

Human Rights of Dalits and Untouchables

AMITA AGARWAL
Department of Political Science
Government College, Ajmer
Rajasthan

The media assaults us daily with horror stories regarding violation of human rights. One cannot sit silently and feels that something must be done.

Here one confronts the question of relationship between the theory of human rights and its practice, as the relationship between the theory and practice of human rights is problematic. The principle that human rights must be defended has become one of the common phrases of our age.

The very first Article of the UNDHR clearly mentions: 'All human beings are born, free and equal in 'DIGNITY' and 'RIGHT'.' But where are the rights of the weaker sections of the society: women, poor, children and dalits?

Today, I am much more concerned about human rights of dalits and untouchables as their violation may endanger peace and harmony in our society.

Human being is the focal point of all human rights and fundamental freedoms. In short free existence of human beings should be regarded as a human right. The foundation norm generating the concept of human rights is the respect for human personality and its absolute worth regardless of colour, race, caste, class, sex and religion.

All human rights derive from the dignity and worth inherent in the human person.

EVOLUTION OF HUMAN RIGHTS

In ancient scriptures, there have been references to the basic human rights, though they were not referred to by that name.

Modern historians credit the origin of the concept to Magna Carta in AD 1215, which was basically a petition urging the King to concede rights to particular sections of the people. Its contents neither had the universality of application nor direct relevance to common man's basic freedoms.

The term 'Human Rights' was introduced in the United States Declaration of Independence in 1776 and then the U.S. Constitution embodied a 'Bill of Rights'. The French Revolution gave birth to 'Declaration of Rights of Man and Citizens' in 1789. In 1929 Institute of International Law, USA prepared a 'Declaration of Human Rights and Duties'. In 1945 the Inter-American Conference passed a resolution seeking establishment of an International Forum for the furtherance of human rights of mankind.¹

The unspeakable atrocities committed on political and ethnic minorities by the Axis during Second World War helped to usher in a world order for promoting respect and observance of Human Rights and Fundamental Freedom. The Charter of the United Nations in its very preamble declared: '...To achieve International Cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for Human Rights and Fundamental Freedoms for all without distinction as to race, sex, language or religion ...'. In 1948 the United Nations proclaimed Universal Declaration of Human rights.

CIVIL SOCIETY AND HUMAN RIGHTS

Civil society is based upon the concept of human rights which are essential not only to fulfil biological needs of mankind but for the dignity of men as well. Without recognising the concept of human rights no polity can be considered as democratic. Every democratic constitution tries to recognise the concept of human rights in one way or the other. Broadly speaking, human rights fall into three categories:

- (a) First generation rights or civil and political rights,
- (b) Second generation rights or social and cultural rights, and
- (c) Third generation rights or Group rights.

These rights are based on the following principles:

- (a) all human beings, without distinction, are brought within the scope of Human Rights instruments,

- (b) equality of application without distinction of race, sex, language or religion, and
- (c) emphasis is on international cooperation for implementation.

The United Nations held that all Human Rights and Fundamental Freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

INDIAN SCENARIO

India has played the most significant role in the promotion of the cause of human rights and is the greatest champion of human rights in the Third World. India has not only incorporated an elaborate Bill of Rights in her constitution but efforts have been made to translate these into reality.²

This was necessary too as, is proclaimed in the Universal Declaration of Human Rights, 'a man comes into this world through no fault of his own, since he has no option of choosing the caste, class and the family of his birth, since he is a joint inheritor of the accumulations of the past and since these accumulations are more than sufficient to satisfy the claims that are made on his behalf, it follows that every man, without distinction of race or colour is entitled to all human rights, including the right to ... dignified life.'

In a country like India whose constitution makes provisions not only of human rights but their protection also, human rights of dalits and untouchables are still in a sorry state. In no other part of the world has so much injustice and systematic discrimination been done to a particular group of people for thousands of years as has been done in India with dalits and untouchables. The basis of injustice or discrimination is not religion or language but 'caste' over which a person has no control.

More than 50 years have elapsed since the Universal Declaration of Human Rights was adopted by the United Nations and the Indian constitution was enacted. In all these years a democratic country like India has done little to enforce the rights of dalits and untouchables. In spite of many idealistic provisions in the basic law of the land human rights of these people are violated time and again and only a few of them get reported.

