a revolution there’ll be lots of problems. Basically, no one should realise it’s a revolution. Something like that needs to take place. The minute people realise that you are doing something related to Ambedkar or these issues, they brand you.”

This same activist, who is also a government school teacher, started a group of Dalit government school teachers, to address caste. They use the existing syllabus, the existing system, to attack caste. As an example, he said they train children to NOT ask the caste of the children sitting next to them. They then ask the children to continue the same outside the classroom too.

These acts of resistance show that the fight against caste discrimination is forging ahead. Sometimes directly and fiercely, sometimes in a quiet manner, but moving ahead nevertheless.

Conclusion

Apart from reservation, the Indian state seems to have done precious little to ensure that oppressed castes have access to a livelihood of their choice. There are several efforts to ensure that this policy of reservation fails too. Right from privatisation of employment to non-implementation of reservation. Additionally, newer challenges have emerged in the last few decades, in the form of policies of Liberalisation, Globalisation and Privatisation

which seem to be widening the caste divide. Activists also do not repose much faith in the judiciary although, there does seem to be no option but to approach the courts time and again. In terms of traditional roles, the delinking of roles from caste is only happening because Dalits are abandoning these roles, but more needs to be done by society and the state. Many activists do want some continuity (of skills of playing traditional instruments, of important occupations like weaving, etc.) but are forced to give up because of discrimination. However, the resistance to discrimination is widespread and is led by Dalit activists, and many times by those Dalits who have had the benefit of reservation. The resistance is also to active discrimination, stereotyping and to the state. The resistance is taking different forms, it is collective and individual, direct and subtle and is widespread. However, there is still a long way to go before Dalits have complete freedom in choosing a livelihood; in having access to a livelihood that ensures an earning required for a dignified living, for an earning that will help them reduce inequalities.

THE WAY FORWARD

We do not want to end these conversations on caste by positing any theories, making a laundry list of suggestions or recommendations, or even imposing our own opinion of our conversations with multiple activists, advocates and people involved in different movements across South India. Instead, we wish to categorically state that this chapter shares with our readers the critiques, ideas, aspirations and impressions that came out through our conversations in their unedited form, so that we can move towards building a campaign against discriminations of all forms.

This document/report is not in the form of an academic paper, nor does it subscribe to any norms of academic research. It stems from a very activist understanding of research. We have consciously avoided methods of academic research and rejected such a format as we believe that knowledge should be generated by and accessible to the communities who have created it. As Prof. Kancha Ilaiah wrote in the introduction to his book, *Why I am not a Hindu* -

“Narratives of personal experiences are the best contexts in which to compare and contrast these social forms. Personal experience brings out reality in a striking way. This method of examining socio-cultural and economic history is central to the social sciences; significantly, the method of narrating and deconstructing experiences has been used by feminists. Further, Indian Dalit-Bahujan thinkers like Mahatma Phule, Ambedkar and Periyar Ramasamy Naicker have also used this method. Instead of depending on Western methods, Phule, Ambedkar and

Periyar spoke and wrote on the day-day experiences of the Dalit- bahujan castes. I would argue that this is the only possible and indeed the most authentic way in which the deconstruction and reconstruction of history can take place.”

In many academic studies, though the academicians employ the ethnographic research methodology, there is an assumption that the survivor community, or as academics say ‘subaltern’ communities, cannot theorise their own situations. We wish to break and take on that notion, to highlight the different marginalised communities’ theorisation of their lived experiences.

As we shared in the introduction to this report, we did begin this study on the premise of working towards a comprehensive Anti-discrimination law, but in the course of the past 4 years, we rejected the idea of a comprehensive anti-discrimination law, as we feel it is fraught with too many conceptual, legal and administrative loopholes. This scepticism is echoed in several of our conversations. Instead, we wish to focus on a campaign or movement that will better address systemic forms of discrimination and bring various rights based movements which are currently working in silos together. We are also envisioning different social movements addressing discourse of discrimination through policies, rather than a statute. We feel the need to take forward Babasaheb’s vision of annihilating caste as a state of mind in an inclusive manner.

It is in this context that we would like to share some of the narratives that examine the legal changes or the proposition of a new law and also the formation of a campaign, in the hope that they lead us towards addressing all forms of discrimination.

An advocate from Kerala said -

“There is lot of lack of legal awareness among the marginalised communities, which prevents the utilisation

of existing law. The law comes when FIR comes (in criminal cases), when there is so much obstruction in (registering) FIR itself, how would one hope to get justice? It also depends on how state agencies like the police understand the case, how a police officer investigates, prepares the charge sheet, whether it is victim supportive or is it actually against the victim and so on. Along with these, what is the legal service the marginalised community people are getting, whether it is like an equipped lawyer or not.”

The advocate’s observations echo the same problems highlighted in the law and caste discrimination chapter, regarding a legal system which is overwhelmingly perpetrator friendly.

The law requires all sorts of evidence, whoever has more supporting evidence, oral or documentary, has a better chance to establish their case. In most protective laws, like laws on sexual assault, the POA, PWDVA and others, the available evidence from the side of the victim is itself seen with a lens of suspicion. In this context, another law (if brought) on discrimination will suffer from the same shortcomings of existing laws as the formation of evidence itself is elusive, technically and also conceptually. In many cases, it is usually a gesture, a statement, a word, behaviour, leading to things like denial, rejection, remarks, displacements and other discriminatory acts. In these cases, intention of discrimination cannot be easily proved. This is because intention can only be determined by actions and circumstances surrounding these actions. Therefore, only if there is a clear overt statement by an accused discriminating on the ground of caste can anti-discrimination laws come into play. However, as our conversations reveal, often discrimination happens without overt caste slurs, but based on questions concerning personal information, behaviours, etc. which barely constitutes ‘evidence’.

For example, one of our respondents who is a professor shared with us that when his son went and fixed a house for rent, the

owner took the advance and approved. When the professor went to see the house, the owner met the professor and going by the dark colour of the professor's skin, the owner suddenly changed his mind and said that the house is already given out for rent and returned the advance. The owner clearly made remarks about colour but not clearly linking with caste.

Even if these actions are recorded, it becomes very difficult to prove the intention. Taking the example of Protection of Women from Domestic Violence Act, 2005 one of the advocates says that -

“The clarity of the specific ways in which domestic violence was defined made it much easier for the courts to deal with cases coming under that Act. One of the possibilities of a more efficient implementation of the the SC and the ST (Prevention of Atrocities) Act, 1989 would be to enhance our understanding of compensation and what constitutes compensation (exploring the possibility of building on definition of mental trauma, agony, etc.). The question arises as to how would one address these feelings or emotions of being discriminated against in law. Perhaps the concretisation of feelings into a sharper word (for instance ‘state of mind’) might help where the definition of law itself is fluid.”

She continued to share her thoughts saying -

“Create specially trained lawyers in the services. Provide quality in discrimination issues. And I think it's more like an enforceable code of ethics. We need to have some broad points common to everything, work around that, and explain the concept of discrimination. When we are actually setting the context of discrimination in the beginning, the multiple marginalisations like caste, gender, class, ability and other things will have to be factored in, like in the preamble, in the definitions, we have to define marginalisation in that context (of discrimination).”

As many respondents shared, even if we define in detail the acts of discrimination, many of the acts of discrimination cannot be easily proved with different intentions. For example, the state led displacements, which are clearly acts of injustice based on discrimination, will be approved in the name of development.

An advocate from Tamil Nadu shared that -

“In terms of merely a law, it might not help. My first impression is that I’m a little sceptical. Laws make a statement. By the very presence of a law, there is a symbolism to recognising that I can say that you are not to be discriminated. But beyond that in terms of putting in place a structure, say some form of complaints mechanism, redressal mechanism and all of that is very difficult. If we were to talk about it in theory, I might say yes, it’s a great idea.”

Another lawyer from Tamil Nadu said -

“We need to symbolically and otherwise have an anti-discrimination law or the campaign strategy or what is the larger movement of anti-discrimination. As a lawyer who goes to the trial court I’m a little sceptical, is this just going to be one more thing, or is it possible to strengthen even the existing things that are there, to re-interpret some of the laws we have already. As we know that the constitution says no discrimination based on sex, caste, and other things, can we not add few more to it to capture those categories, which have been left out right now. Why can’t these be invoked to have legal challenges, which will correct some of these pre-existing discriminatory clauses or unequal clauses which are already there?”

Respondents also stated the reality of our society, where in many cases, the POA Act (which is supposed to deal with caste discrimination in particular) does not serve its purpose. Many examples show that the existing law on prevention of atrocities

has failed because the police refuse to register the complaint. The same thing can happen with an anti-discrimination law also. An anti-discrimination law cannot be seen as a sudden magical replacement which can do away with the systemic problems which are anyway going to continue, because 10 years down the line the same anti-discrimination law, despite its plus points, might not be entertained - the magistrate may not even understand the issue.

A senior advocate from Tamil Nadu shared that -

“With only ‘Law’, we can’t really eliminate any discrimination. You can’t really bring out a really equal society. Change of mind is very important. We have a plethora of laws. You have more laws than the executing authorities, specially the police. It makes sense that we should have one penal law, which should be all pervasive as far as possible. Too many laws only lead to a good defence for the accused. You should think about one consolidated Act.”

The same advocate also shared -

“Punishment by incarceration also is not effective, we should think about alternate forms of punishment, like subjecting them to community service or counselling. For that we need proper counsellor, we need proper probation officer, we need systems. All our correctional institutions only make people the worst criminals. I always feel compensation as a remedy is something which has to be encouraged. I’m definite that compensation in terms of money is not real exact compensation, but it is a solace. If victim justice also means giving solace to the victims and not being only retributive action, then compensation as an element would teach the accused persons first and also give this person some remedy.”

A musician scholar shared -

“We cannot bring everything under the law. Maybe some Bodies can be constituted to address some of these issues. It should not like family courts, but similar. It should be something that comes from ‘democratic’ institutions. How many marginalised sections have a say in planning actions of Bodies that implement such schemes.”

An LGBT rights activist from Tamil Nadu shared -

“Can an anti-discrimination law deter people from behaving in a certain way, because they can be slapped with a case and whether that will result in certain cases of careful behaviour? For instance, in workplaces there are deeply misogynist men, but the fear that their behaviour might result in them being slapped with sexual harassment cases, their internal hatred towards women, their internal stigma hasn’t gone, in their external behaviour they are all very politically correct. So if there is something like a sexual harassment law that can cause people to behave better in public regardless of their mental make up, then it works. So ideally, if there is an anti-discrimination law, think about all the different ways people can be discriminated against, then at least externally their behaviour is not sexist, ablist, homophobic, classist, casteist, then fine. But I don’t know the practicality of it. One thing is that we can’t bring up everything under the law. We all know that there are laws but it doesn’t still change the people’s minds. So one law is not going to change the society, we have to simultaneously work on a campaign.”

A journalist from Kerala said that -

“I am really sceptical about upto what limit the law can intervene in this area of discrimination. Sometimes it is subtle and sometimes direct. Appearance, skin tone, etc. discrimination happens every day to people who live a

subaltern identity. I don't know how we can control this by legislation. When I go to give lectures to journalism students, I used to think about the language used by the media. Irrespective of the language used, I think that there should be a style book with regard to the use of words, phrases, etc. that are discriminatory that are being used and which have been naturalised. Every media organisation must follow this style book. We don't use 'harijan' now. In the same manner, the law can do certain things. Secondly, the way in which something is reported, like rape, there should be a guideline. There should be some legislative control but at the same time there should be no censorship. We should be sceptical about this kind of censorship if control comes from outside. Freedom of press must be defended."

The prejudice which operates at multiple levels against multiple identities also ends up becoming a part and parcel of interpreting and implementing the law. The neutrality of the law gets lost within these obvious prejudices and negative dispositions of the people in power. Discrimination is normalised to such an extent in people's lives, that often they don't even realise that what they are going through is in fact, discrimination.

In this context, there is a serious importance of formulating and designing a campaign around discrimination, which is a process of understanding what are all the acts of discrimination in different contexts of different marginalisation, how discrimination operates, how the people should be self-conscious to not discriminate, how people's movements should organise themselves to address and oppose the discrimination meted out by the state and other state agencies, the private sector and the general public.

We now end this report with an extract from our conversation with a prominent scholar from Kerala, in the hope that we can all come together to imagine and take forward an inclusive campaign against all forms of discrimination -

“That is why we need platforms for discussions, like a new democratic space. In such a space, there are points that we can join hands on, where we can discuss and share. We are yet to reach that high level of consciousness, we should join hands through platforms that allow diversities and in-depth discussions. All kinds of people should have access to such platforms.”

പ്രതികരണം

ഇന്ത്യയിൽ നിലനിൽക്കുന്ന വിവേചനങ്ങളെക്കുറിച്ച് പുതിയതും അർത്ഥപൂർണ്ണവുമായ ചർച്ചകൾക്ക് ഈ റിപ്പോർട്ട് സാധ്യമാകുമെന്നാണ് ഞാൻ കരുതുന്നത്. ഇങ്ങനെ കരുതുവാൻ നിരവധി ന്യായങ്ങളുണ്ട്. ചിലത് മാത്രം ഇവിടെ സൂചിപ്പിക്കാം.

1. മുൻവിധികൾ ഇല്ലായ്മയും സൈദ്ധാന്തിക ജാഗ്രതയും ഈ റിപ്പോർട്ടിന്റെ മുഖമുദ്രയാണ്. അന്വേഷണ മേഖലയെ അതിന്റെ എല്ലാ സങ്കീർണതകളോടെയും സമീപിക്കുവാൻ ഈ റിപ്പോർട്ട് പരമാവധി പരിശ്രമിച്ചിട്ടുണ്ട്.

2. നിയമത്തിന്റെ സങ്കല്പന യുക്തികളും പ്രവർത്തന രീതികളും 'വിവേചനങ്ങളെ' അതിന്റെ ഉള്ളടക്കത്തിലും വ്യാപ്തിയിലും മനസ്സിലാക്കുന്നതിൽ എങ്ങനെ പരാജയപ്പെടുന്നു എന്ന തിരിച്ചറിവ് ഈ അന്വേഷണത്തെ പുതിയ മേഖലകളിലേക്ക് വെളിച്ചം വീശാൻ കാരണമായിട്ടുണ്ട്. നിയമത്തിന്റെ പ്രായോഗിക വീഴ്ചയായി പൊതുവിൽ മനസ്സിലാക്കപ്പെട്ട ഒരു കാര്യത്തെ സങ്കല്പനപരമായ പരിമിതിയായി മനസ്സിലാക്കുന്നു എന്നതാണ് പ്രധാനമായിരിക്കുന്നത്. ഇതൊരു പുതിയ സംവാദ-അന്വേഷണ സാധ്യത തുറക്കുന്നുണ്ട്.

3. 'വിവേചനം' ഏകമുഖമായ ഒന്നല്ലെന്നും അത് നിരവധി സാമൂഹിക ഘടകങ്ങളോടും സാഹചര്യങ്ങളോടും ബന്ധിപ്പിച്ചു മനസ്സിലാക്കപ്പെടേണ്ടതാണെന്ന തിരിച്ചറിവ് വിവേചനത്തിന്റെ ബഹുമുഖ പ്രയോഗങ്ങളെ സംബന്ധിച്ച അന്വേഷണത്തെ കൂടുതൽ ആഴത്തിലും വ്യാപ്തിയിലും മുന്നോട്ടു കൊണ്ടുപോകുന്നുണ്ട്. ഘടനാപരവും സ്ഥാനപരവും സൂക്ഷ്മവും സ്ഥൂലവുമായ വിവേചന രൂപങ്ങളെപ്പറ്റി കൂടുതൽ ഉൾക്കാഴ്ച നൽകുന്നു.

