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REPARATIVE JUSTICE IN CASTE ATROCITIES: CAN INDIAN CRIMINAL LAW GO BEYOND RETRIBUTION?

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INTRODUCTION

The origin of caste system is peculiar to India. It is a social hierarchy which divides people into rigid hierarchal groups. It is much similar to the western practice of racism wherein people's social status is fixed at the time of their birth. This system systematically categorises people into Brahmins, Kshatriyas, Vaishyas, and Shudras, pushes Dalits outside and treats them as an inferior. This exclusion is based upon ancient and cultural practices which promote discrimination against the Dalit community. Caste system is hereditary in nature and unlike the European phenomenon of class system, the caste system does not allow a person to grow out from his/her caste.[1]

Dr. Bhim Rao Ambedkar and other lawmakers of India acknowledged this system of social hierarchy and took an affirmative action by creating a socially inclusive legal document, the Indian Constitution. Unlike the USA's Constitution which was "color-blind", the Indian constitution was created with a vision to protect the interests of all, especially the minorities.[2]

Despite the rights provided by the constitution and the efforts made by legislation to prevent caste atrocities through laws such as the SC and ST (Prevention of atrocities) Act[3], incidents of caste-based violence and discrimination continue to take place in every aspect of social and public interactions. This article serves as a critique to the Indian legislation which is largely based upon the retributive approach and only focuses on individual caste-based crimes. This

[1] Upendra Baxi, Caste Census and Constitutional Justice, Vol.45, JSTOR, 25, 25-29, (2010).
[2] Disha Wadekar, Redefining justice: Legal Scholarship in Critical Caste Studies, Vol. 5 No. 1, JSTOR, 18, 18-26 (2024).
[3] The Scheduled Caste and Scheduled Tribes (Prevention of atrocities) Act, 1989, No. 39, Acts of Parliament, 1989(India).

paper argues that the caste is a systematic method of discrimination built upon social sanctions and therefore it cannot be dismantled solely by penalizing individual actions, still this is all that our criminal laws do. There is a need for a holistic approach to resolve this years old system of social stratification. The existing legal framework is based upon retribution and lacks reparative characteristics like community healing, public apology etc. Inspired by the models of reparative justice followed in countries like South Africa, Canada, Rwanda etc, this paper proposes a similar model to be adopted and implemented by the Indian society.

Lastly, this paper addresses the various gaps in the Indian framework and proposes for a structural change in the Indian model of justice. Many Indian laws focus on compensation and rehabilitation but such laws are poorly implemented and that's why they are not very effective. While this paper recognizes un-effective implementation as a limitation of the Indian legislative model, it also argues that non-implementation is not the sole issue rather there are inherent flaws in the legislation too.

WHAT IS THE CONSTITUTIONAL VIEW OF CASTE IN INDIA?

Unlike the US document which was based on the core philosophy of formal equality and thus followed a color-blind approach, the Indian constitution was effective in acknowledging the centuries old caste-based oppression and addressed such discriminations through substantive equality and inculcated special provisions for the backward groups. The US constitution was initially "race neutral" and later addressed the race-based segregation through amendments which still remain contested. On the contrary, the Indian Constitution abolished untouchability and included provisions for affirmative action such as reservations, since the beginning.

Caste is deeply rooted in our customs, texts, even in society's behaviour and it reflects in the denial of jobs, housing, education and even protection. Therefore, the legislature must address caste as a structural issue rather than just a personal offence and take direct actions to resolve it. Many argue that providing special laws for the backward cast divides the society but many scholars and thinkers have told it be a misunderstood notion. For instance, Dr B.R. Ambedkar defines caste as a system of graded discrimination which cannot be resolved if caste is not dismantled. In his work, Annihilation of Caste, he has argued that denying the caste system keeps it alive. Many scholars of the CCS (Critical Caste Studies) have quoted the similarities between India's caste blindness and USA's colour blindness. They have argued that such notions ignore the caste-based oppression under the pretext of equality. Similar to the scholars of , the philosophers of CRT (Critical Racial Theory)- a discipline that inspired CCS, have

rejected the idea of law being neutral because it favours the dominant groups and their oppression.

