

## Political & Economic Notes:

# Onslaught on the Rights of Dalit and Other Oppressed People

The March 20<sup>th</sup>, 2018 Judgment of the Supreme Court Bench of Justice A. K. Goel and U.U. Lalit in a case under the SCs and STs (Prevention of Atrocities) Act, 1989, is a serious onslaught on the decades' long struggle of Dalit and other oppressed people for the legal protections from the crimes and atrocities that are being perpetrated against them for generations.

Directing the Govt. to amend the sec.18 of the Act, the judgment had set some directives, guidelines and made some observations. They include:

1. A public servant can be arrested under the Act only with the written permission of their appointing authority. In the case of private employees, the Deputy Superintendent of Police should conduct a preliminary inquiry before the FIR is registered to check whether the case will fall within the parameters of the Atrocities Act or if it is frivolous or motivated.

2. The 1989 Act penalises the casteist insults and even denies anticipatory bail to the suspected offenders. The Law is therefore used to rob a person of his personal liberty merely on the unilateral word of the complainant. .... The anticipatory bail should be allowed if the accused is able to prima facie prove that the complaint against him is malafide.

Any deviation from the court directions would automatically lead to the contempt of Supreme Court.

3. Past three decades have seen complainants – who belonged to the marginalised sections of the society – use the SCs/STs (POA) Act, 1989 to exact “vengeance” and satisfy the vested interests.

4. Instead of blurring caste lines, the Act had been misused to file false complaints to promote caste hatred. The current working of Atrocities Act may even “perpetuate” casteism if it is not brought in line and court needs to intervene to check “the false implication of innocent citizens on caste lines”

5. Innocent citizens are termed accused, .... The legislature never intended to use the Atrocities Act as an instrument to blackmail or wreck personal vengeance.

6. The Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by the police for extraneous reasons against other citizens, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law should not result in caste hatred.

The Court said that a Public servant finds it difficult to give adverse remarks against employees for fear that they may be charged under the Act.

These directives or guidelines or observations are a clear indictment of the Act; the way it is enforced and the way the victims of atrocities and crimes are using or misusing the Act. The comments or observations of the court are totally in a bad taste. They sound like the utterances of a politician who is under a strong influence of ideas that go against the very theme and spirit of the Act. The judges here did not confine themselves to examine the specific point of the complaint and give their verdict, but elevated themselves to the position of policy makers and had revealed their reactionary bent of mind.

The statement of Objects and Reasons of the 1989 Act noted that the vested interests try to terrorise Dalits whenever they assert their rights. The Act had excluded the right of anticipatory bail to the accused keeping in view the special nature of crimes Dalits encounter in their life. The Supreme Court simply ignored the realities of society as well as the experiences of people when it directed the amendment of Sec.18 of the Act to allow the anticipatory bail to the accused under the Act.

The Court directive that no action can be taken against a public servant under the Act without a written permission from the appointing authority and a private citizen accused of similar crimes can be arrested only after an enquiry by the Deputy Superintendent of Police defeat the very purpose of the Act. It is difficult to believe that the judges are unaware of the fact that in a caste – ridden Indian Society it is too difficult for a poor labourer, attender, clerk, employee from a Dalit or S.T community to complain and get permission from the higher

authorities to file a case and pursue it. Similarly, in a country where the repressive machinery is in direct collusion with the exploiting classes and bureaucracy and involved in committing or shielding the crimes and atrocities against the Dalits and STs, it will not be difficult to understand the fate of a complaint if it has to pass through the police scrutiny.

Various laws enacted in India claiming to protect the rights and lives of Dalits and other oppressed people had come after going through prolonged sufferings and as a product of struggles by the people. The Untouchability (Offences) Act came in 1955. It was renamed as Protection of Civil Rights Act in 1976. But, after a lapse of 13 years, the rulers had come with the admission that “despite various measures to improve the socio – economic conditions of SCs and STs, they remain vulnerable”. “They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassments... A special legislation to check and deter crimes committed against them in the non – scheduled tribes has, therefore, become necessary”. The result was the enactment of SCs/STs (Prevention of Atrocities) Act in 1989. Again, this Act was amended in 2015 incorporating the provisions of punishment to the casteist slurs against Dalits and denying the anticipatory bails to the accused. The Amendments made the Act stringent by treating the actions like tonsure of head, moustache, or similar acts, derogatory to the dignity of people belonging to the SC and S.T. community, as atrocities.