DALIT'S STATUS IN INDIA

The word 'dalit' literally means poor and oppressed people. But it has acquired a new cultural context which implies, 'those who have been broken down by those above them in a deliberate, systematic and active way'.³ The term basically refers to ex-untouchables and we will confine ourselves to this interpretation. Dalits in modern India bear the brunt of a long broken legacy of the deepest social degradation. They usually are at the bottom of almost every parameter relating to economic well being or quality of life. The distinct burden that only they bear, among all under-privileged groups in India, is the degradation of a centuries-old tradition of untouchability.

PRACTICE OF UNTOUCHABILITY

By the practise of untouchability we mean the avoidance of physical contact with persons and things because of popular social beliefs and practices.

No doubt India has a rich and glorious cultural legacy to be proud of but still more important fact is that nowhere in the world can be found the extent of discrimination perpetuated by one group against the other as it is found in the case of low caste untouchables (by the high caste Hindus) in India. Caste system is a unique feature of India life. It is believed that originally there were only four castes, Brahmans, Kshatriyas, Vaisayas and Shudras,⁴ and this classification was on the basis of one's profession not birth. But over the past thousands of years these four castes have been sub-divided into thousands of castes and sub-castes, and now the basis of classification is 'birth' rather than 'profession'.

There have been many empirical studies which make it clear that the practice of untouchability is still an important component of Indian society and is in a complex, dynamic situation of flux and transition (inspite of all the constitutional arrangements). Though from the public life, specially in urban areas, this practice has almost been eradicated but in rural areas 'dalits' still find only a very very restricted entry to temples, drinking water resources and other public places. Dalits who have adopted other professions than the traditional ones are in a better position as compared to those who still have to practice traditional occupations such as scavenging and tanning.

SOCIAL JUSTICE

The concept of social justice is primarily based on the idea that all men are equal in society without distinction of religion, race, caste, colour or creed. The Indian constitution inscribed justice as the first promise of the republic, which means that the state power will execute the pledge of justice in favour of the millions who constitute the republic. Social justice is people's justice, where the tyranny of power is transformed into the democracy of social good.⁵ The constitution of India proclaims in its preamble the objective of achieving for all its citizens, 'Justice, Social, Economic and Political', and 'equality of status and opportunity'.

All the Fundamental Rights and Directive Principles of State Policy elucidate the constitutional concept of social justice for India. Basically, social justice is concerned with the claims of the underprivileged sections of the society, who have been deprived of their rights, freedoms and opportunities of development because of a defective social system.⁶ The Indian constitution is first and foremost a social document and a majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster the revolution by establishing the conditions necessary for its achievement and the core of the commitment to social revolution is in parts III and IV.

HUMAN RIGHTS AND THE INDIAN CONSTITUTION

Part III of the constitution deals with Fundamental Rights to which every citizen is entitled. Some of these rights are as follows:

Article 14—The state shall not deny to any person equality before the law or equal protection of law within the territory of India.

Article 15—The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.

Clause 2 of the article 15 further states that no person on grounds only of religion, race, caste, sex or place of birth shall be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels, 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 the

state funds or dedicated to the use of the general public.

Clause 3 of this article provides for special legislation for women and children. Constitution amendment act 1951 S-2 permitted the state to make special provisions for the advancement of socially and educationally backward classes of citizens or for the scheduled caste and scheduled tribes. This amended section became article 15 (a) and under this article reservation is provided to these classes.

Article 16 states:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or to any office under the state,

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible or discriminated against in respect of any employment or office under the state.

Clause 3 of this article makes provision that the Parliament is empowered to make any law prescribing, with regard to certain jobs in state or local government, any requirement as to residence within the state prior to such employment/appointment. Clause 4 makes it clear that the state is not prevented from making any provision for the reservation of appointment or posts in favour of any backward class of citizens.

Article 17 abolishes untouchability and its practice in any form. Article 19 maintains that, all citizens shall have the right to:

- (a) freedom of speech and expression,
- (b) freedom to form associations or unions,
- (c) move freely throughout the territory of India.

Article 21 states that, no person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 23 forbids forced labour.

Article 25 guarantees freedom to profess, practise and propagate religion and specifically maintains that a nothing in this article shall affect the operation of any existing law or prevent the state from making law ... (b) providing for social welfare or reform or the throwing open of Hindu religious institution of a public character to all classes and sections of Hindus.