The old and sacred view of caste was based upon the concept of religious purity but the modern (organic) framework, views caste as a much more complex concept because the caste status also signifies the access to economic resources, and other opportunities. In the past, the courts ignored and denied the caste-based discrimination and only took actions if the cases involved civil rights issues or if the dispute involved several claims on property. Courts would not take action if the case pertained to caste-based segregation, casteist slurs and insults. The internal laws mandating punishments for those who went against the caste norms, were not questioned. In short, caste based social discrimination was often ignored by the courts.[4]

The Constitution of India intends to reduce such discrimination and segregation by abolishing untouchability and enabling special laws to be made for backward castes. While, the Constitution does not directly put an end to the deep-rooted institution of caste, it withdraws governmental & legislative sanctions from the caste system. It also replaces the status ascribed to individuals by virtue of their birth with voluntary identities such as profession. Further, the constitution also emphasises on integration of various socio-cultural groups and provides autonomy to them. Article 17 of the constitution[5] abolishes the ages old practice of untouchability. Article 14[6] guarantees equality to every citizen and Article 16[7] promises equality of opportunity to all. As an extension of these two articles, Article 15[8] ensures that no citizen is discriminated on the basis of their religion, caste, race, gender and place of birth. Articles 330[9], & 332[10] provide for reservation of seats for Scheduled caste and scheduled tribes in the Lok Sabha and the State Legislative assembly.

This substantive approach of equality followed by the Indian constitution is an affirmative effort reduce the social discrimination in the Indian Society. This approach is also known as

[4] Sai Ramani Garimella, Caste-Based Violence: The Indeterminacy in the Law, Vol. 58, JSTOR, 234, 234-259 (2016).
[5] INDIA CONST, art. 17.
[6] INDIA CONST, art. 14.
[7] INDIA CONST, art. 16.
[8] INDIA CONST, art. 15.
[9] INDIA CONST, art. 330.
[10] INDIA CONST, art. 332.

compensatory discrimination and it empowers the government to make special laws for the marginalised sections of the society to improve their socio-economic status.[11]

Even though, the constitution has abolished untouchability and aims at reducing caste inequality, the caste discrimination still continues due to several gaps in the legislature. So, even though the laws provide for equality and justice, the gaps or limitations prevent them from changing the power structures in society.

RETRIBUTION: A GAP IN THE CURRENT FRAMEWORK

Robert Gordon, a scholar from US has said that- "constitutional guarantees do not lead to structural changes in society if the power remains in the hands of privileged."[12] India has strong legal protections against caste discrimination, such as the PoA, the protection of Civil rights act as extensions of the constitutional safeguards. However, these laws fail to stop hate crimes and cast-based oppression because their main focus is punishments for individuals rather than focusing on destroying the roots of caste. Even though these laws are meant for the fulfilment of the rights guaranteed by the constitution, they not only lack effective implementation, but also have inherent flaws in them.

The laws for prevention exist but they are often vague or inconsistent. The indeterminacy in the language of such statutes lead different interpretations by different judges leading to absence of clarity regarding the intention of law. For instance, the PoA act mandates establishment of special courts to hear cases of caste-based violence, yet most states have assigned this task to their existing sessions courts.

The statute suggested for the making of special courts without the signs of ordinary sessions or criminal courts, for conducting trials under the PoA however, it was discovered that majority of such courts were selected just as it is because they already functioned as sessions courts. Most of the times the special courts follow the procedures of ordinary sessions courts while conducting the trials. Even the High courts have sanctioned the usage of ordinary procedural rules in special cases. For instance, in the case of *Gangula Ashok v. State of Andhra Pradesh,*[13] the high court held that the special courts have the same status as the sessions courts and

[11] Dr. Rajeev Kumar Singh and Sona Rathore, Victim-Centric Approaches in Indian Criminal Law: Can Restorative Justice Bridge the Gap Left by Retributive Practices?, Vol. 5, IJARSCT, 70, 70-75 (2025).
[12] Robert W. Gordon, "Critical Legal Histories," 36 Stanford Law Review 57 (1984).
[13] Gangula Ashok v. State of Andhra Pradesh, AIR 2000 SC 740.

therefore, they are to follow the procedural rules of the sessions court while conducting the trial under the PoA.

Many scholars and even the Supreme court have called PoA a “hyper-technical” law as it focuses way too much on trivial technicalities and often ignores the injustice done to the oppressed. One such instance to support this notion is that this law mandates the arrest of the offender to be made by the police officer of a particular rank only. If an arrest is made by someone of lower rank than the prescribed rank then the whole case can be called as improper and get dismissed. The Supreme Court has held in the case of *Kailas v. State of Maharashtra*[14], that minute technical errors such as non-submission or improper submission of caste-certificate, arrest by a police officer of different rank, are often used as excuses to dismiss the cases in order to protect the accused. So, in such cases even if the atrocity clearly happened, the accused may get acquitted pertaining to these technicalities.

The existing laws do not follow a victim friendly approach, they rather focus more on the process followed. They often ignore the struggles faced by the victim, the damage caused to them and the life long impact of the atrocities caused to them. They follow a retributive approach, which focuses on punishing the wrongdoer but does not take any action to compensate for the harm. The processes involved for justice seeking are complex and it takes years for victims of caste atrocities to get justice and sometimes they are denied justice even after years of patience.

Another weakness of the Indian legal system is that it fails to acknowledge the intersectional nature of various social identities. Very often, caste, gender, class overlap with each other. So, if a Dalit woman has been a victim to sexual violence, the laws fail to decide if it was a gender-based crime or a caste-based crime. This is a major gap in the legal framework which creates a room for acquittal of wrongdoers.