4. സമൂഹത്തിൽ നിലനിൽക്കുന്ന അസമത്വവും, സമൂഹം പിന്തുടരുന്ന സാമൂഹിക ധർമ്മികതയും വിവേചനങ്ങളെ സ്വാഭാവികവും സ്വീകാ

രൂപമാക്കുന്നതെങ്ങനെയെന്ന നിരീക്ഷണങ്ങളും പ്രധാനപ്പെട്ടവയാണ്.

5. ഇന്നിന്റെ രീതി ശാസ്ത്രം വളരെ പ്രധാനപ്പെട്ടതാണ്. അടിസ്ഥാന ജീവിതയാഥാർത്ഥ്യങ്ങളെയും, സമൂർത്തമായ സാഹചര്യങ്ങളെയും പ്രധാനമായൊടുക്കുകയും മനുഷ്യന്റെ അനുഭവ യാഥാർത്ഥ്യങ്ങളെ മുൻനിർത്തി സൈദ്ധാന്തിക ധാരണകളെ രൂപീകരിക്കുന്ന രീതി ശാസ്ത്രം തീർച്ചയായും മൗലിക ഉൾക്കാഴ്ചകൾ സാധ്യമാക്കുന്നുണ്ട്.

6. ഇന്ത്യൻ സമൂഹത്തിലെ വിവേചന രൂപങ്ങളിൽ ജാതിവിവേചനത്തിന്റെ വിധ്യംസകതയും പ്രാമാണികതയും വിശദീകരിക്കുവാൻ ഈ റിപ്പോർട്ട് പരിശ്രമിക്കുന്നു. എല്ലാ തരത്തിലുള്ള വിവേചനങ്ങളെയും കുറിയ്ക്കാനും സങ്കീർണ്ണവുമാക്കാനുള്ള ജാതിയുടെ ശേഷിയെ വ്യക്തമാക്കാൻ കഴിഞ്ഞിട്ടുണ്ട്. ഇതിലൂടെ വിവേചനങ്ങൾക്കെതിരായ ഏതൊരു നീക്കവും ജാതി വിരുദ്ധമായിരിക്കേണ്ട അനിവാര്യത അടിവരയിടാൻ കഴിയുന്നു.

7. ഇന്ത്യൻ ഭരണഘടനയിലും നിയമവ്യവസ്ഥയിലും ബഹിഷ്കൃത സമൂഹങ്ങൾ എങ്ങനെ അടയാളപ്പെട്ടിരിക്കുന്നു എന്ന് വിശദമായ പരിശോധന നടത്തുന്നുണ്ട്. സംരക്ഷണവ്യവസ്ഥകൾക്കപ്പുറം തുല്യ പൗരത്വം എന്ന പ്രധാനപ്പെട്ട പ്രശ്നത്തിലേക്കും നമ്മുടെ ശ്രദ്ധ ക്ഷണിക്കുന്നുണ്ട്. നിയമനിർമ്മാണം മാത്രം ഇതിനൊരു പരിഹാരമല്ലെന്നും സമൂഹത്തിനുണ്ടാകേണ്ട തിരിച്ചറിവുകൾ വളരെ പ്രധാനമാണെന്നും മുളള നിഗമനം മുന്നോട്ടു വെയ്ക്കുന്നു.

8. വിവേചനങ്ങൾക്കെതിരെ വ്യത്യസ്ത മണ്ഡലങ്ങളിൽ പ്രവർത്തിക്കുന്ന സംഘടനകൾക്കിടയിൽ രൂപപ്പെടേണ്ട സംവാദം വളരെ പ്രധാനമാണെന്ന് റിപ്പോർട്ട് നിരീക്ഷിക്കുന്നുണ്ട്. ഇത്തരം സംവാദങ്ങൾ കൂടുതൽ ഫലപ്രദമായ സാമൂഹിക ഇടപെടലുകളെ സാധ്യമാക്കും.

9. ഓരോ പ്രത്യേക മേഖലകളിലും വിവേചനങ്ങൾ എങ്ങനെ പ്രയോഗിക്കപ്പെടുന്നു എന്നും റിപ്പോർട്ട് വിശദമാക്കുന്നുണ്ട്. ഓരോ മേഖലയെക്കുറിച്ചുമുള്ള സവിശേഷ പഠനങ്ങളുടെ അനിവാര്യതയിലേക്ക് നമ്മുടെ ശ്രദ്ധ ക്ഷണിക്കുന്നു.

10. സംവരണത്തിന്റെ പ്രാധാന്യം അടിവരയിടുന്നതോടൊപ്പം കൂടുതൽ വിപുലമായ മേഖലകളിൽ ഉണ്ടാകേണ്ട ഇടപെടലുകളെ കുറിച്ചും വിശദമാക്കുന്നു. കേവലമായ പ്രായോഗിക പരിഹാര നിർദ്ദേശങ്ങൾക്കപ്പുറം സമൂഹത്തിൽ സംഭവിക്കുന്നതെന്ത് എന്നതിനെ സംബന്ധിച്ച പുതിയ ഉൾക്കാഴ്ചകളുടെ പ്രാധാന്യത്തിലേക്കും, സമൂഹത്തിന്റെ പൊളിച്ചെഴുത്തിനെക്കുറിച്ചുമുള്ള പ്രാധാന്യമുള്ള ഒരു രേഖയാണിത്. അത് പങ്ക് വെക്കുന്ന ഉൾക്കാഴ്ചകളെ വിപുലപ്പെടുത്താനും വ്യാപകമായി വിന്യസിക്കാനുമുള്ള പ്രായോഗിക പദ്ധതികൾ ആവിഷ്കരിക്കപ്പെടേണ്ടതുണ്ട്.

സണ്ണി എം കപിക്കാട്

RESPONSE

I believe that this report will trigger new and significant debates on discriminations existing in Indian society. There are many reasons behind this belief. Let me elaborate few.

1. This is a unique report thanks to its theoretical alertness and openness in approach. Throughout it has taken care to analyse the domain of study by retaining all its complexities.
2. The report tries to problematise the conceptual assumptions of the legal system. The problem lies not with the implementation, but with the very conceptual limits. This approach enables us to open new frontiers of discussions.
3. Discrimination is not looked at in isolation. It is analysed in its complexity by taking many axes of power. This comprehensive political approach helps us to arrive at a deeper understanding of structural and institutional forms of discrimination at the macro as well as micro levels.
4. Equally insightful are the observations on the legitimacy accorded to such discriminations through the mediation of hierarchical social structures and dominant social morality.
5. The methodology gives prominence to the lived everyday experiences in theorising. This is a significant factor.
6. This report foregrounds the hegemonic place caste discrimination plays among multiple forms of discriminations existing in Indian society. It has succeeded in exposing the nasty potential of caste in reinforcing and deepening such discriminations. It leads to emphasising the inevitability of critiquing caste while involved in anti-discrimination activities.

7. The report underlines the importance of the notion of equal citizenship by way of showing the limits of support measures and exploring the ways in which marginalised sections are represented in the Indian constitution and legal system. Societal awakening and interventions are inevitable as the legal measures have limitations.
8. The report takes engagements among different organisations working against various sorts of discriminations as an inevitable pre-requisite for the emergence of such societal interventions.
9. It focuses on the specific domains in order to understand how exactly discriminations are becoming operative at the micro level. It points at the need for deeper studies to understand the dynamics of such specific domains.
10. This is an important document, less for the practical solutions suggested than the insightful understanding about the social structure and the changes to be brought out at a systemic level. Even while highlighting the significance of reservation, it talks about much wider political interventions to be undertaken at the civil society level. Drawing on these insights, concrete projects need to be formulated.

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LIST OF RESPONDENTS

KERALA			
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1	Reshma Bharadwaj	Thuraavoor/ Tirur	All issues
2	Elsamma Prayikulam	Trivandrum	Advocate
3	Mercy Alexander	Trivandrum	Women's movement and labor
4	K K Baburaj	Kottayam	Dalit movement
5	Sunny Kapikkad	Kottayam	Dalit movement
6	Lovely Stephan	Kottayam	Dalit Feminist movement
7	K K Kochu	Kottayam	Dalit movement
8	P E Usha	Trivandrum	Women's movement and Adivasi movement
9	Aswathy	Trivandrum	Disability Rights
10	Geethanandan	Trivandrum	Dalit and Adivasi movement
11	C K Janu	Trivandrum/ Muttanga	Adivasi movement
12	Sonia George	Trivandrum	Women workers movement
13	Sandhya	Trivandrum	Advocate
14	Mythri Prasad	Trivandrum	Issue of Migrant laborers

15	Shahina K K	Ernakulam	Journalist/Advocate
16	Asha Unnithan	Thrissur	Advocate/Feminist/ Activist
17	Vinaya N A	Thrissur	Police/women’s rights activist
18	Ajith Kumar	Trivandrum	Musician/Film maker/ Dalit rights activist
19	George Pulikkoottil	Thrissur	Advocate
20	Santhosh Kumar	Thrissur	Gender learning facilitator/Film maker
21	Faisal	Guruvayoor	Trans rights activist
22	Rekha Raj	Kottayam/ Thrissur	Dalit feminist movement
23	Sara Joseph	Thrissur	Feminist and AAP member
24	Sheeba Ameer	Thrissur	Health movement
25	K M Venugopal	Kannur	Activist
26	A K Jayasree	Payyannur	Doctor/Feminist/ Activist
27	Ajitha (Anweshi)	Kozhikode	Women’s movement
28	Smitha	Kozhikode	Advocate
29	Kalarani	Kozhikode	Advocate
30	Rehman	Kozhicode	Environment activist
31	Ajayghosh	Kozhicode	Activist
32	O P Ravindran	Kozhicode	Activist
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1	Ponni Arasu	Canada	Advocate/Feminist
2	A. Mangai	Chennai	Theatre Activist/Feminist
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4	Sudha Ramalingam	Chennai	Advocate
5	Kalpna Karunakaran	Chennai	Feminist activist
6	Prof Arasu	Chennai	Professor Activist
7	Dr. Aiswharya Rao	Chennai	Disability Rights Activist
8	Jenny Dolly	Chennai	Media, Theatre and Activist
9	Poonkuzhali	Chennai	Advocate
10	Living Smile Vidya	Chennai/ Switzerland	Trans Rights Activist and Actor
11	Glady	Canada	Trans Rights Activist
12	Shankari	Chennai	Trans Rights Activist
13	Sujatha Mody	Chennai	Labor Rights Activist
14	Meghna	Chennai	Labor Rights Activist
15	Karuna	Chennai	Activist
16	Ramani	Chennai	CPIML Activist Feminist
17	Geetha Ramakrishnan	Chennai	Labor Rights Activist
18	Deepa	Chennai	Activist
19	Kavin Malar	Chennai	Media
20	Dr. L Ramakrishnan	Chennai	Queer and Trans Rights Activist
21	Nanburajan	Chennai	Disability Rights Activist
22	Geeta Charusivam	Kanchipuram	Makkal Mandram

23	Salai Selvam	Pondichery	Activist (Education)
24	Karuna Nidhi	Pondichery	Activist (Education)
25	Daya Nidhi	Pondichery	Activist (Education)
26	Talayari	Pondichery	Dalit Rights Activist

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2	Ramdas Rao	Bangalore	Human Rights Activist (PUCL)
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4	Mariswami	Bangalore	Child rights and Dalit Rights Activist
5	Shakun Doundiyakhed	Bangalore	Feminist Activist
6	Madhu Bhushan	Bangalore	Feminist Activist
7	Siri Gowri	Bangalore	Activist for many causes
8	Hulikunte Murthy	Bangalore	Writer, Poet, Activist
9	Uma alias Umesh	Bangalore	Trans Rights Activist
10	Pratibha R	Bangalore	GATWU Activist
11	Saraswathi D	Bangalore	Writer, Poet, Activist
12	Sadhana Mahila Sangha	Bangalore	Street Based Sex Workers' Group
13	Vinay Srinivasa	Bangalore	Advocate Activist
14	Nandini	Bangalore	Disability Rights Activist

15	Babu Khan	Bangalore	Disability Rights Activist
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Sl. No.	Name	Place	Area of Work
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3	Ravichander	Hyderabad	Advocate (Senior Counsel)
4	Venugopal	Hyderabad	Advocate
5	Karthik Bittu	Hyderabad	Activist
6	Gogu Shyamala	Hyderabad	Women's and Dalit Rights Anweshi
7	Kanees Fatima	Hyderabad	Human rights Activist Human Rights Activist
8	Latif Muhammad Khan	Hyderabad	
9	Vijay Bhaskar	Hyderabad	Adivasi Rights Activist
10	Rachana Mudraboyina	Hyderabad	Trans Rights Activist
11	Vasantakka	Hyderabad	Powrakarmika
12	Padmakka	Hyderabad	Powrakarmika
13	Khairunnisa Nakarthorige	Hyderabad	Lecturer Maulana Azad National Urdu University
14	Lakshman	Hyderabad	Transman

Draft Report on Conversations on Anti-Discrimination

Organised by the Alternative Law Forum

March 22, 2016

Bangalore

On Tuesday March 22, 2016, a group of lawyers, activists, students, and other civil society representatives gathered in the meeting hall of Vishranti Nilayam, off Infantry Road, for a day-long series of panel discussions and conversations on the meaning of **Anti-Discrimination**. The meeting was motivated by a study conducted by the Alternative Law Forum (ALF) to look at various forms of discrimination occurring in India. The study had already covered four (4) states and one (1) union territory. In the study, many issues of discrimination were discussed. In the introductory session, Rumi Harish, a member of the study team, told us about certain aspects of the study.

Rumi pointed out some aspects of discrimination that he engaged with during the course of the study. First, while he has been an activist working on issues of gender and sexuality for over a decade, the study made him look anew at the multi-faceted nature of gender oppression in India and how it intersects with caste and class. Second, it brought out how the state often acts as the instrument of discrimination, especially for Adivasi groups. He found that discussions about discrimination on the basis of religion and disability were not discussed by many participants, but caste was a major point of discussion.

Danish Sheikh pointed out how the researchers looked at the law in the study, both in terms of how it recognises discrimination as well as how it could potentially do so with a comprehensive anti-discrimination law. There are now 5 legally recognised forms of discrimination: race, caste, sex, place of birth, and religion. Caste and gender have the most number of legal provisions regarding them (e.g. SC/ST Atrocities Act, Sexual Harassment) though discrimination on those fronts are very much alive. The introduction of a comprehensive civil law would shift the burden of proof from the person complaining to the person against whom the complaint is made.

The crowd grew during the course of the day, and participation, interest, and energy were high throughout.

The event consisted of four panels broken down by topical focus —Disability, Caste, Gender, and Class. Each related to broader themes and posed questions about the meaning of discrimination in both its legal and social sense.

The event was organized by Rumi Harish, Sunil Mohan, and ALF.

Disability

The first panel was on **Disability**. It included Amba Salekar (EQUALS, Centre for Promotion of Social Justice, Chennai) and the disability rights activist, G. Ravi, from Bangalore. Gowthaman Ranganathan of the Alternative Law Forum (ALF) moderated the conversation.

Ravi started by describing disability as a comprehensive whole related to other facets of an individual's identity. He also said identity-based rights claims (specifically caste and gender) have not adequately addressed the issues of disability in their movements.

Getting recognized as disabled is the result of a corrupt system that is often inaccessible to those socially and politically marginalized in other ways. For instance, to get a certificate of disability from a doctor often requires a bribe; at the very least, it requires access to a doctor. Many of the low-caste children he works with in rural Karnataka don't have that access.

