Judicial Pronouncements and Caste

How has the judiciary dealt with cases relating to upper-caste humiliation of dalits, as also sati and its glorification? An examination of the judicial pronouncements of the courts delivered in the context of the SC/ST (Prevention of Atrocities) Act, 1989, the Protection of Civil Rights Act, 1955, and the Rajasthan Sati (Prevention) Act, 1987.

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The matter of caste-based reservations engenders much heat and dust, the courts being a major player in the game. The courts are, of course, assumed to be impartial and above the biases and prejudices to which ordinary mortals fall prey. The law dealing with contempt of court forbids the imputing of motives or biases to a judge. There is an ongoing debate and justifiable criticism of the law, especially in the context of "truth" not being a defence to a charge of contempt in an institution whose motto is 'satyameva jayate' or 'truth will triumph'. However, while treading carefully in the context of the law as it presently stands, it may be interesting and worthwhile to look at some of the judicial pronouncements of courts and at facts in the public domain.

A pointer to the relation between caste and the judiciary is a recent interview of noted constitutional expert and jurist Fali Nariman on the occasion of the release of his book on the Indian Legal System, where he states: "Former law minister P Shiv Shankar, a dalit, told me that as policy, in some states, if two justices have to be sworn in on the same day, the guy from the preferred community is sworn in first, so that the guy from the non-preferred community doesn't supersede him in becoming chief justice".[1]

'Casteist' Insults

In May 2005, the chairman of the Industrial Development Bank of India (IDBI), V P Shetty was arrested on a complaint made by IDBI general manager Bhaskar Ramteke under the SC/ST (Prevention of Atrocities) Act, 1989. The chairman is alleged to have hurled a volley of "casteist" expletives at the general manager. The Bombay High Court held that the offence of insulting or humiliating a member of the scheduled caste in "any place within public view" was not established as the incident took place in a private room and quashed the FIR under the Atrocities Act.[2] Contrary to the image of Ramteke and Shetty having a get-together in the latter's drawing room, conjured up by the phrase "private room", the incident took place in the chairman's office at the IDBI premises in the World Trade Centre. Ramteke had gone to meet Shetty in connection with official work pertaining to readjustment of the SC/ST backlog ahead of the merger of IDBI Bank and IDBI. The court asked the police to instead take cognisance under the Protection of Civil Rights Act, 1955 (PCRA).

The taking of cognisance by the police is followed by investigation, collection of evidence and then trial, culminating in a judgment. It might be instructive to look at judgments delivered in the context of the PCRA as well as the SC/ST Atrocities Act.

In 1996, a case was filed against Krishnan Naynanar under PCRA as well as the Atrocities Act for making "casteist" remarks against one Kuttappan while contesting a by-election to the Kerala legislative assembly from the Thalassery assembly constituency. The complaint was that Nayanar, at a convention of the Left Democratic Front at the Town Bank auditorium, made the remark: " 'The other thing, that harijan, one Kuttappan, he was dancing on the table'. This was what Naynanar stated quite contemptuously".[3] There were witnesses who had also deposed that more or less the statement had been made, with a little difference in wording.[4] Even though the statute provides that an act against a person belonging to the scheduled caste category shall be presumed to be on the ground of untouchability,[5] the Kerala High Court held that no offence under PCRA can be made out as it cannot be said that "the complainant

was insulted or attempted to be insulted on the ground of untouchability". Coming to the Atrocities Act,[6] the court ruled that though the incident was admittedly in public view, yet the offence of insult or humiliation was not complete, as the complainant Kuttappan was not present at the public meeting. The court went on to observe that it was only offences like dumping excreta, waste matter, and carcasses within the premises of a member of the SC community, which need not be necessarily done in the presence of the person insulted![7]

In Phulsing's case, the Madhya Pradesh High Court took into account the presumption that an act was done on the ground of untouchability, but considering the facts of the case, felt that the presumption had been rebutted. Phulsing, a Lodhi thakur and ex-Malgujar had been taking "begar" from Balla, who was a chamar. Phulsingh had got Balla's house demolished and abducted Balla's wife for five days. In addition, Phulsingh had threatened to overrun Balla by his tractor and kill him. Balla reported the matter to the police and while he was returning Phulsing shouted at Balla "Chamra mere virudh report kyon ki, main tumse manhani ke 5,000 rupaye loonga"[8] ("you chamar, why did you make a report against me, I will take Rs 5,000 from you for defamation").