This history of Acts make two points clear: One: The masses of Dalit and other oppressed people had to fight against the exploiting classes, the state and upper casteist forces whether there was a law or not to uphold or protected their rights. Two: The very fact that more stringent anti – atrocities laws had to be enacted one after the other only point out that the laws could not stop the atrocities and they got further intensified necessitating Dalits and other oppressed people to continue the struggle.

The data from the National Crime Records Bureau says that a crime is committed against a Dalit every 15 minutes. Six Dalit women are raped every day. Over the last 10 years (2007 – 2017), the crimes against Dalits had shown a 66 per cent growth. It is every body’s knowledge that only a fraction of Dalits, who suffer various kinds of indignities, atrocities and murderous attacks in the hands of landlords, politically powerful as well as upper casteist forces file complaints in the police stations. Most of the victims do not even dare to complain because they fear or are threatened, violently blockaded and attacked if they complain. Likewise, we have countless instances where the complaints are not accepted in the police station, or thrown into the dust bins or the complaints are forced to be withdrawn. The cases are weakened and made ineffective before they reach the point of judgment. The complainant with weak economic background, find totally unequal to those who had committed the atrocities. It is every body’s knowledge that 90 per cent of the cases ended up with the acquittal of the accused leaving the victims of atrocity at the end in a ruined state.

So, the problem faced by the Dalits as well as other poor is their utter inability to use an Act rather than misusing it as the Judges sought to allege. But it is wealthy and dominating classes who are better placed to do so. They can use or misuse, or violate or keep aside or bend a law to suit their own interests against the overwhelming majority of exploited and oppressed people. The provisions of some laws (including the Land Reform Laws) that are said to be pro-people and a product of a prolonged and organised struggle of the people are reduced into mere sheets of white paper the moment they are enacted. The teeth of certain laws become sharper and all powerful whenever the dominant classes and the state are in need of crushing the unrest, protest and struggle of the exploited and oppressed people.

### **Countrywide Protest**

Thus the March 20<sup>th</sup> 2018 judgment of the Supreme Court sought to do away with whatever the legal protections the people had won through struggle. It boosted up the morale of the forces who are working overtime to blockade the people’s struggle. Quite naturally, the judgment had invited a powerful and Country wide protest from the people. The April 2<sup>nd</sup>, 2018 Bharat Bandh came only in this wake. Thousands of Dalit and other oppressed people came into the streets in UP, MP, Gujarat, Maharashtra, Haryana, Punjab, Telangana, AP and other states. At several places, the schools were closed; trains were stopped; roads were blockaded and shops were closed. The protesters clashed with the police. The Governments in the states had

suspended the Internet services at several places; imposed Sec. 144; deployed the armed police in a big way; arrested hundreds of protesters, fired teargas shells and gunned down at least 9 people in different states.

The BJP Govt. at the centre sought to dismiss the protest as a product of BSP's conspiracy. But the massive nature of the protest had enhanced its fear of growing alienation from the Dalit and other oppressed people. It contemplated the filing of Review Petition on the Supreme Court judgment, lately and half heartedly as a measure of damage control.

### **Episode of Review Petition**

The Review Petition filed by the Centre on April 2<sup>nd</sup> 2018 appealed the Supreme Court to stay its order barring automatic arrests and the registration of criminal cases under the Act. It appealed to keep the judgment in abeyance "as it sparked widespread protests". But the court has turned down the appeals saying that "those protesting on the streets may not have even read our judgment. They are being misled by some vested interests, so that does not concern us". Rejecting the Govt's appeal to delete certain parts of its order that referred to misuse of the Act, the court curiously argued that "it was not their view that the SCs and STs Act was being misused; rather, govt statistics pointed towards it". The court's Amicus Curiae said, the March 20<sup>th</sup> 2018 judgment was based on the govt's view about the abuse of the 1989 law". "It was the govt. which gave the data, made the submissions and now they are challenging the judgment". Justice Goel has pointed out that it was the report brought by the Govt. which became a deciding factor for the court to lay down the guidelines against arbitrary arrests or false implications under the Act.