The Right to Education Bill says that it is mandatory for every child to receive education. However, the way it works out is that a volunteer (not a teacher) will go to the child's home and teach them life skills. They do not even teach basic science and mathematics, just hygiene. These volunteers are not even paid. When issues are raised, it is often treated as a charity that bumps the egos of those who help, rather than a recognition of a child's basic right. Many parents do not want to show that their children are disabled, leading to underestimates of the extent of discrimination, denial of basic rights and a consequent restriction of political action.

The presence of a legal provision or a social movement alone cannot help the people whose existence is not recognised by society. Just recognising that people with disabilities exist is a huge task and an important intervention, as is changing the mindsets of people that their basic rights should be respected.

Ravi also pointed out that disability often exists with other issues. There is a relationship between a person's caste and the likelihood of them contracting polio. There is an added issue when a disabled woman cannot access a toilet.

Amba added to his points, noting that becoming disabled in the eyes of the state is not as simple as bribing a doctor, since doctors tend to view disability as equating to only physical impairments. Psycho-social conditions, learning disabilities and other impairments that do not present physical symptoms are invisible in the system, even though they also deserve legal protection.

Amba framed the conversation in terms of legal mechanisms and agreements—including the Persons with Disabilities Act (1994), which provides protections for those categorized as disabled. The Act outlines what can count as a disability (it must be included in a government list of impairments). She pointed out that while there is rhetorical support for disabled citizens based on India signing the Convention on Persons with Disabilities (2007), implementation has proven to be challenging when it comes to discrimination.

Amba distinguished between *direct discrimination* which excludes people with disabilities from entering certain spaces and taking public transport and *indirect discrimination* which effectively bars the same people through expenditure failures and lack of supportive infrastructure.

For example, the difference between a sign prohibiting the entry of those in wheelchairs (direct) and not having a wheelchair ramp available (indirect). While the second example may be less visibly discriminatory, it also fails to provide the “reasonable accommodation” set out in the Convention.

Amba pointed out that a comprehensive anti-discrimination law must also address forms of indirect discrimination and offer provisions for reasonable accommodation to address them. Amba also brought attention to the point that the Movement for Rights of the Disabled has evolved over time. Many victories have been won in the courts and this has made the 1994 Act more inclusive. There is fear that the current Bill for the Rights of Persons with Disabilities that is being tabled in Parliament may overturn the Supreme Court’s more progressive judgments.

One of the central points of the conversation was unpacking the meaning of “reasonable accommodation” for persons with disabilities and asserting that the failure to provide accommodation is also a form of discrimination.

There was some contention between Amba and Ravi over whether disability rights advocates should push for a separate

ministry to handle relevant affairs, with Ravi supporting the effort to bring everything “under one basket” and Amba saying this would further sideline disabled people’s concerns. Here, Gowthaman drew a parallel between debates within the Trans community over whether a separate Department of Trans issues would increase resources or further marginalize Trans people from the “mainstream”. Gowthaman also asked how the principle of “reasonable accommodation” might be useful in challenging discrimination of transgendered persons. What would reasonable accommodation of a trans person in the workplace look like? Access to gender appropriate toilets? Support for transition? One challenge was how difficult it is to generalize reasonable accommodation beyond case by case.

The conversation suggests there is no one comprehensive definition of reasonableness by which to measure indirect discrimination. This does not make the experience of indirect discrimination by disabled people less real or important, but it presents unique challenges in addressing discrimination through the law. Both Amba and Ravi stressed the limits of a legal framework to provide necessary accommodations.

Vinay Sreenivasa (ALF) gave a relevant example from the recent campaign against Signal-Free Corridors. When BBMP planned to put in skywalks — a “legitimate aim” to improve pedestrian safety and simultaneously increase the rate of vehicular traffic — they implicitly excluded anyone who could not access skywalks because of physical impairments. When challenged on this, BBMP’s response was: this is such a small proportion of the overall urban population that it should not matter. Yet if “reasonable” is determined by proportionality, as BBMP claimed in this case, then disabled people would be excluded indirectly because they are always a numerical minority. If this constitutes discrimination, and the panel agreed it does, then an anti-discrimination bill *must* provision for such cases.

The conversation around disability was overshadowed by the imagined figure of an able-bodied citizen who benefits from

urban development, from interactions with the state, and from full citizen participation.

The later conversations on caste, class and gender reveal this citizen to be a cisgender male who is middle class and upper caste, but both G. Ravi and Amba pointed out that an otherwise privileged citizen can still be disabled. Imagine a poor, blind, Dalit girl in a village, and a middle-class, blind, Brahmin man living in Bangalore. Both have the same physical disability. But beyond the fact of their shared physical impairment, the ways in which they experience the world are shaped by other factors. Amba called this the “social participation floor” and said it is distinct from a measure of poverty based only on income. She said many upper-caste people in urban areas fear being told they are no longer disabled because of their class position and their access to technology. Disability is more than just a physical impairment and must be understood alongside other social identities.

Caste

The second panel of the day addressed issues of **caste**. On the panel was Kunal Ambasta (National Law School of India University) and Gogu Shyamala (writer and activist, Anveshi). The panel was moderated by Vinay Sreenivasa of ALF.

Vinay began by expanding on the points made in the first session. He emphasized how difficult it is to take a clear stance on anti-discrimination because opinions differ as to which type of intervention would be most effective. Further, many movements fail to be inclusive of the different, multiple identities people inhabit. For example, he said the labour movement is patriarchal and hasn't adequately addressed issues of caste, while caste movements haven't always addressed the issue of gender.

Everyone talks about equality, but what do we really mean when we use this word? Does it mean formal equality before the law,

and if so, how to assure this isn't used to further discriminate? Is it about equality of opportunity and, if so, how can this be facilitated? In order to put forth effective anti-discrimination measures, we need to clarify what discrimination means —and what equality looks like.

To make these broad points more clear, Vinay posed a specific question about the Prevention of Atrocities Act (1989), which since it was passed has been the primary legal mechanism to seek redressal for caste discrimination before the law. Has it been effective or ineffective, he asked?

Gogu responded that the Act is very important for Civil Society generally and for Dalits in particular. She pointed out that although the law is meant to protect Dalits it is not *against* dominant castes. Instead, the law reveals the caste system to be a deeply embedded psychological attitude that operates like a physical or biological structure. It is not natural, but its long history makes it seem that way. To counter the deep roots of the caste system requires the force of law. She gave examples from her work with Dalits in Andhra Pradesh, in villages dominated by Reddys and Kammas, about how embedded views about caste are, and about increasing Dalit consciousness about their rights.

Kunal was less optimistic about the effect of the Prevention of Atrocities Act on Dalit communities. He compared the Act with the Forest Rights Act (2006) which was meant to counter the problem of Adivasi communities becoming encroachers on their own land after the land receives special protection. In order for Adivasis to get a legal title under the Forest Rights Act, they must prove the community has lived there for three generations. However, Kunal pointed out, this entitlement on paper doesn't translate because usually these communities don't have the documentary proof required to make the claim. The law protects their rights on paper, but discrimination continues in practice.

Similarly, the Prevention of Atrocities Act protects against caste-based crimes on paper, but the problem is in implementation (or lack thereof). Kunal pointed out how systemically the judicial system has a caste logic. Because police are part of the system of caste inequality, and because they answer to rich and powerful upper-caste landowners, the police often refuse to file FIRs under the Act.

Kunal gave an example of a Dalit family where the women were raped in front of their sons and brothers, and where the brothers were allegedly made to rape the sisters in the public square. While Kunal stated that this was obviously a caste-based crime rooted in resentment of a Dalit family that had bettered itself, the accused were convicted on charges of rape but acquitted of any offenses under the Prevention of Atrocities Act. Although justice was supposedly served, the caste-based nature of the crime got erased. This example shows how, despite existing laws, powerful upper-caste elites continue to control the justice system in ways that fail to address Dalit discrimination.

Kunal pointed out how systemically the judicial system has a caste logic. In both these cases, the caste of the enforcers of the law are aligned with the castes of the perpetrators and biased against the victims. The police, the judges, the framers and the state privilege non-Adivasis and non-Dalits. The judge who decides the case also comes from an upper caste and is prone to the same biases as the perpetrators of the crime. Any recourse to the law is therefore stuck in the caste biases it is meant to address. Whatever new law comes up will be subject to the same problems. Therefore it is important that anti-discrimination laws be specific about the classes of people that they are intended to protect. One cannot equate discrimination of a non-Adivasi preventing the operation of Adivasi land, with the systematic discrimination of Adivasis which has persisted over centuries.

Whenever laws come in for protection there are accusations that they privilege the historically dominated group and are misused,

be it laws regarding Domestic Violence, Adivasi land rights or the Prevention of Atrocities Act.

Take the example of IPC 498-A, which is aimed at domestic violence. When it is invoked, often due to extreme social pressure, women are forced to withdraw the cases and even reject their earlier complaints in court. These examples are used to show that the women were lying about their abuse and that the law is being misused. This makes a general anti-discrimination Act very dangerous.

Given these responses, Vinay asked whether we can learn from or need to change existing laws, including the Prevention of Atrocities Act?

Gogu expanded on Kunal's earlier point: that within the existing framework, Dalits can only exist as victims under the law. That when Dalit women are raped or murdered only criminal charges are filed, recognising their status as victims but not their rights as Dalits. Those who insist that equality means formal equality see this as sufficient redress for the crimes committed, but the panelist did not.

The conversation then turned to the recent case of the Dalit PhD scholar Rohith Vemula, who committed suicide after being forced out of Hyderabad Central University in what has widely been labeled an institutional murder. His status as a Dalit was called into question by those who opposed the narrative of caste-based violence that led to his death. Those against Vemula said that because his father was from a different (non-Dalit) community, Rohith himself cannot be a Dalit. This despite the fact that his mother is Dalit and he identified himself as a Dalit. Gogu pointed out that erasing his identification with his mother's identity shows how caste-based violence and gender-based violence shape one another. Rohith's mother raised her children as a single mother, as a Dalit woman, and they went on to be successful students. But her legacy is erased when his identity as a Dalit is called into

question; even in death he is denied the Dalit politics he claimed for himself and he is denied kinship with his mother. This is a violence of caste and gender.

Kunal emphasised that the punishment meted to Rohith by Hyderabad Central University — that he could not access any of the public spaces of the University — mirrored the form of caste-based punishment Dalits continue to face in villages and rural areas. It makes it a caste-based crime in the long tradition of caste-based violence. However, in order for his case to be brought under the Prevention of Atrocities Act, the state must acknowledge how caste-based discrimination has functioned and how it continues to function. When caste is denied as a causal factor, the state perpetuates caste-based discrimination at every level: from the local police all the way up to, in this case, the HRD Ministry.

Vinay then asked whether the Prevention of Atrocities Act *can* be a solution to the problems discussed. After all, he said, the Act is meant to provide recourse for caste-based discrimination but it does nothing to dismantle the underlying structure of caste inequality. At best, it treats discrimination on the basis of caste as a matter of individual experience, and at worst, caste is denied altogether and the Act is never invoked. This is done by the upper-caste people in power and in the name of formal equality before the law.

Kunal and Gogu went on to give other examples, including Dalit girls in Haryana who were stopped from riding state-provisioned bicycles to school by members of the community who were dominant caste. After the police refused to file an FIR under the Prevention of Atrocities Act, the girls were taken from the road and raped. Another example was the cultural practice of the Jogini system, which Gogu said exploits Dalit women and, in her opinion, should be prosecuted under the Act.

Within the context of the conversation about anti-discrimination, the issue of caste and the use of the Prevention of Atrocities Act

(as well as when it is not used) shows the limits of law to rectify social wrongs and offer justice to victims of discrimination. Despite having a law on the books, issues of caste-based violence continue with frightening regularity. Without accompanying social changes Dalits continue to be, at best, victims and at worst, invisible, beaten, raped, and murdered with impunity. Law cannot be the only tool for combating violence and discrimination.

Gogu also added that existing laws of caste need to evolve into the intersection between caste and gender. When inter-caste marriages happen, for example, Dalit women marry and experience domestic violence, though they would not be protected under the PoAA, even when the abuse involves caste. This is an area that movements and laws need to evolve to address.

Gender

After the lunch break was the third panel on **gender**. It included Aarti Mundkur (advocate) and Zakia Soman (Bharatiya Muslim Mahila Andolan) and was moderated by Darshana Mitra from ALF.

Zakia spoke first because she needed to leave directly after the panel. In her comments, she emphasised religious discrimination in addition to gender. She also articulated ways in which religious discrimination is compounded by gender discrimination (and vice versa). She began by making an argument for a secular state and the danger of the current political climate of Hindutva/Hindu Nationalism: a climate in which secularism is deemed anti-national. “The word secularism has been demonised into something very negative or something to be mocked at,” she said. She mentioned anti-beef laws being passed in various parts of India, laws that require religious converts to declare publicly before the state their change of religion, inter-religious marriage laws which also require a public declaration and therefore open

couples up to targeted violence from religious groups, and attacks on Christian and Muslim minorities in Orissa.

Zakia framed her comments in relation to the Special Marriages Act and the various and different marriage laws which apply to different religious groups in India: Muslim, Parsi, Christian, etc. In terms of the reform of Muslim personal law, she rejected the appropriation of a few conservative men who have stonewalled any discussion of reform in the Muslim community, particularly reforms which would most benefit Muslim women.

There were some systemic issues that she pointed to. Even with so-called secular governments, Muslim women are faceless. State engagement with the Muslim community is of a distinct character. The Muslims they engage with are often male, upper-caste, and visibly religious. However, in times of riots, women are attacked. 300 gang-rapes were documented in Gujarat and women are targeted because of a patriarchal mindset of honor.

Since 2002, being Muslim became a primary identity, where it superceded all others. It has become more challenging reading the Koran in a gender-justice framework to push for social progress.

Zakia said that the Muslim community has not had an Ambedkar or a Phule. There has not been a democratisation movement in the community, so the discourse is limited, protecting a small elite group of Ashraf high caste Muslim men. Coupling this with communal attacks makes Muslims as a whole vulnerable, irrespective of who is in power. The Sachar report said that only 4/100 Muslims are college graduates. Traditionally, Muslims are self-employed, so livelihoods are links to the home. When the home or shop is attacked, so is their basic livelihood. Communal riots not only destroy homes, but livelihoods, especially in a climate of ghettoisation. Getting housing and renting shops is hard with a Muslim name. The law has left faith to the community. Ambedkar and Nehru attempted a Universal Civil Code. Other Civil Codes

have been amended, but the ‘secular parties’ have supported a small conservative elite. Age of marriage, Talaq, polygamy and women’s right of inheritance do not get touched. According to the 1939 Act, women need to come to court for divorce, while men can initiate it anywhere. This does not come from the Koran. The Shah Bano case resulted in maintenance rights dependent on going to court.

The Sachar report states that Muslim women should be included in entitlement schemes and scholarships. The Gujarat High Court said that scholarships for minorities is religious discrimination, so the law can counter progressive aims, even if we ignore ‘security’ legislation. 95% of women cannot access the law, and those who can, do so with difficulty.

Darshana agreed with Zakia that the complexities of different identities are often not acknowledged by the law, and so a position like “Muslim woman” is a difficult one through which to encounter the state. Zakia said that when the government wants to talk to the Muslim community they speak only to men, because men are visible as leaders and officially speak on behalf of the community.

It is not sufficient, to have special laws for the Muslim community if those laws don’t take into account the unique position of women within the community.

In response to this point, Aarti emphasized the possible benefits of a Uniform Civil Code, despite acknowledging that support for it is controversial. Independent India has seen a very very slow inching towards a common standard in the rights for women under the various Civil Codes, and this progress has been slow because of the various codes in practice. As it was discussed during the framing of the Constitution by Dr. Ambedkar, the point of drafting the Constitution was a golden opportunity missed to ensure a common standard, which now is a politically difficult goal to reach.