. In a second case, Phulsing had a land dispute with Parsadi, also a chamar by caste. Phulsing threatened and abused Parsadi by saying "Chamra bhonsdike jagah chod dena nahi to goli maar doonga"[9] ("you chamar, ****** leave the place otherwise I will shoot you dead"). Phulsing also wrongfully stopped Parsadi's wife who was passing along a road in front of his house and said to her "Yahan se chamriya nikli to lat marenge, tere bap ka rasta nahi nahin"[10] ("you chamariya, if you pass this way I will kick you, it is not your father's road").

Two separate cases were registered against Phulsing – one with regard to the incident involving Balla, and the other, with respect to Parsadi and his wife – for insults on the ground of untouchability under section 7(d) PCRA.[11] The high court, in deciding whether Phulsing had committed the offence, evolved two tests to determine whether an insult fell within the ambit of Section 7(d) of the PCRA. The first is to ask whether the insult would have taken place irrespective of the fact that the victim was a member of the scheduled caste. If yes, the insult was outside the ambit of the provision. The first test as formulated by the honourable Madhya Pradesh High Court goes as follows: "The question is what is the test to determine whether the insult was or was not 'on the ground of untouchability'? It is possible in my view to conceive of a test. The test is to ask the question, whether insult would have taken place irrespective of the fact whether the victim was or was not a member of the scheduled caste. If yes, the insult was insult simpliciter outside the ambit of clause (d). On the other hand, if (the) insult had taken place only because the victim was a member of scheduled caste, and it would not have taken place if he had been of higher caste, then (the) insult was (an) insult on ground of untouchability".[12] The court thus decreed that even a "casteist" abuse hurled at a member of a scheduled caste might not amount to insult on ground of "untouchability", if there are other issues involved between the parties. The court seems to have read the word "only" into section 7(d) even though the provision as phrased by the lawmakers does not contain it.

Insults

The second test formulated by the court was that if the insult was part of a personal quarrel between a member of a higher caste and member of a scheduled caste then the insult would not be on the ground of untouchability. Only insults in the absence of a quarrel would fall within the ambit of the offence. The formulation of the high court is indicative of the perspective brought to bear: "Another rough and ready test, though not very infallible, would be to ask the question whether (the) insult was part of personal quarrel which took place between a person of higher caste and a member of the scheduled caste; or was the insult offered in (a) cool and studied manner in the absence of any quarrel. In the first situation, the insult would most likely (be) insult 'simpliciter' while in the second situation it would be (an) insult on the ground of untouchability."[13]

The object of the PCRA, which was originally enacted as the "Untouchability Offences Act, 1955" till its change to the present nomenclature in 1976,[14] is to punish the preaching and practice of untouchability. The legislation has been enacted to concretise and make real the abolition of untouchability under the Constitution.[15] If two interpretations in law are possible, then the one that furthers the intention and object of the legislation is to be favoured over the other. The court seems to have almost carved out an exception, something on the lines of – "provided that if there is a quarrel between the member of the higher caste and a member of the scheduled caste then the "casteist" insult will not amount to an offence under the act".

It is pertinent to note that as in the present case, generally the quarrels that form the backdrop of "casteist" abuses, insults and humiliations are in fact themselves rooted in the caste location of the individuals concerned. They are not "personal" quarrels between equals. The fact of Phulsing being a lodha thakur and Balla and Parsadi belonging to the scheduled caste community can obviously not be disassociated from the issues of begar, abduction of wife or displacement from land, which are at the root of what the court chooses to see as a "personal quarrel" taking the insult outside the ambit of the act. In fact, the hon'ble court goes on to make the rather puzzling observation, "Now calling a chamar a chamar may be insulting him but it would not be an insult on the ground of untouchability".[16]

Applying the two tests evolved as general principles to interpret the legislation the court held that as both Balla and Parsadi had a personal quarrel with Phulsingh and the insults were "insults simpliciter" and not on the ground of untouchability. That it was incidental that Balla, Parsadi and his wife belonged to the scheduled caste community and the insult would have been

offered "no matter to what caste Balla belonged". The judgment held that regardless of the presumption under section 12 of the PCRA (i e, that the court must presume that an act was on the ground of untouchability), in the facts and circumstances of the two cases no offence was made out under the act. The High Court acquitted Phulsing in both the criminal cases with respect to Balla as well as Parsadi and his wife.