Article 32 makes all these rights judicially enforceable. This

article gives every citizen the right to move the supreme court for the enforcement of his/her rights. Under the powers given by the constitution the courts can direct the individual or the state to desist from the practice of untouchability. This article cannot be suspended except in the case of a state of emergency.

To ensure social justice to the poor the 42nd amendment to the constitution introduced article 39 (A) for free aid to the poor. In pursuance of this article a massive legal aid programme for the poor and ignorant has been chalked out through various organisations.

Part IV of the Indian Constitution deals with the Directive Principles of State Policies. With the passage of time attitude towards these Directive Principles has changed and now they have become major instruments of change. This change is reflected in Justice Bhagwati's observation:

The Directive Principles enjoyed a very high place in the constitutional scheme and it is only in the framework of socio-economic structure in Directive Principles that fundamental rights are intended to operate, for it is only then that they can become meaningful and significant for the millions of our poor people who do not even have seen necessities of life and are living below the poverty line or level.

Though these principles are not enforceable in a court of law, nevertheless these are required as fundamental in the governance of the country and it is the duty of the state to apply them while making laws. The principles are the conscience of the constitution.

Just as the fundamental rights conferred by part III would be without a radar and a compass if they are not geared to an ideal, in the same manner the attainment of the ideals set out in part IV would become pretence and tyranny if the price to be paid for achieving that ideal is human freedom. One of the faiths of the founding fathers was purity of means. The goals set out in part IV together constitute the core of the constitution.

Founding fathers of the Indian constitution were confident that the constitutional systems would be administered democratically and welfare society would be set up in which millions of poor people would be able to improve their lot. Hopes and aspirations of the people found voice in these words of Pt. Jawahar Lal Nehru: 'I trust that the constitution itself will lead us to real freedom that we have clamoured for and that freedom in

turn will bring food for our starving people, clothing for them, housing for them and all manners of opportunities of progress.'

ADVANCEMENT OF JUSTICE: SOME IMPEDIMENTS

In a country like India which has the long tradition of human rights and democratic polity, even with the help of a constitution, whose aim is to provide social justice, dalits and untouchables still live in a sorry state.

Today, when we have recently celebrated 50th Anniversary of the Magna Carta for All Humanity and while emphasising upon, 'All Human Rights for All', have started celebrating, 'UN Decade of Human Rights Education' (UN General Assembly had adopted a resolution to this effect on 23rd December 1994), we need to look into the rights of dalits and the impediments in their realisation.

The first and foremost impediment is various formalities and procedural technicalities under law. This can be called the root cause of all the other impediments. As is popularly said 'Justice delayed is Justice denied', our courts from the lowest to the Apex court are functioning in a way that at times a case is not solved, in the entire life span of a human being. In addition to this at first a poor and ignorant dalit hardly finds the courage to go to the court and even if he goes to the court he stands no chance in comparison to his opponent who is generally richer, better educated and belongs to a higher caste.

Secondly, it is universally accepted that the implementation of part IV will involve mass legislative activity, but such efforts will be meaningful, realistic and successful only if the weaker sections for whose benefits these laws are made have an effective voice in shaping of these laws.¹⁰

Thirdly, in every human organisation authority is always exercised and decisions are taken by the chosen few, described as the elite. Dalits who come no where near, even to the border line of these elite, are the natural losers.

Fourthly, a major impediment is the population which is in turn the root cause of many social and economic evils.

Fifthly, to make social justice meaningful exploitation at all levels and of all kinds must be ended. Though this exploitation is not based on caste, still poverty, ignorance and illiteracy of dalits make them an easy prey.

ROLE OF THE STATE

The state has intervened in favour of dalits in a variety of ways since independence. These interventions include:

- (a) an array of constitutional and legal provisions,
- (b) representation in government employment as well as in elected representative bodies through reservation,
- (c) budgetary support through the special component plan (SCP) approach,
- (d) special programmes of health and education,
- (e) priority in all rural development, slum improvement and antipoverty programmes for the dalits, and
- (f) technological changes, such as conversion of dry latrines to flush latrines for the release of person engaged in traditional occupations.¹¹

WHAT SHOULD BE DONE?

Implementation of human rights is a subject of great importance and in India we have to go a long way in this direction. Here an attempt is being made to bring into focus the much needed sincere efforts required to make the human rights really meaningful to those who need them the most.