Should the Uniform Civil Code necessarily be a cut and paste from the Hindu Marriage and Divorce Act, she asked, or should it borrow substance from other Acts? Putting aside concerns about the current government and the politics of the moment, she used her comments to think more generally about the possible benefits of a Uniform Civil Code, especially for the multiply-marginalized subjects Zakia described.

Aarti emphasized the current failure of the law to take into account women who were not assigned female at birth. Whether it is through surgery or without surgery, the spectrum of those who, she argued, should appear as women before the law is great. “Criminal and Civil Law have no imaginative scope for this [Transgender] population at all. It is now time that we should think about expanding these notions of sex and gender across the board,” she said. This is a potential benefit to a Uniform Civil Code which is not present in the current legal configuration.

Aarti tied her discussion of women’s legal status back to the earlier conversation about caste by invoking women street cleaners and garbage collectors who are all Dalit. This is an issue of labour, of class (the topic of the last panel) and of caste, but it is also an issue of gender. Female workers get paid less than their male counterparts and the majority of workers in such low-skilled professions are women. Following these comments was a brief discussion about sex work as a gender issue and/or as a labor issue, further illustrating how gender-based discrimination compounds other identity categories.

Darshana summarized Zakia and Aarti’s points as follows: 1) The state and the law are not good at recognising a plurality of identities. Even laws meant to protect vulnerable and victimised groups do so by reducing the subject to one aspect of their identity — e.g. as low caste or woman but not both. For this reason, the law alone doesn’t do a good job of recognizing how multiple identities compound each other in experiences of discrimination. 2) Majority voices are the loudest, and often obscure other

experiences. Darshana gave the example of (im)moral policing in Mangalore where it took upper class women being targeted in a pub before the issue got wider public attention. What about the invisibility of a Dalit woman facing sexual harassment? 3) Certain reforms can't be addressed without getting co-opted by communal and other movements.

Recap of the Discussion So Far

At this point, Danish Sheikh offered a brief summary of the points made so far. In legal cases, he explained, the burden of proof is on the victim to prove that discrimination has occurred. In the case of Rohith Vemula, for instance, great emphasis was placed on contesting the identity claim that he was a Dalit man, on the presence or absence of proof that he was *really* Dalit. This implied that if he wasn't, then his death couldn't have been due to discrimination (without clarifying what makes someone *really* Dalit, at least according to challengers). Danish's point was that discrimination is always based on perceived identity; it is enough that Vemula was perceived to be Dalit and therefore subject to violence. Perceived identity *is* a legitimate basis for claiming discrimination.

Danish also pushed against the idea that discrimination can only be addressed by the criminal justice system, and underlying theme of the day's discussions. He questioned whether anti-discrimination should necessarily or best take the form of a *law*. What other models — for instance restorative justice — might make sense as alternatives to a retributive system? While the law offers a laundry list of protected identity categories, it can never exhaust them, and the law fails to recognize the directionality of discrimination. For instance, cisgender and transgender people are not equal in their experiences of discrimination. Neither are Brahmins and Dalits. In fact, discrimination describes how power moves from the more privileged groups to less privileged

and more marginalised groups. The direction power moves in, channels violence and discrimination, and any anti-discrimination law must account for this.

Class

The fourth and final panel was on **class**. The panel had Robin Christopher from ALF, Mallige (Karnataka Jana Shakti and Mahila Munnade), and Clifton (Manthan Law). It was moderated by Rumi Harish who was one of the organisers of the event. She began by explaining that while class was not an initial category of inquiry in the research they did on discrimination, in the course of interviews they expanded the focus from 6 categories of discrimination to 12. One of those added categories was class. They looked at how class interacts with other factors such as caste, gender, color, and disability. Rumi began asking how each panelist understands discrimination — in relation to class — and what legal framework they use to address this in their work.

First, Mallige spoke about her work with slum dwellers and the urban poor. Her organisation is trying to reconceptualise slums as “labour cities” in order to emphasise that although slum areas are considered poor in material resources they hold their capital in labour potential and therefore, have power within the framework of capitalist production. Labour negotiation should not be a zero-sum game where if one worker makes demands, the same will be taken away from another worker to compensate. However, this is the current situation and it prevents organizing.

Mallige pointed out that the law, as it operates, is against the working class despite claiming neutrality. Laws generally are oriented towards the organised sector, which is usually not where women and children work. Ambedkar, Lohia and Kanshiram all said that society has two sets of law, the formal and the social, the Indian Constitution and the Manusmriti. The former cannot

overturn the latter while the latter's biases affect the working of the former.

Law and policy on housing projects in Karnataka often operate in an anti-poor fashion, even when the rights are given on paper, with administrators openly stating that they have no interest in implementing those legally guarded rights.

Clifton spoke about class-based demands for a living wage which he said are a directive principle distinct from the Right to Life which is understood as a fundamental right. This draws an important distinction between the meaning of a “principle” and a “right”, Clifton humorously explained, because principles are like the “Pirates’ Code” in the *Pirates of the Caribbean* films—just guidelines.

In other words, the political principle that supports a living wage does not have the force of policy or law behind it. Only when workers are running industries do they have the ability to demand rights from the courts. This is not the case currently.

For example, Clifton said, 65% of people in Mumbai/Bombay live in slums, while Karnataka has an official statistic of 12% slum dwellers and a real figure closer to 30%. Under the Karnataka Slum Clearance Act, the state only has obligations to provide protection or services if the slum has been officially declared. Since most of the slums in Karnataka have not received this distinction, the areas and the people who live there face a difficult, ongoing battle to stay where they are.

In discussing class and workers’ rights, it became clear that the panel viewed anti-discrimination as, at best, a problematic framework for organizing workers.

Mallige insisted that the workers’ movement has been and is being deeply marginalized by other movements. She explained that most of the workers are Dalits and that 93% of the unorganized workforce are women. In this way, the situation of workers is

compounded by forms of discrimination based on gender, caste, and other social factors. But class, she said, still doesn't receive the same traction within civil society that these other issues do. To illustrate this, Clifton questioned why the rights of women street sweepers are seen as a labour issue and not an issue of patriarchy or gender?

The tensions around trade unions and workers' cooperatives must distinguish between a legal framework, which is relatively short-term, and a social-justice framework, which is long-term in its vision and scope. What this tension reveals are the limits of an anti-discrimination law to fully address the class-based concerns of workers' rights.

There was agreement on the panel that existing laws are not sufficient, yet the law is also what what "we have to work with"—as lawyers, activists, and members of civil society. Clifton gave the example of the continued need for the Atrocities Act even though the Constitution ostensibly prohibits untouchability. He evoked the Dalit girls who ride their bikes to school every day despite harassment and persecution. That daily act is an articulation of political struggle, even when it is not actively framed in relation to the law.

The perceived (im)mutability of categories of discrimination like gender, caste, disability, and sexuality (to name only a few) makes them substantively different from socio-economic class. However possible or impossible it is to alter one's class position through collective action and organizing, it has not been seen as fundamental and unchangeable like other identities. Instead, within a capitalist system, class is compounded with the other categories used to discriminate. Anti-discrimination law necessarily affects class-based interests groups like workers, but to date organizing around class and organizing around gender, caste, etc. have not been seen as mutual projects. By including a discussion of class in the conversation on anti-discrimination, the organizers made an attempt to draw connections across these categories.

Whether the media covers a particular issue like the struggle of Dalits, has to do with the perceived political power of the constituency, but also — as Rumi pointed out about the coverage of trans people in the media over the past 20 years — with the aesthetics of covering beautiful trans women and not struggling trans people more broadly.

Similarly, Clifton suggested that Rohith Vemula's death received coverage not because it was substantively different from the deaths of many other Dalit students who are victims of caste-based discrimination in the context of higher educational institutions, but because his suicide note in English got media traction that it would not have in another language.

Overall, the day of conversations on anti-discrimination broadly addressed the intersectionality of the identity categories through which we experience discrimination. Panelists acknowledged the value of legal mechanisms but also recognised their shortcomings. Like the Atrocities Act, a single piece of legislation can help redress specific wrongs but it cannot alter the underlying societal conditions which lead to discrimination in the first place. The push for a comprehensive anti-discrimination law is an important one, but it is one aspect of a larger project focused on the equality and dignity of every human being.

Draft Report of the National Anti-Discrimination Consultation

Organised by the Alternative Law Forum

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Bangalore

Session I: Education

Chayanika Shah first posed the following questions:

What is the meaning of discrimination in education for any particular group? Usually, the first question on discrimination is about whether one has actual access to education. We have the RTE, but there are innumerable questions about translating it into reality. So, can one actually access formal education? Can one stay there? One uses the phrase dropout but the phrase “pushed out” is being increasingly used because people are forced to leave due to the lack of real access to education or the discrimination one faces within.

These questions were addressed to the panel with the intention of first talking about primary education, and then about secondary education.

Hulikunte Murthy is a government employee who is attempting to bring change from within the system. He himself came from a poor household and struggled with school. He feels that the only reason he received an education was because his teachers – in order to prevent school closure – came to the houses of students and pushed them to go to school. He noted that most people who studied with him did not complete their Masters, which led him to

question what education is exactly, and what discriminations lie within. He believes that they are using textbooks and the syllabus to address questions of discrimination and that education is only important to them because Ambedkar said so.

The ongoing debate on using Kannada (the mother-tongue) in schools, is something that he struggles with. But he does not believe that it applies to him, as he wishes to send his children to a place where they may face less discrimination and are treated as human beings. He would, however, take issue with his children returning from school reciting shlokas because he wishes to push them towards Buddhism. He wants them to see the world through Kannada, but the question of language is only posed to those at the lower levels, and never to caste Hindus who can send their children to ICSE or CBSE schools.

When he was younger, he was faced with a situation where he had to drop out of school but managed to get back in because of his mother's efforts. He believes that Dalits want education first so that they can then work towards empowerment. He faces discrimination in his work all the time.

He stated that most of the students and teachers in government schools are Dalits, and that they are mostly girls. This is because boys are sent to private schools, while the girls are sent to government colleges, including the Zilla Panchayat's daughter. The Rs. 200 for government school is still difficult for people. There are times when the clothes that they wear are torn and even though they try to cover it up, government teachers target them and ask impossible questions. They ask the students how they could come there dressed in such clothes...which leads the students to then drop out. In addition to this, Dalit students sit at the back of a class. He notes that if he raises these questions and issues, he is accused of being casteist. Or if he talks about Ambedkar they get upset and feel that he is raising the issue of reservation and creating problems.

Hulikunte Murthy also said that they used to write “SC/ST” in the register, but that this is no longer practised because no one knows who is SC/ST. He spoke about the Basavanna movement, and the necessity of addressing casteism, but stated that caste Hindus see it as a reformation of Hinduism itself, and that this, in turn, leaves students confused about what to believe. **Hulikunte Murthy** said that he asks questions to challenge the assumptions that people have such as the praising of the vastness of kingdoms while simultaneously ignoring the violence necessary to create them.

They now have training on how teachers should talk about caste and reservation and how they should address Brahminism. In his college, girls and boys don’t talk to each other, and if they do – or even if girls wear jeans – they are taken to the principal’s office. This brought **Hulikunte Murthy** to question the presence of women’s empowerment, because wearing jeans also provides for confidence.

He does not question the presence of discrimination, but believes that dropouts that are caused by it must be prevented. The number of Dalit children who go to school and college has increased, but so has the number of dropouts. Private colleges pose a challenge because one must present them with a caste certificate for which the applicants are then mocked. Teachers also talk in a problematic way such as the usage of rhetoric that use examples of low-caste girls with high scores in order to shame low-performing upper caste students. He pointed out that even Dalit colleges carry these problems, an example of which is the Ambedkar Medical College.

Chayanika Shah added that caste within the syllabus has to be addressed. She also pointed out that there are issues surrounding the subjects that one is allowed to study. For instance, when a Dalit feminist was studying Sanskrit, there was talk about how she should not be studying the language and how she was not supposed to have access to it. She also got a job only when she

took on her husband's Maratha name. The way teachers behave is a problem as well. Discrimination occurs at multiple levels, and there is a need to make changes from within.

Prakash KR spoke about how he used to meet with Adivasi children to bring them into the mainstream and is now happy that he is actually in the mainstream – the Adivasi system forms the mainstream. The system is matrilineal. He believes that it is because of this system (from which he has learnt so much) that he was able to speak to the audience. The current education system has a finite shape and does not encourage people to think. The Adivasi system is different. While the mainstream system might have a single poem on the bee or perhaps students might learn about the apple (or one fruit), the Adivasi sing about bees all day and learn about all the fruits. They are taught to question, and to think for themselves.

Prakash explained that the Koraga people face severe discrimination as untouchables. That there is a practice of Ajal, where when the upper caste fall sick, they transfer it to the lower community by giving them food that is mixed with their hair and nails. They are treated as bonded labour. They form 6.5% of the population and are spread across 52 communities. They face discrimination within the communities, where the disparities are such that some have access to an education abroad, while others cannot even access primary education. There are 116 tribal residential schools, but they are so bad that they cannot be called schools. They have about 12,000 children. While there are so many schools in this country, these 116 schools are treated as separate. Since these schools fall under the Social Welfare Department, they have no connection to the Education Department. This means that RTE does not apply to them either.

Prakash added that in the same way that people are given pigs and seeds even when they do not have the land for it, people are given facilities without any understanding of what their communities

want. He provided an example in which the government spent Rs. 13 crore on a school that had no teachers. Often, those who are employed do not have any formal training. Their students struggle to even write their own names. The students are then usually made to change schools after primary but end up dropping out because of how difficult it is to integrate. Less than 20 students have completed their degrees at these schools. Even when students finish, they end up working in coffee estates or as manual scavengers.

While the government Navodalaya Schools are good and free, the entrance test that they require ends up preventing students from enrolling. Only estate owners' children are able to attend.

Prakash then spoke about how rampant the corruption is: even money that is sent for food is taken away by the administration. The children are tortured by having to sit in a room where they learn nothing. They have been looking at alternative models and have found a residential school in Kerala for classes I-XII where the Education Department handles the schooling and the Social Welfare Department handles the residences. This coordination has worked well for the school. Prakash believes that the education system must be reformed in order to address issues of discrimination. He (and the community) wishes to implement the model of the Kerala residence school in their own schooling system. He added that they work with the Alternative Law Forum to deal with legal issues.

Chayanika Shah addressed the fact that we need to understand what we have in education and what can be defined as mainstream. Is mainstream education Brahminical or colonial? Do we know where our standards come from? She pointed to the need to contest this, while also looking at the question of discrimination within. Which brings us to the issue of whether or not separate, segregated schools have worked or if that is a form of discrimination in itself?

Hasina Khan began by stating that discrimination is not a new thing. That while we see a lot of discrimination against minorities now, it has always been present. She recalled that she faced discrimination in 1992-1993 during the riots. While Saffronisation and language against Muslims is increasing, this issue has been around since before Modi's time. She saw for herself how Muslim students in Bombay would not get admission into schools and colleges even back in 1992 and 1993. Those who left the riot-affected areas like Muzaffarnagar or Muzaffarpur to find safety found a gap in education after their shift. This was usually caused either because they could not safely go where they wanted or because they did not have certain documents. She has found that situations such as these have had the largest impact on the education of girls.

The Prime Minister's High Level Committee tasked the Sachar Committee with creating a report on the social, political, economic situations of Muslims. Questions were raised on the ability of Muslims. But Hasina thinks that the questions should be addressed towards the foundations of the study. They looked specifically at discrimination, but barely looked at education. Muslims, even though they do not want to, are pushed towards ghettoisation and the education that they have there is of a very, very poor quality. It is present only for the sake of it. While such Muslim areas may have one or two primary and secondary schools, there are almost none for higher education.