The whole episode of review petition (not yet complete) brings out two things. One: The Central Govt. as well as the court wanted to dilute and make the 1989 Act ineffective. The Court only gave this idea a form of March 20<sup>th</sup> 2018 Judgment. The assertions made by the Judges only make this point clear. Two: Unexpectedly, the judgment had triggered off a massive protest and opposition. The BJP govt. at the centre found itself in a dock. It had, therefore, become necessary for it to distance itself from the judgment in order to escape itself from the political damage caused by the judgment. The review petition is only a part of this exercise. The meekness shown by the govt in its petition as well as its arguments to retain the 1989 Act are only a manifestation of its lack of commitment towards the aim of ending the caste system and associated discriminations, inequality and oppression.

### **A Few Things to Learn**

The masses of Dalits and other oppressed people have certain things to learn:

1. With all its claims and promises about the equality, freedom, justice, democracy and democratic rights the Indian Constitution is based on and represents a class divided society. It upholds the private property – as well as foreign – as sacrosanct and inviolable. In the last seven decades, this right to property enabled the economic, social and political inequalities to grow in the society unimaginably and the wealthiest few as well as the overwhelming majority of poor to emerge. It placed the wealthiest classes on a highest pedestal crowned with powers and resources to dictate and alter every aspect of life of property less and weaker sections of people by invoking the Indian Constitution, law and power of property as they please. Similarly, the wealthiest classes and the institutions controlled by them can install themselves at the helm of power, interpret, direct, utilise, curb or discard any democratic institution, their functioning and rights. They can decide whether the poor, at all, can avail the democratic rights, freedoms and to what extent and in what manner. Various pillars of society – state, legislature, judiciary, police, bureaucracy and media, etc – seem to be independent from each other. But, in reality, they are controlled and used in the interests of dominant classes.

Our people fought and sacrificed a lot for an independent, democratic economic and political system. But, overwhelming masses of people are sought to be brutally suppressed whenever they tried to utilise the rights and protections that are said to have been promised in the Indian Constitution. The people are required to wage bitter struggles against the powers that be and dominant classes in the court of law and mainly in the streets to avail and protect even the marginal rights. The struggle of the poor becomes more difficult whenever they are contested by the state, rich classes and powerful political forces in the society.

So, while struggling to avail or defend the rights or protections that are believed provided in the Indian Constitution, the exploited and oppressed people must always be conscious that their ability to avail or defend their rights will be weak, uncertain and unreliable when their struggles as long as they do not have a really democratic and independent economic, social and political system of the society. So the people's struggle for democratic rights and freedoms must be linked with the struggle for a new society free from feudal and imperialist exploitation and oppression.

2. Laws in the present society that promise some legal protections to the rights of people are a product of people's struggles. The rulers had enacted these laws under the pressure of people's struggle and as a move to check the advance of people's struggle and pacify the people. They seek to reduce the laws thus enacted into empty papers in practice and create all hurdles in the way of their utilisation by the people. The experience show that the people can avail the rights and legal protections as long as and to whatever extent the people rely on their own initiative, organised and united struggle. So they must fight for legal protections as well as their enforcement. But, at the same time, they must never excessively put their hopes on them and thus weaken their own conscious, organised and united struggle.

3. Dalits, advasis and other oppressed people must continue their struggle against every attempt to dilute or do away with whatever the legal protections are provided in the 1989 Act. They must fight for a total withdrawal of the directives of the judgment (March 20) of the Supreme Court which seek to dilute and make the Act ineffective. In the conditions when the Hindutva forces are at the helm of power and the retrogressive, reactionary, communal and upper castiest trends and forces are getting boosted up in every sphere of life, a determined and unrelenting struggle against these trends and forces and the ruling class policies alone can stand by the exploited and oppressed people in our Country.

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