Law is made for the protection of the victim. However, in reality the law may protect the oppressor and do harm to the oppressed. It has been argued by many legal scholars that in Indian legal framework law not only fails to prevent caste-based violence but also helps in sustaining such acts. The upper castes are very influential and own most of the economic resources and social spaces. That is why, many jurists argue that many legal frameworks are designed by the privileged class to protect their own interests. In the past, the laws allowed

[14] Kailas v. State of Maharashtra 2011(1)ACR807(SC).

caste panchayats to run themselves without any intervention from the courts. Even today, such groups function in small towns and courts reduce the caste-based crimes held by such panchayats merely to “village disputes” or “personal issues”.

REPARATIVE JUSTICE: WAY FORWARD

As the word suggests, Reparative justice means repairing the wrong done by the wrong-doer to the victim. While it includes compensation, its actual meaning goes beyond compensation and includes elements like public apology, which are effective in restoring the social position and dignity of the victim. Even though punishments are meant to create deterrence in the minds of the offender and to set an example for others in the society, they do not erase the trauma faced by the victim. They are helpful in preventing future crimes if implemented effectively however such retributive methods are not useful in repairing the harm caused to the victims.

Many belief that it is just the improper implementation of law which is a hurdle in creating a just and equal society but the truth is that Indian legal system requires a structural shift in its framework. Our laws need to go beyond retribution and adopt a reparative model which is centred around compensation, undoing the harms, societal recognition, community building and healing. It is evident from the suicide of Rohith Vemula suicide that our system often benefits the oppressor and exploits the victim. In the above mentioned incident, a Dalit PHD student died of suicide because he along with other Dalit students were denied hostel facilities because of politically motivated interests with involvement of government personals.[15] Other similar incidents include the Khairlanji Massacre- women of a Dalit family were sexually assaulted and killed by upper caste men, the Hathras incident and the Mirchpur incident.[16] These incidents are examples that the current retributive system has failed to deliver actual justice to the victims.

The modern laws and legal systems not only fail to deliver proper justice to the victims of caste-oppression and discrimination but these laws also lend a hand in reinforcing the institution of caste. Some laws appear to be neutral but are often discriminatory towards certain protected communities. For instance, section 377 of the Indian Penal Code[17] did not appear to be unjust or discriminatory on the face of it but after a deeper interpretation of this law, it was

[15] Aljazeera, https://www.aljazeera.com/gallery/2016/2/1/rohith-vemula-dalit-scholar-hanged-himself-in-protest, (2/7,2025).
[16] Jurist News, https://www.jurist.org/commentary/2023/03/yadav-gaur-hathras-case-institutional-failure/, (2/7,2025).
[17] The Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

decriminalized for it was being unjust to the homosexual couples. Similarly various caste laws meant for combating caste atrocities, like the PoA, often puts the high burden of proof on the victims rendering the purpose of empowering the backward castes as impossible.

Even the various judgements given by the Supreme courts were responsible in upholding the stereotypes that students and professionals of the oppressed castes lack merit. That is why the reparative model is important because it not only acknowledges the systemic exclusion of certain communities, but it also restores their dignity. This model has drawn inspirations from different countries. For instance, in South Africa, the Truth and Reconciliation Commission was created to provide a platform for the victims of apartheid to confront the wrong-doers for their atrocities.[18] Another example would be of Rwanda wherein the courts not only focused on the formal approach of justice but also combined justice with societal healing by including local people in the process of punishing the offenders of genocide.[19] These models offer symbolic recognition to the oppressed caste by mandating public apologies by the offenders thus they can be proved helpful in combating the roots of caste injustices in India.

Justice cannot be achieved solely based on the strict rules of procedures, so the legislature must empathise with the victims and engage with their experiences in order to understand their social standing in a better way. This ensures active participation of the oppressed in the process of achieving justice. Further, the critiques given by CCS (Critical Caste studies) must also be taken into account for better legislation and implementation.

CONCLUSION

The current laws, (though not always,) penalize the overt actions of caste-based violence but ignore the indirect or silent discrimination towards the marginalised castes. Also, even after the constitutional provisions of equality and untouchability, the incidents of violence, oppression and discrimination based upon caste continue to take place owing to the vague and unclear language in the statute, ineffective implementation and other various limitations, the biggest of them being the retributive approach of the current framework which only focuses on punishments and puts technicalities on priority. The existing system fails in capturing the Intersectionality or the overlapping nature of caste, class and gender. There is a need to

[18] Britannica, https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa, (2/7/2025).
[19] Human Rights Watch, https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts, (2/07/2025).

inculcate the reparative characteristics in this framework, such as healing and community building which will truly empower the marginalised castes.