Hasina adds that this is true across the country and that even when there are primary schools, there is no infrastructure or teachers. Even though equality is a right...one does not see it. Due to the failures of the state, children are unable to attend regular schools, which in turn often forces the community to take on the responsibility of educating their own. There were many policies that were made based on the Sachar Committee's report, such as the 15 Point Policy. Students were to be given money for their education. But Gujarat never implemented this policy.

When in 2013, a Congress social worker filed a case with the Gujarat High Court and questioned their failure to implement the policy, the HC directed the government to implement it. The government took the issue to the Supreme Court and claimed that it did not want to make separate policies for minorities and that they wanted to implement it for everyone. The SC made them do so and had to notify them as well. State policies are not implemented because of state intentions in the form of discrimination. In UP, where there was a scholarship policy that gave less than the Central policy, there were more drop outs among Muslims. People cannot access policies. If the State does not intend on implementing a policy, then the policy will never reach the people.

The increase in patriotism in education and the Saffronisation of education has had a huge effect. Muslims in Farukhabad do not go to school because teachers consider them “dangerous” and keep a close eye on them. This is very common. Many students have surnames that match the job of their family and people use this to figure out their religion or caste and threaten them with it. This is very common in primary schools.

In colleges in Hyderabad, female members of ABVP take off women’s burqas and tell them that they should not wear them “in this Hindu nation”. Much of the discussions there were on how they should set aside their religious identity and follow the majority. The question of clothing and identity is an important one, because Muslims are attacked for it. The Committee report clearly articulated that the state has continuously discriminated against Muslims. This is evident in the education ratios and the high rates of dropouts in secondary and higher secondary schools. Schools are normally located further away from their community areas and traveling to and from school is an additional challenge. Religious education is common because the state does not provide the necessary facilities.

At the CBSE board, Shabana Asmi brought up discrimination against Muslims in Gujarat as is seen through the interactions, language and syllabus used in class. Asmi provided Kapil Sibal with a report on it, and added that in order to resolve the issue, there must be a consultation with the community and that they must improve the system through intervention. He asked for examples and evidence, which are difficult to provide because of the way that people are threatened for providing evidence. It is important to talk about how hard it is to provide evidence. They went to the SHRC as a part of a minority commission, in order to ask for numbers of applications on minority rights – education was the most common problem. The state has failed to adequately respond to these problems because it is difficult to address them and one does not know whom to approach. They also held a convention in Delhi, that involved Muslim women, where they discussed how the arrival of this government has had an impact on their lives. There has been a major increase in the discrimination and violence that they face. Hasina believes that the number of applications from minorities would have reduced dramatically. Just as there exists a Prevention of Atrocities Act, there must be another that can help Muslims deal with discrimination, and help them assert their rights.

Chayankikah Shah noted that a common theme is that of state negligence towards multiple obligations. There are some mechanisms in place that allow one to challenge this kind of negligence; it is even possible to challenge the SC. While we do need to make use of these, it is also important to understand that the state's Brahminical and Hindu character make it blind towards these needs or intentionally ignores them. She provided the example of the new trend of attacking those speaking on the behalf of marginalised communities by accusing them of being communal or casteist. Within the state mechanism itself, however, there is a way to address its lack of action. She then brought up the issue of disability education and asked if we are aiming

to integrate them into the mainstream education system even though we disagree with it. The point is not to segregate them into separate schools but to think of unique ways to integrate education. She provided the example of deaf culture, which asks the mainstream to integrate into their language and culture, and not the other way around. We need to learn from them and not merely attempt to force them to integrate into our culture. It is necessary to understand what we want to educate them in and what we intend to achieve with it. We see the transformative value of education, but if the system that we give them access to is discriminatory, then this will prove to be an additional battle. There is also horizontal discrimination that can be seen among peers in schools, which pushes students out.

In addition to this, what they learn is alien to them. They are taught in a language that is different from what they speak at home or are taught the Ramayana and Mahabharata, from which they feel disconnected due to their different personal experiences. When a teacher comes in with their own biases and the culture of the class is built in terms of biases, the whole system is built against the minority student. There are efforts to bring about changes in the system: rewriting of syllabi, rethinking of curriculum, and organisation of training.

There is a lot of critical pedagogy happening with regard to this, but how great is the effect? Aside from the law, what other ways of addressing the issue does one have? Chayanika presented the example of ragging or sexual and gender-based harassment on campuses for which there are internal mechanisms. The UGC mandates anti-discrimination cells, and while this has not yet been implemented, it must be worked towards. Questions of intersectionality must also be addressed. A statement against discrimination from the university itself would help. But there is a need to think of other ways to move forward and resolutions that will make people feel comfortable outside of the law.

Questions and Comments from the audience:

1. The RTE Act requires extra care and attention – it’s not just about access to school but about training teachers (because they cannot cope) on how to deal with students. Teachers must be trained in order to address and respond to taunts from other students. Anti-discrimination has to start from the lowest level so that they find a more egalitarian system when they grow up.
2. Speaker worked in Rajasthan with young girls. She found that they were not able to talk about reproductive and sexual health because most of the teachers were male. It is incorrect to limit this issue to lack of awareness. In some cases, such as that of Dadri, the issue was more of an ideological block than it was of a lack of awareness. It seems to be a problem of wilful negligence. How can we address that?
3. The discrimination that Dalit children face is a reason for them dropping out. Just asking about their caste can make things very difficult. The speaker’s own daughter was embarrassed to write down her name while filling out a form. A girl who happened to see what she had written down, stopped talking to her after that. What kinds of remedies can there be – can legal remedies address this?
4. Is it the community’s responsibility to provide representation? The Pasmada Muslims have no representation in the education system, neither do Dalit converts to Islam who are oppressed by the upper caste Muslims. There are no representatives to address their issues. Centre for Equity Studies expanded on the Sachar Committee report, which is useful. Access to education is not just the state’s responsibility. We need to address intersectionality. For example, how Muslim women are oppressed because of their intersection of their religious and gender identities.

5. If the people who discriminate are educated, would it be correct to say the issue is one of a lack of awareness? If the people who discriminate are not educated, then perhaps one could make that argument. But what does one do about such learned people? Majority of Muslim girls are not sent for their higher education. Do we motivate the Muslim community to take the initiative to bring about greater equality?
6. There was anti-Christian violence in Khandamal district, where Catholic boarding schools (which had government aid) were damaged and destroyed. They did not receive any compensation after the incident. They faced a lot of issues. For example, teachers were fired because their salaries could not be paid and repairs could not be made. The schools did not only have Catholic students but Dalit and Adivasi children as well. This is a case of violence by the majority community that was followed by a lack of compensation by the state – there was horizontal and vertical discrimination. What avenue does one use to respond? When the state withdraws partial aid given to these schools, how does one fight the state within the parameters of the law? Multiple solutions are necessary; it cannot be limited to the law because the law only plays a limited role.
7. There is a connection between housing and education for Muslims. Where one lives impacts access to schools. There are some bogeys that have been created and raised – there is no data to prove that Muslims go to madrasas, the only evidence is from Sachar, which is only 4%. This binary of religious and secular education is false. Also, a binary of lower and upper caste has been created, but it is not as black and white as that. There is also a distinction between dropout and push-out. There is constant targeting of these minority institutions, even by the so-called “secular elements”. There lies a danger in talking about Muslims in binaries, and we need to move beyond these binaries.

8. The government required that in order for the transgender community to receive benefits, they had to be from the Dalit caste. But they had a consultation and refused this saying that the transgender community was beyond caste and refused to identify as having a caste within.
9. On ALF's work with African students: private colleges seem to be built just so that they may extort money from students while providing a substandard education. This is in addition to the other discrimination that they face. This seems to be an extension of privatisation in education. How does one deal with this kind of discrimination where we seemingly actively seek out such students from their countries for the purpose of exploiting them?

Responses:

Hulikunte Murthy responded by saying that in order to escape this humiliation as a Dalit, you need to either die or escape. Dalit capital is an illusion and power politics. The notion that “if you get the stick that was used to beat you, you should start beating others”, is not the solution. If oppressor communities start talking about caste, that would help. But at the moment, there is too little of it, and it is unstructured. This needs to change. The responsibility to address the humiliation rests with all of us.

Prakash KR - Question on if all Adivasi children would be in one school would they have difficulty in integration. He responded saying if the quality of education is good like in the Kerala model they would have confidence in interaction and so that is how one can deal with it. There has been an Act to abolish the Ajal practice so the direct discrimination has ended but indirect discrimination has continued.

Hasina Khan stated that minority institutions and minority quotas are being attacked by the government a lot. She believes that there is a caste and class difference between Muslims, but it

has not really been seen after the riots. It is only seen at the time of marriage. Discrimination has increased after the riots. Awareness is the responsibility of the state, and not just the organisation and individuals. Hasina believes that the state should be brought to book when it fails. It is a myth that there is no awareness among people. In fact, where the communities face violence is where the political awareness is very high. With Pushpanda Muslims, the conversation on reservation should be within the backward classes of Muslims. The Maharashtra government initially gave them 5% reservation but the BJP government cut this down and the Maratha community was given 16% reservation (stayed by court). This conversation on reservation is to ensure the representation of socially and educationally backward classes and that their rights be protected. If there is an atmosphere between students, teachers, and the management to encourage minority students, then the number of drop outs would decrease. School practices, such as discriminating against those who eat non-vegetarian food at home or games where Muslims are always the villains, must be changed through awareness. This will create an inclusive atmosphere.

Chayanika Shah concluded this section of the discussion by acknowledging that while things seem bleak – especially as the state seems to become more Brahminical, more saffronised, and refuses to implement the law – the only hope is to change the mindset of those in power. Education is important because it transforms those in power. It helps them realise their role in the community and in creating change. We need to move towards believing in the transformative power of education to bring about change in mindset. Public education has slipped out of our hands and we are not investing in government education; we have given up on it. Private universities and colleges are growing in number and everything continues to move out of our hands. There is still hope and it is because of what campuses have been showing us in the last 10 months. The young want

something more. She argued that perhaps this is something we need to encourage and build on.

Section II – Employment

Vinay Sreenivasa began the discussion by noting that employment has different kinds of discrimination. He recalled that there was an advertisement that said general people could apply to clean toilets but the person who had put up the ad was beaten for suggesting that general people could do that. There is reservation in employment, but it faces opposition and some jobs (like manual scavenging) are left specifically for certain communities. There is also the issue of discrimination in the workplace, and the way in which class operates against unions, factories, and the lower classes. What are the available remedies against discrimination in employment? What role do we, the state and civil society play? Do we even understand discrimination in the same way? What is it? Is it the lack of equality? Is it the violation of rights, or is it intentional negligence of a community?

Gee Imman Semmalar spoke specifically about employment and the trans community. He is a trans man of caste background and acknowledged his privilege as someone who is English-educated. He felt that it was impossible to talk about employment without talking about caste because employment is segregated on the basis of caste. This is a caste-based economy.

In terms of the trans community, the issue that usually arises is that of access to employment opportunity and of the choices that one has. Without getting into the feminist argument on sex work, he stated that the trans community only has access to begging or sex work. It is a caste occupation due to the structural and social exclusion, and one believes that there are no other options. So, it becomes a caste occupation. The only other option is to do NGO or HIV work which is usually headed by a cis, gay or bisexual man, and therefore has the same feudal structure. The legwork, like distribution of condoms or pulling chairs in conferences, is

done by trans people and the “intellectual” work, such as budgets and reports, are carried out by cis people. Even though there is more dignity in having a job such as this, NGOs carry the same feudal structure which needs to be broken down. Trans men are ignored because the patriarchal gaze focuses on women. There is a higher chance of passing as a trans male. Trans females are made out as “the other” because of their lack of reproductive capacity, as a trans woman cannot reproduce caste.

Gee returned to the issue of education, stating that it must be addressed before one can talk of employment. Because the drop out rates among members of the trans community are very high, they do not have access to employment. Most government policies use rehabilitation packages that involve vocational work like sewing, but this does not allow one to really make enough for a living. There needs to be a change in our understanding of rehabilitation. There is also a lot of discrimination present in the form of the Beggary Act. Trans women are picked up even when they are not begging and this is based entirely on how they look.

The Karnataka Police Act criminalises the entire trans community. There are many laws that criminalise the community and few that protect them. This is a continuation of colonial discrimination against Hijras as a “criminal polluting community”. The idea of pollution comes from a caste-based understanding (Arthur State – Summary of Law). The idea of cleaning the streets of beggars comes from the same notions of caste and purification; it is the same idea behind evictions of slums. Any challenge of caste-based employment is met with punishment. Examples of which are: the Chittradurga incident where they organised a boycott of a school because a Dalit person had been appointed as the cook, and the Rohith Vemula movement where Dalits are moving into academic spaces and are facing social boycott. Laws that are used to criminalise the Hijra community follow the morality and caste-based view of them as impure or indecent. This is why one

cannot talk about employment without talking about caste. The biggest fallacy in the labour movement lies in its failure to talk about caste, regardless of whether it is the political movement or the radical left.

Bezwada Wilson talked about manual scavengers and how, as a nation, we have moved away from the track of focusing on humans. He feels that Brahmanism and caste identity have been incorporated into the minds of every person of every caste – like a virus in everyone’s mind that must be removed by an anti-virus. One cannot escape their caste. They may dream of a day when caste might no longer exist, but there is no way to erase it as caste is a constant source of oppression in their lives. Even though Article 17 abolished untouchability, it has not actually disappeared; it continues to exist everywhere. Bezwada recalled that he was called a bangi even when he went to Press Club. No matter what he does, he knows that others will continue to see him as a person of that caste. Sanitation is caste-based work – even within Christian and Muslim communities. They never admit to the fact that they are scavengers because of the kind of oppression that they face. He asks the question of how the movement of standing up and declaring what work they do will matter when they have done nothing wrong.

As part of the Swacch Bharat Abhiyaan, the PM cleaned for a minute, and then ignored that their employment is of a caste-based nature. He did not do anything to improve their situation. Even though there is law to help manual scavengers, where the law clearly says that no one should be allowed to enter sewers or to clean excreta, this kind of employment is continued. Not a single person is being punished for providing such employment. On the contrary, it is manual scavengers who are being punished. A DM in Haryana wrote to the SC saying that while there are sewers and people cleaning the sewers, it cannot be called manual scavenging because they are not carrying shit on their heads. The SC saw this, laughed, and the judges did nothing. Bezwada reiterated that very

aspect of employment is affected by caste and patriarchy and it is destroying people's humanity.

Pratibha focused her talk on the unorganised sector, and began by restating that it is not possible to separate issues of caste and class in the employment sector. They go hand in hand. Class discrimination has been built in since the Industrial Revolution. She spoke about how the sector might look nice for global companies; 83% of it is comprised of women. There are laws to protect their rights, but there are issues with their implementation. The government has failed to resolve differences in earning, where minimum wage is set at Rs. 7000, but the management earns in lakhs. Until recently, minimum wage was set at random and with no scientific basis. Pratibha believes that the government is pro-capitalism and pro-ownership. She pointed to the example of Shahi industries where they admitted to providing their staff with good food and water, but their workers with a different quality of food and water. Unionisation is difficult and they end up facing a lot of backlash when they do manage to form them. There are provisions for creches, but they are so bad that children die because of them. The state, the police, and the owners consistently fail them. All the women in the garment industry are of a lower caste and class. The female workers are stuffed into a single van, while the managers are given luxurious cars. Pratibha emphasised that the conditions are bad for all the workers.