In 1997 the Bombay High Court held that the inimical terms between the accused and the complainant tainted the latter's version with animosity and the delay, though alleged to be caused by the accused, led to the creation of doubt and acquitted Haridas of the offence of insulting or intimidating a member of the scheduled caste under the Atrocities Act.[17]

Inter-caste Dining

Enforcing any social disability on the ground of untouchability with regard to use of utensils kept in restaurants, hotels, dharamshalas, sarais is an offence under PCRA.[18] The Karnataka High Court in a case where separate cups and saucers were kept for harijans, acquitted the hotel proprietor on the grounds of a 12-hour delay in filing the complaint, the prosecution witnesses being related to each other and that the complaint did not specifically mention that the accused had kept the utensils separately.[19]

Preventing any person from exercising any right accruing to him by reason of the abolition of untouchability under section 17 of the Constitution is an offence under the PCRA.[20] Similarly, encouraging any person or class of persons or the public by words, signs or otherwise to practise untouchability[21] and insulting or attempting to insult a member of a scheduled caste[22] are offences under the PCRA.

One Duni Chand had invited all the residents of the village, including harijans, for meals at his house in connection with the wedding of his son. The seven accused persons arrived there when Nanku, son of Dharu, and Chana, son of Sukhiya, who were both harijans, were taking their meals. The accused allegedly stated that they would not take their meals at the house. They also apparently turned out Nanku and Chana from there. The Supreme Court held that the evidence of the complainant, Duni Chand and the eyewitnesses, was of a general nature and none of the witnesses had stated with reference to any of the accused the specific words used by them at the relevant time. The Court held that no offence under section 7 PCRA was made out and set aside the conviction of the accused persons.[23]

Sati and Its Glorification

A look at the fate of the Roop Kanwar sati case and the sati glorification cases against members of the powerful "rajput" community of Rajasthan may also be instructive while looking at caste and judicial pronouncements. In Deorala, a nondescript village in Rajasthan, 18-year old Roop Kanwar burned to death on the pyre of her husband Maal Singh on September 4, 1987. Dressed in bridal finery, Roop Kanwar walked at the head of the funeral procession to the centre of the village and ascended the pyre. The family lit the pyre, fully aware that she was sitting on it, alive, with hundreds of onlookers watching the proceedings. In fact, relatives fed a thousand people in honour of the 'Sati Mata'.

On a petition by women activists, the Rajasthan High Court ordered the state government to prevent the sati glorification function on the 13th day of the death. However, the ceremony on the 13th day of Roop Kanwar's death was held with much fanfare. A festive "chunari" taken round in a procession, draped over a trishul to resemble the form of a woman was set ablaze in the presence of VIPs, politicians and legislators along with thousands of people. Cries of "Sati Mata ki jai", "Jab tak Suraj-chand rahega, Roop Kanwar tera naam rahega" ("As long as the sun and moon exist, Roop Kanwar you will be remembered") rent the air.

Pressure from women's groups led to the promulgation of the Rajasthan Sati (Prevention) Ordinance, 1987 on October 1, 1987 prohibiting the glorification of sati. The Sati Dharma Suraksha Samiti dropped sati from the name and organised a massive rally in mid-October in Jaipur with naked swords and shouting of slogans in favour of Sati and Roop Kanwar. Similar rallies were organised in the districts of Alwar and Sikar. Under the Ordinance, 22 criminal cases pertaining to these rallies were filed for glorification of sati. The Rajasthan Sati (Prevention) Act, 1987 was promulgated on November 26, 1987 and was deemed to have come into force on October 1, 1987.[24]

The additional district and sessions judge at Neem-ka-Thana in Rajasthan pronounced all the 32 accused, including the father-in-law, as "not guilty" with regard to the gory immolation of Roop Kanwar and acquitted them on October 11, 1996. The main reason for acquittal in the judgment is the absence of eyewitnesses to the immolation. In fact, the court declared that the prosecution had not been able to prove that Roop Kanwar was alive when she sat on the pyre and died due to being burnt!

On January 31, 2004 all the accused in four of the criminal cases, including former minister and vice president of the state BJP, Rajendra Singh Rathore, former Bharatiya Yuva Morcha president and the nephew of vice president Bhairon Singh Shekhawat, Pratap Singh Khachariawas, president of the Rajput Maha Sabha, Narendra Singh Rajawat, former IAS officer Omkar Singh and advocate Ram Singh Manohar were acquitted of the charges of sati glorification.