Judicial Activism

We not only need a new justice jurisprudence charged with the egalitarian ideology of socialist development and dignity of personhood, we also require a whole new range of judicial techniques and non-judicial alternatives which will establish a pragmatic nexus between law and life. We also need judicial and para-judicial cadres who will execute the testament of social justice.

A beginning has been made in this direction by changing the traditional doctrine of *locus standi* which insisted that the aggrieved alone had a right to approach the courts. The state was regarded to be the soul guardian of public interest and the individual had no role to play. But in the course of time, Mr. Justice Krishna Iyer and Mr. Justice Bhagwati championed the cause of judicial activism to promote social justice by liberalising the *locus standi* rule.

The limited scope of access to the high courts in the country through public interest litigation which is now popularly being

called social action litigation, necessitated prompt legal service and legal aid to the rural masses so that their problems of daily life could be speedily solved. This task has been helped by Lok Adalats which are available instruments for dispute settlement with the help of social activists and voluntary organisations.

What more can be done is the enforcement of a legal aid guarantee programme in every case, criminal, civil, revenue, forest, excise, etc. where one party belongs to the dalit community and the other does not. This would be the guarantee programme in comparison to aid programme and it should be recognised as the obligation of the state to provide adequate and effective legal aid in every case whereas dalit is confronted with an unequal adversary. In addition to this lawyers must be paid at the prevailing market rate and should be freely selected by the dalit litigant himself.¹²

Role of NGO's

In the highly unequal fight of dalits, activist voluntary organisations wherever they exist, have been found to provide valuable legal and moral support to the victims, giving legal guidance, ensuring that cases are registered, that the victims and witnesses are not pressurised, and investigations are not deliberately delayed. The state should provide financial and administrative support to such NGOs and may even take initiative for motivating such NGOs to come up where they do not exist, specially in atrocity-prone areas.

State Cooperation

No judicial action, no social organisation can succeed until the state cooperates with them. The judgements have to be implemented by the government, so until there is a change in the attitude of the government and the governmental agencies the human rights cannot be properly enforced. There is a need to provide training on the concept of human rights to police officials and other officials concerned with the defence, law and order problems.

The police administration has already established a well developed system of monetary rewards and medals as token of recognition for those who have done a good work. It is necessary to consciously integrate this reward system to accord high priority and encourage prompt, impartial and effective investigations in cases related to atrocities.

It is proposed that a substantial special allowance be given for postings to those police stations and cells that deal with scheduled caste sections, and that at least one year's posting in that section be made mandatory for qualifying for every level of promotion.

It is also necessary to consciously reduce the mechanical reliance on crime statistics. A higher rate registration of cases of atrocities for instance, may reflect not a declining security environment for dalits as it may superficially appear, but on the contrary a more responsive police administration now registering atrocity complaints, where earlier they were simply being ignored and brushed aside.

In the manner that gender sensitisation programmes are being organised for government officials at all levels, a similar package of training programmes should be regularly organised at all levels for the officials of the state governments, including the judiciary, so as to sensitise them and influence their attitudes towards the weaker sections.

Vigilance Committees should also be established at thana and district levels, comprising on the one hand members of the executive and judiciary and the police, and on the other elected representatives, NGOs and representatives of educated local youth and weaker sections, to oversee registration of complaints, investigation and progress of cases. For instance, if a dalit is unable to register an atrocity complaint in the police station, he or she should have access to appeal to the committee, and the committee in turn should be suitably empowered to make necessary recommendations to the Station House Officer (SHO).

OTHER RECOMMENDATIONS FOR ELIMINATION OF ATROCITIES

The National commission for SC's and ST's, April 1990, has made a number of other recommendations in relation to atrocities, which need to be followed up. These include :

- a. revocation and suspension of gun licences in places where atrocities have occurred;
- b. liberal invocation of provisions of Bonded Labour System (Abolition) Act, 1976, and other such measures, vesting of powers with executive magistrates wherever such provisions exist, and resort to summary trials;

- c. a review of debt relief legislation on all India basis and guidelines incorporating statutory features of various enactments issued by the state;
- d. instead of opening special police stations for SC's/ST's special police officers of ASI or head constable rank be posted at all police stations for such cases; and
- e. establishing special courts exclusively for taking up atrocity cases.¹³

For this purpose, texts may be prepared in simple local languages, elaborating all the relevant provisions and laws, and practical details such as rights, legal-aid facilities available to the victims. Volunteer resource persons both from within and outside the government may be first educated in depth with regard to the relevant legal provisions and procedures. In turn, they can run legal literacy classes for high school and college students, especially those residing in government run SC and ST hostels.