Vinay Sreenivasa asked Bezwada Wilson the following: what the Safai Karamchari Andolan is doing to implement the 2013 Act; how one can address class discrimination since it is not even a legal category; and to expand on attitudes on gender in Safai Karamchari Andolan. How women are affected by the community?

An audience member commented on the complete denial of manual scavenging on every level, and the way in which Swachh Bharat Abhiyan is invisibilising the practice.

Bezwada Wilson agreed with this comment. He added that the old program was created so that tourists might not develop a poor opinion of the country. The current government corporatised the program and it has evolved into a big business. While it receives a huge component of the budget (1000 crore), inflow of money for rehabilitation of the community has decreased dramatically (down to 10 crore).

The Bhim Yatra was organised to say, “stop killing us”. They demanded that where there is no underground sewage, septic tanks must be built. They are holding the government accountable for monetary compensation, so that they can collect the money from the contractor. When the government builds 12 crore toilets, they will have no way to clean the pit and this work will ultimately go to the scavengers. There has been no effort to invest in machinery to help convert railway coaches or the toilets so as to help the manual scavengers escape. Researchers do not want to think about how to clean the pits and excreta because these are considered polluted practices. They want to leave it to the community to figure it out and to deal with it. The SC did the same thing when they asked the Safai Karamchari Andolan to come up with a solution; they do not want to be the ones to think of a solution. Bezwada emphasised that there is an intersection between caste, class and gender, and none of them can be addressed in isolation. The Safai Karamchari Andolan is working to file cases to get compensation, to demolish septic tanks and insanitary latrines. They are trying to do ground-level work before going to the SC because it can sometimes be too dangerous to go directly to court. They want to file cases for the punishment of employment of manual scavengers with police stations and not with the court.

A member of the audience pointed out that while the issue of manual scavenging has been talked about on a systemic level, it exists even in our homes, where there is gender discrimination in terms of how women clean the toilets and not the men. This

is similar to an organisation in MP that built toilets where even though women do not use the toilets, it is women who clean them.

Gee asked Bezwada what the Safai Karamchari Andolan is doing for Jammu and Kashmir, since they are exempted from the 2013 Act.

Bezwada responded by saying that while the Act does not apply, the judgement does, thereby allowing the Safai Karamchari Andolan Union of Jammu and Kashmir to enforce their own rights.

Vinay moved the discussion back to issues of discrimination against the trans community and against women and asked about possible remedies for these issues. While the fight against caste and its impact on employment is a long-term one of a political and social nature, he asked what one can do about it at this given moment. What do we do about multiple identity discrimination and intersectionality? And what are the ways in which we can look at class given that it is not a legal identity?

Gee pointed out that legal institutions such as police stations carry their own prejudices, even though they are supposed to uphold the law. The judges are usually Brahmin and male and their prejudices affect the provision of justice. The marginalised are attacked in every single form. Those who are in power, attack those who are marginalised.

To prove this point, Gee used the example of how when a trans female and cis man married they were threatened by the police with Section 377. The legal experience is a very expensive affair, and caste solidarity and gender prejudices ensure that justice is determined in a prejudiced manner. Privilege allows one to access justice and it favours the ruling class. There are countries that have moved towards abolishing the prison system because of how oppressive a structure it is for certain communities. There is a need to re-imagine justice and work towards social democracy. That is the very minimum – more must be done than just that. In

order to provide access, land must be distributed to marginalised communities, and this land must be taken from the powerful. There must also be an annihilation of caste and this cannot be limited to manual scavenging. It must be extended to the different ways in which caste is practised in our everyday lives. As Ambedkar said, this is a notional change and in order to achieve this, social change must accompany legal change. The NALSA judgement allowed OBC reservation, at which point the community asked what this would mean for SC/ST trans persons. Are they blind to caste differences within the community? There are differences and privileges within the community, and they are often ignored.

Pratibha talked more on how there are no legal institutions that favour workers. She pointed out that the legal wage was not implemented for a year. Not until the court issued a notice. The government also called the Rs.127 a typo and lowered the minimum wage to Rs.122 a day. The workers are treated and considered as a faceless entity. The worker's strike led to a loss for the companies. The workers were then told that their wages would be withheld as compensation. When they attempted to register a complaint, the government took the side of the companies. The system itself remains problematic because judges are quite anti-labour. The way to address class is to collectively unionise and protest against the government. Caste must be removed in order to address any issues. While workers and their unions are strong, they still have a long way to go. If Shahi Exports now has 46 units, and H&M's profit is equal to India's budget, why are the benefits of this labour not being felt? She concluded her statement by adding that without addressing and acknowledging intersectional identities it will not be possible to diminish the system.

Audience questions and comments:

- The ISI consultation shows that Labour has Rs.500 crore to be used for workers, but only 5% is used, and that goes towards their own salary payment.

- With regard to issues of class, a trans woman spoke about how she was enrolled in an MNC and how trans women did not have equal educational opportunities. Nowhere are they accepted as workers, not unless they use influence in order to do so. While it is good that garment workers protest, there is a need for a committee of sorts to unionise and ask about their demands. Raising the issue of the Orlando shooting, she asked what issues affect sexual minorities and LGBTQ people. Trans phobia is a major issue, and how to progress and deal with it has not been addressed.
- Modi visited 40 countries, and the issue of publicity and mobilisation is dangerous. Modi is to India as Trump is to America. The audience member asked who gets to decide her gender – doctors, psychologists or psychiatrists? Her gender identity needs to be “approved”, but why must the government have a say in her identity? In 2014 and 2015, trans people in Bangalore were kidnapped and put into men’s cells and beggary colonies. How does one fight the common puritan mindset? The NALSA judgement is well and good, but there is no clear consensus on the issue. Gender identities are fluid and need not be fixed based on existing norms. Why must sex remain an issue of procreation? There is a need to educate the masses. Cis persons are the decision makers for this community, and they dominate the minority. This is not right. The speaker believes that the politics of the movement against anti-discrimination has been bifurcated by funding. She feels disappointed that discussions are all that occur.

26.06.2016

Session III – Housing

The **Moderator** outlined the four major areas of discussion:

- Experiences of housing discrimination and how they differ between rural and urban areas.

- Possible remedies for discrimination in housing. Experiences of the law being used to address housing discrimination.
- Housing in areas of conflict and displacement. How access to housing is affected by conflict situations (riots and communal violence) or displacement (land acquisition, natural calamities).
- How housing discrimination manifests itself. Solely in the form of access to housing? Or through other forms of harassment as well?

Mehtab spoke specifically about Muslim men and the discriminations that they face in housing. Before narrating his own experiences, he paused to question whether or not he can use his own experience of housing discrimination to generalise those of all Muslim men. He began his story by talking about his experience in Bangalore, as it marked the first time he faced such discrimination. He had moved from Delhi in February of 2014, where he had lived in Muslim localities. He had not imagined that finding housing in Bangalore would be as difficult as it was or that it would take as long as it did. He found that the moment he mentioned his name, things would become uncomfortable. There were times when everything was set and in order and he would be denied at the very last minute. This was not surprising because he had heard of it happening before. He noted however, that this conversation usually referred to communal differences as only existing in North India. This clearly was not true. He learned of a different issue when he was set to get a house from an owner who was OBC from AP. He assumed there was a sense of solidarity. But, on the night before the deal was to be signed, India lost a match against Pakistan, and the next day the owner called to cancel the deal; he said he had given it someone else. All this happened to Mehtab even though he had an agent. He was also told not to mention that he was from Bihar as this would apparently add to the discrimination. He told people he was from Delhi. He had privileges, such as a good job at Amnesty, in-laws who were not Muslim, and his ability to speak English.

It would seem as though this communal divide cannot be overcome by one's cultural capital. Mehtab had a friend who moved from Bombay to Bhubaneswar, who said that while all of his non-Muslim friends had found housing, he had not. Like Mehtab himself, he finally got a house that was owned by a Muslim. This is all that they *can* get. This brought up the question of the impact and manifestation of this issue. Mehtab believes that housing discrimination is the mother of all discrimination because it leads to other issues. Living in a marked area affects one's education and employment. Living in a Muslim area (he deliberately avoided the term "ghetto" because these are areas that the marginalised are pushed to), makes it difficult to gain admission into better schools. CRY's study, which was carried out after the September 2008 blasts, establishes this fact. Living in a marked area makes it difficult to get a loan or a job because people from these areas are viewed with suspicion.

The JNU incident reminded Mehtab of the Jamia Nagar incident of 2008 where people were asked to leave their houses and were condemned and branded. All this leads to further stereotyping, which means that if someone is a Muslim living in Jamia Nagar, then they are faced with the double marginalisation of being a "bad" Muslim as well not good Muslim. Muslims play along by denying that they live in Jamia Nagar. Similarly, in Dwarka, others assume that they live in the Muslim areas, and they are often forced to live there. Rural areas are divided on the basis of caste, but in urban areas, they are basically divided along communal lines, even if caste does not exist.

Mehtab said that if one were to look at these marked areas (Dalit or Muslim), they would find people are forced to live there as a result of conflict. After the violence of 2002, many people said that Muslims should live in Muslim areas so as to provide some sense of security, but the validity of this can be contested. How does one define and establish the discrimination when it is often indirect? Housing discrimination is usually done indirectly, on the

basis of food habits or on whether people are vegetarian or non-vegetarian.

Mehtab once again questioned if his personal experience could be offered as a generalisation. He then spoke of the recent news reports and stories on the new provision of the Real Estate Bill. He does not believe that it will solve any problems because the issue is not limited to buying and selling, but to tenancy as well. In any case, it was not possible for him to buy a house in those areas and so he did not feel that it was applicable to him. He admitted that yes, one could argue that Muslims could buy houses and rent them out, but he is sceptical of this possibility because of caste and class differences that lie within the community. **Mehtab** stated that he was not sure what the way forward really is, but that perhaps one should think of how (as was the case with Vishaka) there were guidelines before the law.

Rekha Raj began by talking about an article that she had read on a Muslim student from Kerala. He had been looking for a house in Delhi, and felt discriminated against. She stated that in Kerala, Muslims are a powerful minority but their experience outside is very different. She thought it is possible to generalise a personal experience – perhaps not generalise, but take it seriously in order to understand a person’s unique experience of oppression.

In her own experience, she has found a myth of solidarity among communities. In a caste society such as ours, there is no real solidarity. It is very difficult to have. How does one start a dialogue between communities? Should it be started in terms of what privileges one possesses? Because that is a very important issue. It is also very important to understand vulnerability and victimhood. Where a person stays or what their location is affects everything. This is a sectarian society and is divided on the basis of identity. Housing is not an identity. It is interconnected with all the other forms of discrimination that people face.

Narasimha Murthy, because of his 15 years of work experience as well as his experience as a slum-dweller, felt that it was important to look at the history of housing allocation. There was a huge change after Independence; urbanisation took on a formal shape. There is a stark difference based on caste or class. Urbanisation is carried out by forceful eviction or denial of rights to housing, and is based on caste. It is a Directive Principle of State Policy in the Constitution, which is why the government is not treating it as a fundamental right.

13.75 million people do not have housing and many of them are women or disabled. 82% of them are SC/ST. Housing schemes were provided in 2013 and 2014, but the people were denied the land itself. Houses are designed and built as per the intentions of the developers, which is why the government does not pay attention to the needs and desires of the people who will actually live there. The land is snatched away and is given to the rich. The amount of land that is given to the poor is minuscule in comparison to the amount given to the rich and powerful. The CM declared a slum-free city but the houses have not been built nor have they been given any priority. The houses are designed with no privacy and those that are given to women and children have a tiny amount of space.

Narasimha Murthy feels that even animals are given better shelters. When banks give loans for a house, they charge exorbitant interest rates (14-16%), while those in upper class localities are given loans with 8-10% interest rates. The government provides subsidies but they are impossible to access because it requires bribes and a lot of running around. There was a welfare state in the 1980s, but the government abandoned that. The houses are built vertically and not horizontally. There is a caste and religious element to housing allocation. There are separate localities for people like manual scavengers and beedi workers and the government clearly encourages this segregation. On Ambedkar

Jayanti, the government announced that they planned to construct 1 lakh houses in urban areas and 50,000 in rural areas, which means that the government has money to build houses but will not provide land rights. There are also many conditions attached to these houses, such as no right to remodelling. People are given assets but no rights. It is important to see the right to housing through the lens of the caste system.

Narasimha Murthy believes that the government is encouraging people not to have any self-respect and to act as beggars before them.

Rekha believes that the government promotes segregation and that it is not sensitive to the concerns of the families. Proof of which lies in the way they deny families of privacy and their children of an education. The system of giving loans and schemes is not sensitive either, as can be seen in the different interest rates. The issue of housing is a structural one. People are not given equal status in society.

Simpreet Singh argued that when one looks at discrimination, they often miss the idea of positive discrimination, which also needs to be discussed. He argued that there is some discrimination that must be retained: unjust treatment and prejudiced treatment. Unjust treatment brings in justice, which can be social and economic. Prejudice is also important because most responses have been to the unjust treatment through lack of accountability of the state. That was what Ambekdar tried to do with the Constitution, by attempting to address the state's unjust treatment.

Simpreet believes that we have failed to respond to prejudice, which is why there is a need to move beyond the law. Prejudice has many facets (socialisation, culture) which is why there is a limit to what the law can address. One cannot use the law and emancipatory law to deal with prejudice. Prejudice is much more intense and intimate. It deals with labelling, and being made out to be “the other”.

Housing and discrimination is a unique phenomenon. Housing itself is an end and a means to another end. Education, livelihood, and health are all things that are linked to housing. Therefore, housing has a dual aspect to it.

Article 15 prohibits discrimination, and Article 19 talks about freedom. If one were to look at them in depth, they would notice a clash between the two articles. For instance, it says that a person has freedom of expression and association and may refuse to give someone a house. In the Indian context, this is yet to be resolved. The census reports contain all housing details. There are clear indicators of quality of housing for SC/ST, minority groups, slum areas, that show discrimination at play. There are clear fault lines for the minorities living in slum areas or without access to facilities like toilets. Across the country, one can see discrimination across different regions. People face discrimination for multiple identities such as being North-Eastern, unmarried, etc. They lose access to numerous facilities such as toilets. There is horizontal and vertical discrimination. Cooperative societies exercise private discrimination while access to services is provided by the state; the state's failure to do so is vertical discrimination. With vertical discrimination, there is the easy remedy of the law and one can use the Constitution. But there is no solution for horizontal discrimination.

Simpreet provided the example of the Zoroastrian Cooperative Housing Society case in the SC where a Parsi society denied housing for a non-Parsi. Based on the right to associate amongst those who are similar, they were allowed this, as well as the right to discriminate based on caste.

With the Dayal Bhag Cooperative Housing Society, however, the Delhi High Court said that a cooperative housing society may not discriminate. Delhi has the principles of Cooperative Societies that says a society should be open, voluntary, and non-discriminatory. This has not been mentioned in the schedule of the Act, which means that one cannot discriminate. They are filing a petition to

amend the Cooperative Societies Act in all states so that it may be in accordance with the principles to prohibit discrimination. However, this only deals with the aspect of justice, not prejudice.

Simpreet stated that he had heard of meetings between communities that were held in order to get to know each other. Simple as this may seem, he said, this helps remove prejudices. After the Muzaffarnagar riots, the rehabilitation for the people moved them outside the town which was also used as an excuse to extend the limits of the town. This was true in the aftermath of the Mumbai riots as well. Communities were moved to the periphery, which led to ghettoisation. Even in Ahmedabad, the area of the town was extended, and new areas emerged to form ghettos. Housing has been provided through schemes, but this housing is located on the periphery of towns. People are moved from the centre to the periphery. The housing scheme itself becomes a source of discrimination because it causes displacement. If a person lives in a settlement that has been labelled a slum, then they are most vulnerable to violence from the state, and others label them as criminals too.