Under the legislation, sati means the burning or burying alive of any widow along with the body of her deceased husband or with any article, object or thing associated with the husband, irrespective of whether such burning or burying is voluntary on the part of the widow or otherwise.[25] "Glorification" has been defined as including the observance of any ceremony or the taking out of a procession in connection with sati or the creation of a trust, collection of funds, construction of a temple or the performance of any ceremony there with a view to perpetuating the honour of, or to preserve the memory of a widow committing sati.[26]

The court, duty-bound to apply the definition of sati as laid down in the law, instead declared that it means a "woman being virtuous, having strong character, completely devoted towards her husband and having a relationship with only one man during her whole life". Applying this interpretation, the judgment refers to Sita and Anusuya as satis and observes that the invocation of their name would obviously not make a person guilty of sati glorification.

The provision is then interpreted to mean that the observance of any ceremony or the taking out of a procession must also be in relation to a particular incident for the act to be punishable. Carrying this logic further, the court rules that as the Roop Kanwar incident has itself not been proved as one of "sati", therefore "sati glorification" does not get established by the taking out of the processions in her honour.

The Bhanwari Devi Case

Finally, the reasons given by the trial court in Rajasthan while acquitting the accused in the infamous gang rape of Bhanwari Devi speak for themselves.

Bhanwari Devi was a sathin – a village level worker in the women's development programme run by the government of Rajasthan. She had joined the programme in 1985 and was a relentless campaigner against the practice of child marriage. Bhanwari Devi had successfully prevented the marriage of the one-year old daughter of Ram Kanwar Gujar. On September 22, 1992 she was gang-raped by five men, including Ram Karan Gujar. The district and sessions judge, Jaipur on November 15, 1995, delivered the judgment. According to the judge, the accused are middle-aged and therefore respectable citizens, while teenagers usually commit rape. The judgment goes on to declare, "Since the accused are upper-caste men, the rape could not have taken place because Bhanwari was from a lower caste".[27] EPW

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Notes

1 'Fali S Nariman at the Express', *Indian Express*, September 3, 2006.
2 'IDBI Chief Arrested for Caste Abuse', *The Telegraph*, May 7, 2005.
3 Free translation of the statement from the Malayalam – excerpted from para 2 of judgment reported as E Krishnan Nayanar vs Dr M A Kuttappan, Member Kerala Legislative Assembly and others, 1997 Criminal Law Journal 2036, Kerala High Court.
4 Ibid, para 3 – free translation of the statement from Malayalam – "There is one M A Kuttappan, that harijan MLA, he climbed over the table and was dancing. Is this the democratic manners of Anthony?"
5 Section 12 of the Protection of Civil Rights Act, 1955: "Where any act constituting an offence under this act is committed in relation to a member of the a scheduled caste, the court shall presume, unless the contrary is provided that such an act was committed on the ground of 'untouchability'".
6 Section 3(x) of the SC and ST (Prevention of Atrocities) Act, 1989: "intentionally insults or intimidates with intent to humiliate a member of the scheduled caste or scheduled tribe in any place within public view".
7 Ibid, p 2039.
8 Excerpted from para 2 of Phulsing vs State of Madhya Pradesh 1991 Crl L J 2954.
9 Ibid, para 3.
10 Ibid, para 3.
11 Section 7(d) PCRA: "insults or attempts to insult on the ground of 'untouchability', a member of a Scheduled Caste".
12 Ibid, para 6.
13 Ibid.
14 Substituted by section 3 of the Untouchability (Offences) Amendment and Miscellaneous Provisions Act, 1976.
15 Article 17 of the Constitution of India, Chapter on Fundamental Rights.
16 Ibid, para 7 of the Phulsing judgment.
17 Haridas vs State of Maharashtra, 1997 Crl LJ 122, Bombay High Court at Nagpur.
18 Section 4 PCRA: "Whoever on the ground of 'unotuchability' enforces against any person any disability with regards to – … (ii) the use of any utensils, and other articles kept in any public restaurant, hotel, dharamshala, sarai or musafirkhana for the use of the general public or of any section thereof; or…"
19 State of Karnataka versus Irappa, 1981 CRl LJ NOC 104 (KANT).
20 Section 7(a) PCRA.
21 Section 7(c) PCRA.
22 Section 7(d) PCRA.
23 Sriniwas vs Duni Chand (1997) 7 SCC 522.
24 Section 1(3) of the Rajasthan Sati (Prevention) Act, 1987.
25 Section 2(c) of the Rajasthan Sati (Prevention) Act, 1987.
26 Section 2(b) of the Rajasthan Sati (Prevention) Act, 1987.
27 Excerpted from 'Sati: A Study of Widow Burning in India' by Sakuntala Narsimhan, 1998.