LIBERATION FROM TRADITIONAL UNCLEAN OCCUPATIONS

As we have already seen, the anguish of the socially oppressed dalit is most acutely centred in those who are still trapped in traditional 'unclean' occupations, such as sweeping, scavenging, tanning and flaying, disposal of carcasses, prostitution etc. Because of the 'unclean' nature of occupations in which they are engaged, have assigned them lowest position in the caste hierarchy, and are subjected to extreme forms of untouchability. There is no doubt that the beginning of the end of untouchability is possible only when specific castes traditionally engaged in 'unclean' occupations are liberated from their professions. It is unfortunate that this problem has not received sufficient attention in the past. Insofar as some action has been taken, the main reliance has been on the conversion of dry latrines into flush latrines, and supply to scavengers of wheel barrows, hand carts and implements such as gumboots, gloves, buckets etc. The progress even in these measures has been halting and tardy, and these anyway do not go to the heart of the problem. Only recently in 1991, a centrally sponsored scheme has been launched to systematically survey and release scavengers from their traditional occupations.

We have already noted the tragic trap in which the scavengers are caught up, that if they seek social dignity they have to accept

economic insecurity by abandoning a profession over which they have monopoly rights, whereas if they cling to economic security, they remain victims of untouchability even in the otherwise anonymous and mobile socio-economic environment of cities.

Therefore it is simplistic to suggest that routine loans for alternative economic activities will be adequate intervention for liberating scavengers. The cruel trap in which they are caught can be broken only by a major programme of mobilisation on scavengers to motivate them to accept the risks of breaking free from their traditional occupations. The next step would be a careful selection of alternatives, ensuring that these alternatives are completely caste neutral and dignified, economically secure and viable and preferably part of the modern economy.¹⁴

The concept of 'Ram Rajya' provides that individual or group of individuals or the community at large shall have the dignity and the status. No one shall be treated in inhuman manner. There shall be respect among the members of the society for the long lasting peace. The aim of Ram Rajya is to maintain peace and harmony in the society with freedom and liberty.

In short, the provisions of the constitution must be read as a whole to find out the true meaning and the spirit of the constitution which was enacted to ensure justice—social, economic and political—to each and every citizen of India. It should be, further, borne in mind that the founding fathers attached great importance to the dignity of the individual and were keen to promote fraternity so as to ensure unity and integrity of the nation. Anything done to drive a wedge between two sections of the society, either on the basis of caste, creed or religion or economic classification such as rich and poor would put undue strain on fraternity and may endanger unity of the nation. For building up a welfare state, the welfare of each and every section of the society must be kept in view. Parties may differ on how common good can be better achieved under the constitution, but their object must be common good and not the good of any particular class or section of society even though it constitutes a majority.¹⁵

NOTES

1. S. Subramaniam, *Human Rights: International Challenges*, Manas, New Delhi, 1997, vol. I, p. 4.
2. Charanjit Singh, M.R. Garg and Naveen Sharma, 'Concept of Human Rights and the Indian Constitution', in B.P. Singh Sehgal, ed., *Human Rights in*

- India: Problems and Prospects*, Deep and Deep, New Delhi, 1995, p. 290.
3. Vijay K. Gupta, *Perspective on Human Rights*, Vikas, New Delhi, p. 81.
 4. Abdul Rahim P. Vijapur, ed., *Essays on International Human Rights*, p. 118.
 5. Vijay K., Gupta, op. cit., p. 194
 6. Gokulesh Sharma, *Human Rights and Social Justice*, Deep and Deep, New Delhi, 1997, p. 396.
 7. Ibid., p. 403.
 8. *Minerva Mills Ltd. Vs. Union of India*, A.I.R., 1980, S.C., 1789.
 9. Gokulesh Sharma, op. cit., p. 397.
 10. Ibid., p. 449.
 11. Vijay K. Gupta, op. cit., p. 92.
 12. Ibid., pp. 94-5.
 13. Ibid., pp. 97-9.
 14. Ibid., pp. 102-103.
 15. Gokulesh Sharma, op. cit., pp. 44-5.