The **Moderator** summarised the discussion by stating that housing discrimination exists in various forms (horizontal and vertical). It is easy to use the law to address vertical discrimination, but social engagement is required in order to address horizontal discrimination. Different communities lack space in order to engage in dialogue, which is necessary to have in order to address discrimination. At the same time however, there is a need to address the law and policies as well.

The Audience raised the following issues, questions and comments:

1. Issues in securing housing for queer and trans people across genders and who are unmarried. Access for people with disabilities in terms of housing design.
2. Return to the feminist movement to argue that what is personal is political. Instead of using the law and policy

route, why not use that of community interaction? Delhi is designed such that main roads have plush houses of the majority community, and the back lanes have tiny houses of the minorities. Students initially come in with prejudices and call them dirty, but then realise that the minority communities have been given no space in which to live in.

3. The experience of a queer, trans persons in Bangalore in 2007 was as follows: they looked for shelter for female born, gender and sexual minorities, and took a house. The house was guarded and supported by many hijras. It was located outside Bangalore city, in an area that is hijra dominated. If a community has no support from anyone else other than the community itself, then the community, brought together by class, helps each other in an area. The speaker wanted to reflect on this.
4. Bombay had a ban on dance bars and women would live in suburbs or in rental houses. There was a lot of political backlash against local people, where they tried to throw them out on the pretext that they were a danger to the community. The audience member asked how an issue such as this may be resolved and how to lobby on it. Land and housing in the areas where the riots occurred have been targeted. The people do not want to go back and they do not want to talk about what happened to their land or houses. There is a huge difference in who loses. The audience member asked how they are supposed to come back from something like this. Ghettoisation does not just occur. People are pushed into it. Those who used to live in mixed communities but now live in ghettos face discrimination from within the community. In addition to which, people who are single are not given homes and are often targeted. Discussions on discrimination must be inclusive of these experiences as well.

Responses of the panel:

Simpreet agreed that the discussion had left out disability and LGBT issues, and that it was important to consider. The process of habitat is a different process of different patterns. When a person moves to a city, they look for an area or for support, regardless of whether they are from a marginalised community or not. The problem arises when a person who wishes to move out of their community is not allowed to. If there was something like a diversity index, then all collectives would fail. Simpreet believes that what must be destroyed is discrimination, but does not believe that we must all be mixed. There is tendency to focus on liberty and not fraternity and that needs to be changed.

Mehtab wanted to understand the relationship between positive discrimination and segregation. He agreed that it was important to look at different identities. If a person is unmarried, they are not given a house on the grounds that it is a family house. Similarly, houses are given based on whether a person is vegetarian or non-vegetarian. These are used as excuses. He believes that what is personal is political, but raised the question of how to establish a personal experience as one of discrimination. How is he to distinguish and claim that discrimination against him stems from the fact that he is Muslim, and not because he is single? There needs to be a community interaction. Mehtab's issue with the word "ghetto" has to do with the politics of labelling. He does not feel a sense of solidarity with people from the same community, and agrees with Simpreet in that it is important to see if a person can move out of a community if they want to.

Narisimha Murthy stated that ghettoisation has increased in India. In other countries, it is based on race. But in India, it has been skilfully executed (like separate housing for the Lingayat) and must be looked at through the lens of caste issues, particularly that of untouchability.

Questions:

1. Explain ghettoisation. After the riots, Muslims were not the only ones being denied housing. The government issued circulars that required background checks by police. These caused problems for renting of houses. The speaker was asked whether they were vegetarian or non-vegetarian, but he does not personally feel bad about it. He has seen people of different communities living together in Bangalore but believes that an incident will set off religion-based communal violence.
2. Should we be talking about right to land instead of right to housing? People are setting up tents on private land, but it is difficult to make an intervention.
3. One must be careful in terms of the idea of a diversity index. Singapore used a diversity index to create national identity. We have looked at three forms of discrimination: by the state, between people, and structural discrimination. The speaker asked if examples could be given of communities that have been transformed by going outside these interactions, and that helped in the fight of the state.
4. Notions of aesthetics, such as the idea of a clean city, are taking over our idea of what urban spaces should look like. Should we remove slums and street vendors because they dirty our city? The impact of aesthetic appeal on urbanisation must be considered. As in the case of ghettoisation and rehabilitation, how do we place the burden on the community? We question the formation of ghettos but not of gated communities. We should shift the burden of questioning onto how the privileged are excluding instead.

Narasimha Murthy spoke on nomadic communities and on how the government is giving out housing. People build a hut within the house that they have been given because that is what makes them feel comfortable. They have succeeded in having conversations on the rehabilitation of people who have not been provided the right to land. There are people trying to break unity within Dalits and Muslims. There have been conversations to attempt to address these issues. Narasimha stated that they try to fight for land rights, not just housing rights, and that they are clear on this matter.

Simpreet returned to the history of housing allocation. Pointing out that after Independence, land reform was the agenda but never translated into actual reform. The mystery of the shift from land reform to housing reform remains. Prior to the 70s, the struggle was led by political parties that had a more structural understanding of society. Later, demands were made by NGOs and new social movements and they lacked that understanding of structure and society. This led to a reform in the movement in terms of demanding a right to housing, which, Simpreet believes, is ridiculous. There is a lack of understanding regarding the right to land in urban areas. This is not the case in issues of agriculture. Land can be considered in three ways: land use, land occupation, and land ownership. These three aspects need to be understood in making an argument for land.

The issue of aesthetics is not quite as simple. What dominates the design of cities is the sense of aesthetics that those in power have. Simpreet paused to state that on the other hand, filth should not be romanticised so that others may be forced to live in it. The work should be towards improving their situation and not just forcing them into places that might cause them harm. It is easier to deal with the state because it is simple. Like by using Article 14, one could argue that not only slums should be demolished, but other illegal buildings as well, such as shopping malls. When it comes to the community however, prejudices influence interactions and movement. The challenge lies in addressing this because it cannot be done in any single way. Everyone in society is affected by such prejudices, and there is no onus on any single entity to make all the changes. It must be a collective effort. It is necessary to acknowledge these prejudices.

Audience:

Speaker is from Arunachal Pradesh and faces discrimination every day. She does not blame the people because it is the system that promotes a lack of understanding on how the North-East

works. People are never taught about North Eastern societies. She wonders what makes everyone except for the people of the North-East “Indian”, and wonders how this works.

Session IV – Health

Akhila Vasan introduced this session by talking about how over the last few sessions, they had looked at the impact of identity on people’s lives and at issues of exclusion. She stated that the health sector is no different. What is different however, is the intersection and people must bear that burden. Health involves political concepts of access – including access to housing, land and many other services. She opened the discussion by posing three questions:

1. How does discrimination take place in healthcare?
2. How is commercialisation impacting community access to healthcare?
3. What are the legal mechanisms in place and are they adequate? Are they preventing discrimination at all? Or are they adding to the problem?

Nadika N. spoke from the perspective of a trans person. They felt that the medical system is geared to make people feel like subjects of the state. Everyone has given up on seeing medicine as a noble profession, and on receiving good care from those who practice it. People who need care are met with the large bureaucratic wall that is the medical system. Nadika posed the following question: if this is the experience of the dominant upper class, then what are the experiences of marginalised communities? As a trans person, they have had to go through three different gates (which is the role of a doctor – a gate and not caregiver). There is a pathologisation of their experience, out-of-date medical textbooks, huge costs and prejudicial behaviour.

Alisha, a Pakistani woman, died in Ishrawat. She had been shot six times in the face. Once she reached the hospital, doctors wasted time on deciding which ward she should be placed in. She died when they operated on her – near the toilet. Similarly, a trans

woman in Delhi died in a hospital. She choked on her blood as doctors tried to decide which ward to place her in. In 2010, Lamda Legal did a nationwide survey in the US, and found that 75% of trans people faced discrimination from doctors. Doctors refused to touch them (or used an excessive number of gloves to touch them) abused them, or blamed them for their diseases even if it was for something as simple as a cold. While there has been no such survey conducted in India (which should be done), the social prejudice in India is equal if not worse. This goes for the visible population of hijras. Trans men are made to be invisible, and gender fluidity does not even seem to exist in India. Doctors not wanting to touch or talk to trans people has to do with issues of caste concepts and purity. The care for trans persons is usually inadequate because it is usually carried out by the ward person or by nurses. Trans women must also face awful treatment from gynaecologists because they do not want to go to them. The medical and pharmacological industry require that a person is able to reproduce in order to receive medical care, and this is constantly used against trans people in their interactions with the medical system.

Kaushik stated that the discrimination does not end there. Female victims of trafficking and rape victims have useless medical tests conducted on them, and this makes cases very difficult. PTSD assessments are not done, which prevents rehabilitation from being carried out. With visually disabled patients, doctors speak to the caregiver as though their patients have no agency. Injuries of kink practitioners, such as rope burn or those sustained from being tied up, cannot be taken to a doctor because doctors then call the police.

Sylvia has personally seen how trans women are discriminated against. They usually come accompanied by an NGO because they are too scared to approach the system directly. Sex workers are also treated terribly. An HIV positive sex worker refused to sign a registration because they make the whole community look

bad. The blame is laid at the feet of the community even though it is not their fault. Doctors have never been trained in gender issues beyond male and female because the rest is treated as informal. Doctors are, therefore, incompetent and are prejudiced in their attitude as well.

Nadika stated that this is not simply an issue of incompetence, but of their view of trans females as men, and trans males as reproductive beings.

Akhila added that all citizens have been reduced to reproductive beings, which is essentially to reduce them to machines. This is similar to how sterilisation results in mass deaths among women. There is a gradation on who bears the burden, but it is along lines of gender, caste, and class, and this is the problem.

Sylvia has seen that proper care for people with disabilities is not incorporated into hospitals. The inadequate facilities leave patients feeling humiliated that they have to ask for help for things like carrying their bags. There is a misconception (which is propagated by the media) that the Muslim community does not care for their children, or for their health. But in her own work, Sylvia has found that the Muslim community wants healthcare protections, but it is the system that denies them the care they wish to receive. The health workers who come into the communities make their prejudices clear by doing things such as making faces at beef stalls. All this comes in the way of providing adequate healthcare.

Nadika explained how the Ministry of Social Justice and Empowerment asked for consultations on the Transgender Bill. Trans rights came from the outdated idea of rehabilitation. The Ministry believes that the trans community must fit back into the mould of society instead of the other way around. The UN's idea of "reasonable accommodation" is important: it is not a disability until society fails to meet a people's needs; everything is designed for able-bodied people. Nadika believes that the trans community

has to think of this in terms of reasonable accommodation and not rehabilitation, because they are human beings.

Sylvia pointed out that so far, only visible forms of discrimination, which are very tangible, had been discussed. There are however, multiple layers of discrimination, and that it is a matter of ideology. Poor people are viewed as a nuisance and as something to be eradicated — as is the case with evictions of slums. But, they are also viewed as a resource. In the same way that women are objectified, so that they can be used as consumers for products (as Indians are used as a virgin population for clinical trials), poor people can be used as cheap labour. In policy work, there may be one person who has more power who is able to push a policy through even if it does not work. People who are in power intentionally exclude the poor and vulnerable. We have moved from free and comprehensive healthcare to packages and affordable healthcare, which is not helpful to any vulnerable section. Those who claim to work in healthcare are pushing their own agenda and are attempting to benefit from schemes that they suggest. But these schemes negatively affect the poor. An example of which is Devy Shetty saying that it is okay for villages not to have water as long as they have a big hospital. This system is being controlled by crony capitalism. It needs to be broken, so that it can help the public sector and those who are vulnerable.

Akhila explained that health insurance is a model that creates a separate autonomous body that empanels government and private hospitals and provides free healthcare schemes. A person has to jump through hoops in order to obtain these services. It requires many documents like a BPL card, which makes it an exclusive system, and it is only equipped to treat certain diseases. There is also the streamlining of services, so if a person were to go for heart surgery, they will be treated solely for that. If they happen to have a stroke, they would have to go to another hospital. They also have to pay the whole amount before they are allowed to exit the policy. The scheme is framed to exclude people and has

been created by people like Devy Shetty who are on the boards of hospitals. There is a major conflict of interest. Non-state actors hold the system to ransom and do as they please, but the people who are supposed to benefit are not taken into consideration.

The entire terrain of healthcare is controlled by pharmaceutical and insurance companies, corporate hospitals, doctors and researchers. It has shifted completely from being in service of human rights to being a profit-driven industry. When the policy is controlled in the way that it is, it is not possible for an individual to easily navigate or use the system. How can one address discrimination when there is a chasm between the policy and the people?

Akhila pointed out that what we are looking at is the manner in which dangerous healthcare is being pushed under the guise of care and protection. Instead of cleaning up the environment and improving sanitation, the system is pushing medication onto the people. Similarly, vaccines are being provided for diarrhoea while the problem may instead be resolved by providing clean water.

Sylvia gave an example of a clinical trial that deliberately used marginalised communities. They chose teenage girls who were studying in ashram schools from migrant families, and violated procedures for informed consent. Until recently, no action was taken against them. The selection of human resources into healthcare is also discriminatory; those who attend medical college are privileged. The education that they receive is biased and it trickles down into their practice. They are not trained in primary health care or with the understanding that they need to work with the poor. Even nurses have two classes: the more privileged and elite deal with the dressing and communication with patients whereas those from lower classes and castes work as aides. The nursing aides have to perform tasks such as catheter changes and cleaning. Dayis or midwives were made illegal and have been removed by the government even though they have traditional knowledge. The people who occupied these jobs were

mostly Dalits and the government offered them jobs as cleaners instead. Sylvia believes that this has led to the loss of a huge body of knowledge. That even when traditional knowledge is documented, it is sanitised to make it more Brahminical. They remove aspects that involve beef and call things Ayurveda even when they are not. How does one resolve this form of discrimination?

Nadika addressed the issue of “NGOisation” that occurs in all fields, including healthcare. HIV was ignored until the white man was affected by it. Among the first to contract the disease were trans sex workers, but it was not until the upper middle class was affected that funding was provided. It is only now that NGOs are involved in it. Nadika sees a problem in target-related interventions by NGOs in MSM and TG as being the most at risk. She thinks that this is a problem of discrimination as well.

Sylvia believes that where there are public interests or business interests, NGOs are PINGOs and BINGOs and they are the problem.

Akhila continued on this point and spoke of how health issues are not spoken of because the experts in NGOs have closed off the discussion, and have become its gatekeepers. These NGOs have further been co-opted by the state to think in terms of commercialisation. She stated that NGOs raise a lot of issues as well and that in some instances, they take control of government services and refuse to give them back. HIV work actually created a huge demand for colleges and jobs in the social service sector. She then brought the conversation back to looking at the legal context.

Kaushik began by talking about the commodification of water and commercialisation of its distribution that has never been questioned. He believes that the people are losing their agency in healthcare. He pointed out that during the Bandua Mukti Morcha case, the SC talked about the right to healthcare, and while everyone knows about Article 14 and Article 21, there is a feeling that this is only a dead letter of the law. He proposes

that perhaps after listening to this discussion and hearing about how it has failed, we must go back to the basics and start afresh. Law follows social change. Healthcare issues that affect the LGBTQ community do not have any chance of reform until 377 is removed. Without this, an individual with health issues must provide an extra-judicial confession. He felt that the conflict of interest discussed earlier was a clear violation of rights. The right to terminate a pregnancy is limited to a few weeks, unless a person has been violated, or has been deemed a “lunatic” and has received the permission of a guardian.

Kaushik feels that on every level, the system has failed to address and deal with physical and mental health.

He posed the following questions: where do we stand? And what have we really achieved. He continued by stating that perhaps the law could offer a solution, but years of experience tells us that the law does fail. The solution does not lie in the law, and the answers to these questions lie outside of it. The numerous judgements mean nothing. He pointed out how long it took for Vishaka to be implemented. It is community change that must be brought about. He suggested that perhaps we should start knocking down the doors of the courts in order to reclaim what has been lost. Kaushik finished his statement by admitting that he is extremely depressed by all this, but is determined to find the answers.

Sylvia feels that after having engaged with the legal system, the other only possibility is to go through the Consumer Protection Law which treats health as a commodity. An individual has to pay a registration fee of Rs. 1000 in order to then claim that unsatisfactory healthcare was provided. This is a bad recourse because those who are economically underprivileged cannot access it. There are huge violations such as false diagnosis, unnecessary operations, or refusal to remove catheters until payments are made. There have even been instances where women are made to walk naked in front of male doctors. These are all committed against vulnerable communities and is the result

of a power imbalance between doctors and patients. They have engaged with the law but have met with little success.

Audience questions and comments:

1. Issue of medical patents that allow medicines of low-cost production to be sold at high rates. The people who are really in need of it are from poor countries. The audience member asked those from the health sector for their thoughts on the issue.
2. Medical negligence is the only legal recourse, but it is very difficult to even register an FIR. In the experience of the panellists, have there been any successful prosecutions? What about mental health? ALF held discussions on mental health and it was shocking to see the lack of infrastructure. Mental healthcare seems to be worse than physical healthcare and doctor-patient interactions are terrible. What are the possible recourses?
3. Has there been any work conducted with doctors and healthcare patients in order to make them more sensitive? Particularly on issues of mental health?

Akhila acknowledged that the issue of patents is a serious one, and that aside from the court cases against pharmaceutical companies, no policies have been made on them. Last year, the government brought 300 drugs under price control order. After pharmaceutical company lobbying, there was an immediate stay brought about by the court. Every step faces backlash from these forces. Government control is only loosening. Prices are not based on what they should be, but on what the companies decide upon. There have been some victories, such as the Novartis case, and one can draw courage from these small wins.

Kaushik suggested looking in to the proposed activities of The Mental Health Act and the NALSA scheme of 2015 for persons suffering from mental illnesses.

Sylvia talked about how when she tried to teach students about such factors, she was told that it was not a moral science college. The issue is systemic and to change mindsets is very difficult. The doctors who work on HIV/AIDS are completely trained on how to be sensitive, but their behaviour still ranks them among the worst. The ideas are so ingrained that she was not sure if training might even help. She recounted the PUCL case where they had fought to prevent a private contractor from getting involved in providing food for children. She paused to state that there is a correlation between malnutrition and the entrance of private companies into the market. The companies had been set up under the guise of “training women” and do so in rural areas where the government does not interfere. The government was in complete collusion with them. The case shows that there can be legal successes.

Nadika brought up how people with disabilities are denied their sexuality and are not treated as human beings who have desires and needs. People with psychosocial disabilities (Nadika refused to use the term “mental illness”) do not have any agency. They are not given any say in what medication they will receive and their dosage is determined by their guardians. People with disabilities do not express their sexualities and are waiting to be given away in marriage.

Nadika spoke about how she worked with peer counsellors in Chennai in order to sensitise them to trans needs. They had wanted to target psychiatrists first because they are the first gatekeepers. However, many of them refused to come to the workshop. There are attempts to expand the workshop to the entire mental health community, but Nadika knows that this will face resistance.

Akhila summarised the panellists’ responses by stating that it is not necessary to be disillusioned by the idea that the law will not work. There are some areas in which the law does work such as in response to violations. There is also the possibility of using the transformative power of the law in order to enforce medical ethics.

Concluding Session:

Saumya Uma said that they would try to flag some of the many ideas and experiences that had been discussed in the session

Darshana Mitra offered to summarise the ideas of discrimination and its different manifestations:

- There is a distinction between horizontal and vertical discrimination and response to the latter is possible.
- State discrimination is different from private discrimination. There are deliberate actions or laws of the state that discriminate.
- Private discrimination may involve peers who are responsible for horizontal discrimination. Vertical discrimination could also exist in terms of employment.
- There is a difference between specific incidents and issues of deep-seated prejudice. The law only addresses the former, so in what ways can an individual deal with issues of prejudice?

Darshana then asked how the law recognises the impact of and reactions to discrimination.

Saumya Uma spoke about possible remedies:

- Grassroots-level movements, campaigns and unions – the idea of a collective effort, and of coming together is what is important.
- Inter-community conversations could perhaps be used to deal with prejudices. Many groups have worked on this in the aftermath of conflicts.
- Sector-wise, local-level mechanisms or internal committees that could deal with discrimination as grievance redressal. Example: The ICC for sexual harassment issues or cooperative societies for housing.

She then addressed issues with the law, such as difficulties in access to courts or other legal institutions, the bias and corruption of those involved in the system, and discriminatory aspects of the law itself such as Section 377 of the IPC. She offered a reimagining of the law where local-level remedies are utilised. People who do not want to go to the law (due to lack of access or biases) are provided with alternative options. They could be thought of as parallel processes. If the law deals with manifestations of discrimination, is there a way to address the root causes as well? Since the law sets the standard, an anti-discrimination law might help in providing a framework for understanding what is and is not acceptable.

Rumi Harish commented on how while listening to the discussion he felt like he was revisiting all the people that they had previously spoken to. The campaign was more about different languages of expression than it was about forming a law. He hopes that this campaign can bring together individual experiences, knowledge, and languages of discrimination, on both a social and legal level. He felt that it was important to grasp the sensitivities of the different languages of experiences.

Audience questions and comments:

1. There should be a strong follow up to the 2 years of work on this issue. It should not end in a consultation. There should be monthly discussions and a strong effort to do something big. The work cannot stop here.
2. People are afraid of the law and cannot engage with it. This should be kept in mind. In deviant-based analysis, the people who are “successful” in a community are examined to see what it is that they have that those who are oppressed do not. In this case, it would be about having the law prevent the worst from happening, and for a necessary social transformation to come about. This would lead to positive change that would

encourage people to flourish; the law would not be limited to simply preventing discrimination from occurring.

3. The speaker argued that while conversations on anti-discrimination occur here, the realities of those who live in villages are very different. There is no independence in the villages. For example, a trans person would have to either die or leave a village. Perhaps this conversation should be taken there.
4. More reflections on positive discrimination and how that could be used as a strategy should be organised. The speaker mentioned that when deciding on a name for this workshop, they chose not to call it “anti-discrimination” *because* of notions of positive discrimination. An example of which would be allowing minority communities – on the basis of their status as minorities – to decide who lives in their communities.
5. Focus on the young and include them in the conversation. This will allow the movement to move forward. There should be modules for that with facilitators, and without a top-down approach.
6. Positive discrimination is one way of responding to discrimination. Revisit the Constituent Assembly Debates where this was discussed as well as the debate on reservation and separate electorates. The argument against reservation is that privileges are being taken away. This mindset must be changed. The privileged have not yet internalised or recognised that this notion is wrong. This needs to occur.
7. Conversations need to be taken into spaces where they otherwise do not occur, and where lived realities are different. Informal conversations must happen regularly. Communities that are discriminated against fight their own battles and have no idea about what other groups face. There must be

a conversation between communities. It is also important to think about how the media perpetuates discrimination.

Rumi Harish spoke briefly on how in organising this discussion and campaign, they had hoped to facilitate a conversation between movements. They will continue to provide a space for inter-movement dialogue. They will figure out how to get movements to speak with each other and examine the role that prejudice plays in that as well. Such as in addressing the intersectionality of movements and the lack of implementation within the movements themselves.

Audience:

1. In these fields of discrimination, no campaign can be conducted in and of itself. It must recognise the underlying issues and structures that are at play. Structural issues of oppression such as untouchability must be examined in order for there to be any real progress. Most efforts are limited because they look at singular forms of discrimination as opposed to the multiple underlying structures of caste, gender etc. This may seem daunting, but it is necessary. Domains of discrimination exist only to strengthen the social order.
2. There is a lack of recognition surrounding manners of discrimination. How does one extend this beyond the discursive level and onto an experiential one? Therein lies the importance of community intervention. It must be pedagogical and more experiential. It should not be an imposition of the law.
3. Ground-level community work is important. For instance, sitting together with the community can be seen as pedagogical experiential work. It harks back to inter-caste dining and strategies such as going to the water tank. These could be places and sites for such discussions.

Darshana Mitra talked about how there can be no singular, targeted discrimination until there is a statement such as “end caste”. But one can try to understand forms of discrimination and how they interact – which is what the last two years of work has been about. She added that this needs to be expanded upon. In order to do so, they need volunteers to document people’s experiences of discrimination. This would contribute to *understanding* how to deal with discrimination. She ended the session by issuing a call for volunteers to look at methods of documentation that could be used (interviews or social media) and to expand their work over to different places and sectors. These could also be inter-movement dialogues.

To,

Dr. B.S. Chauhan,
Chairman,
Law Commission of India

Dear Sir,

**Sub: Response to Appeal and Questionnaire released by
the Law Commission of India on 07 Oct 2016**

The above referenced appeal from your office sought inputs and engagement from concerned groups on “*the comprehensive exercise of the revision and reform of family laws, as the Article 44 of the Indian Constitution provides that the state shall endeavour to provide for its citizens a uniform civil code throughout the territory of India.*” Further, the appeal states that “*the objective behind this endeavour is to address discrimination against vulnerable groups and harmonise the various cultural practices.*”

The Appeal also states that “*Family Law reform, inter-alia, has to view women’s rights as an end in itself rather than a matter of constitutional provisions, religious rights and political debate alone. With this in background, the commission opens the debate on Uniform Civil Code and seeks your valuable suggestions towards social and legal reforms.*”

There are several concerns we have regarding the entire process: the linking of women’s rights and the UCC, the format of the questionnaire, its timing and the process of seeking opinion. Our concerns are outlined below.

At the outset, we would like to state that positioning the Uniform Civil Code as a response to address discrimination against vulnerable groups or as the only way forward for personal law

reform is condemnable. There is no explanation for how a Uniform Civil Code is necessarily a framework to address discrimination not merely for personal law reform. Nor is it clear as to why a UCC will necessarily serve the cause of women's rights.

We also question the need to "harmonise" cultural practices. The values our Constitution stresses on are equality, plurality and diversity. Uniformity is a different value from equality and one fails to understand how Uniformity will lead to the realization of constitutional values.

The stress on family law also has the impact of looking at women only as having certain roles to play in a family. Viewing women in this framework is not the way forward to achieving gender justice or women's rights.

The questionnaire format itself and each question is drafted intentionally or otherwise in a manner that forces one to assume that we need a UCC. The questionnaire limits responses and is so narrow in scope that it has an undue focus on the personal law of Islam and has tokenistic questions on Hindu Law and Christian Law.

There is absolutely no focus on customary practices practised by several Adivasi groups for instance or any other non-codified practice of any community, nor the question of personal laws and the rights of the persons belonging to the LGBTQI community. The questionnaire also seems to exclude the impact of aspects such as caste, changing property relationships, and codification. A detailed critique of the questionnaire is produced as Annexure – 1.

The timing of the appeal is also suspect. At this moment, many from the Muslim community, progressive women's collectives and other organizations, which also have men in the forefront, are raising issues of gender equality before the Supreme Court. Given that the Supreme Court is hearing petitions challenging some of the gender-biased aspects of Muslim Personal Law, the timing of

this “Appeal” and questionnaire raises many doubts. The timing has certainly contributed to vitiate the atmosphere in the country.

The entire process of consultation does not seem to have the sincerity nor seriousness it deserves. What is required is a committed process of wide-ranging and sincere consultations, aimed at upholding the constitutional values of equality, diversity and plurality.

What is urgently required at this point of time is law reform and institutional reform that will lead to gender justice. We demand that the Law Commission hold public hearings on how to achieve gender justice through reform of personal law and through institutional reform. We need to look at reforms which will make justice and institutions of law more accessible to the marginalized. These consultations need to be held across the country, with all communities, and in a manner that makes it possible for the common people to engage with the commission.

We demand that the current appeal and questionnaire be withdrawn and that civil society groups, representatives of various communities, and the wider public be consulted on what kind of process will lead us to path of providing gender-just laws.

Yours sincerely

Law Commission's Questionnaire on the Uniform Civil Code: A Critique

The questionnaire released by the Law Commission of India on 7th October, 2016 to initiate a debate on the Uniform Civil Code (UCC) is problematic on various fronts. The aim of the questionnaire, as stated by the Law Commission, is to seek the opinion of the public about ways in which family law reforms can be introduced in an integrative manner so as to not compromise the diversity and plurality of India's social fabric.

In our opinion, the questionnaire has failed to achieve this objective. First of all, the framework of the questionnaire itself is problematic as it assumes that we need a UCC. It also seems to have assumed that gender equality is dependent on the presence/absence of laws/codification/UCC merely and not dependent on actual content of these laws. The way the questions and the options have been framed, limits the scope of the answers. A simple yes or no answer to a question negates various other factors upon which the answers may depend.

The focus of the questionnaire is on specific practices of certain religions, even though the appeal states that family laws of all religions have been focused upon. There seems to be a populist skimming, where popular practices such as bigamy, triple talaq have been highlighted. The questionnaire also seems to be an attack on minorities, focusing on certain contentious practices of the Muslim community, completely ignoring the contentious practices of other religions, such as the concept of the Hindu undivided family and coparcenary property among the Hindus. Further, the questions do not deal with any of these practices in detail.

The options provided as answers to the questions, and some of the questions themselves, ignore the consequences that will follow. For instance, the question about banning of polygamy, does not address the consequences that will arise if this practice is actually banned, i.e. the concerns about the rights of the wives and the children born out of these marriages. Another instance is the question on compulsory registration of marriages, where concerns about the validity of a marriage that has not been registered and rights of the children born out of these marriages, have not been addressed. At various places, assumptions have been made that a UCC will lead to gender justice and better realization of rights without there being a working draft.

The questionnaire also makes certain assumptions about various current practices. For instance, the question about Hindu women's right to property assumes that the current law is perfect and the prevailing customary practices prevent them from claiming their rights, while in fact, the law on this issue and its interpretation itself is problematic. This is also the only question pertaining to Hindu law and the questionnaire seems to have assumed that the Hindu family laws are otherwise perfect and need no reform.

What is problematic is also that Question 8, which pertains to reform in Hindu law by stating that 'Legal provisions will not help in what is primarily a cultural practice, steps have to be taken to sensitize the society instead'. It appears as if the commission assumes that only the Hindu community is capable of sensitization and hence there is no need to change customary law, but for all other communities, such internal reform is not possible.

Some questions have also ignored the current framework of law, such as the question on banning/regulation of polygamy, polyandry and maitri-karar. The question and the options have ignored criminal law framework on these issues. The maitri-karar contracts are not even legally enforceable in India and hence, we fail to see exactly what is sought to be banned here.

The question about protection of couples who enter into inter-religion and inter-caste marriages seems to be misplaced. This question is in no way related to the family law reforms or formulation of a UCC. This is an issue that needs to be addressed, and to an extent, is also addressed, in the criminal law framework of the country.

The questionnaire also seems to be narrowing its scope to religion as the basis of different personal laws. Additionally, while the appeal says this is about the UCC and the reform of personal laws, most of the questions are only about the UCC. In this process, other factors such as case, tribal identity, geography etc. has been ignored. The Law Commission is also, regrettably, silent on the rights of sexual minorities.

Thus, the entire questionnaire is problematic – the methodology, questions and the process of seeking inputs. This questionnaire needs to be withdrawn.

Alternative Law Forum

Bangalore

