

SECTION - X

CATCHING AT A STRAW: INITIATIVES FOR NATIONAL HUMAN RIGHTS COMMISSION

The functioning of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been looked into by several agencies in depth. A number of amendments to the Act and other supportive measures have been suggested for its effective implementation. The views of the following agencies are being referred to in the Annexures to this paper.

1. **National Commission for Scheduled Castes and Scheduled Tribes** - Their latest report for the year 1999-2000 and 2000-2001 contains some recommendations¹, which are placed at **Annexure I**. The recommendations made in the report for the year 1998-99 are placed at **Annexure II**.
2. **'Broken People' - Caste violence against Indian Untouchables (1999)** - is a research document prepared by an International Organisation called **Human Rights Watch** containing recommendations² which may be seen at **Annexure III**.
3. **National Campaign on Dalit Human Rights** - in their document **Dalit Human Rights violations - Atrocities against Dalits in India**, Vol. I. which purports to be a report of their National Public Hearing held at Chennai on 18-19 April, 2000 have made observations/recommendations³. These have been summarized and attached as **Annexure IV**.
4. **SAKSHI - Human Rights Watch, Andhra Pradesh** - Their document "Scheduled Castes Human Rights Monitor 2000 (AP)" includes several recommendations⁴, which are available in **Annexure V**.
5. **Proposed Amendments to SCs and STs (Prevention of Atrocities) Act, 1989**. In addition to the general recommendations made for checking atrocities against SCs, some agencies have made specific suggestions to make the law more effective. These proposals have all been put together in **Annexures VI-VIII**.
6. **Bhopal Declaration** : A new paradigm of Development has been outlined by Dalit intellectuals in the first ever attempt at articulation of their perception made at

¹Sixth Report, op. cit., pp

²Human Rights Watch, op. cit., pp 11-18

³National Campaign on Dalit Human Rights, op. cit., pp 309-317

⁴SAKSHI op. cit., pp 138-141

Bhopal. This has been referred to in the main body of this paper at several places. The Declaration emerging from this conclave as a Social Charter for Dalits has been documented as 'Bhopal Declaration' which has been included as **Annexure IX**.

In addition, recommendations made by various agencies regarding proposed amendments to the SCs and STs (Prevention of Atrocities) Act, 1989 have all been put together in **Annexure V**.

These recommendations cover by and large identical ground and suggest similar type of corrective actions. This shows that there are no perceptual differences in understanding what the problems are and how these should be addressed. Broadly, recommendations from these agencies can be summarized under the following heads:

- (i) **Sincere and effective implementation of the law**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (ii) **Capacity building within Government** through the following measures:
 - (a) Training of officials charged with implementation of Atrocities Act and their periodic re-training
 - (b) Posting of women police personnel in police stations located in atrocities prone areas for sensitive recording of complaints against SC women.
 - (c) Launching of massive awareness campaigns particularly for enforcing provisions of the Protection of Civil Rights Act, 1955.
 - (d) Proper selection of functionaries engaged in the implementation of the Act for ensuring their unbiased behaviour and handling of complaints with empathy for SCs.
- (iii) **Capacity building of Watchdog bodies**: Strengthening of statutory organizations set up as watchdog bodies for enforcement of human rights, and rights of Scheduled Castes, Scheduled Tribes and Safai Karamcharis and rights of women and children. This should include enhancement of their capacity to undertake investigation of complaints, devolution of resources, conferring powers to initiate prosecution against guilty and to operate branches in States.
- (iv) **Strict enforcement of Supreme Court's guidelines on treatment of persons in custody** and recommendations of National Police Commission, 1980 for mandatory enquiry in serious offences against Scheduled Castes.
- (v) **Convergence of regulatory and development programmes**: Effective implementation of social and labour legislation and development measures which have a direct bearing on the commission of atrocities against Scheduled Castes through concerted and convergent action. This should include, on the regulatory side, Minimum Wages Act; Land Reforms Laws; Bonded Labour System (Abolition) Act, 1976; Employment of Manual Scavengers and Construction of Dry Latrine (Prohibition) Act, 1993, Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh Devdasi (Prevention of Dedication) Act, 1988; Karnataka Devdasi (Prohibition of Dedication) Act, 1992; The Bombay Devdasi Protection Act, 1934; etc. On the development side, vigorous implementation of Special Component Plan

for poverty alleviation and improvement of infrastructure in their colonies, extension of education and health facilities and for empowerment of Scheduled Castes Panchayat members would need to be undertaken.

- (vi) **Information as a tool of influencing civil society:** Effective use of information as a tool for influencing social change may be promoted by bringing Government reports, statistics and policy documents on status of Scheduled Castes and atrocities committed on them in public domain, compilation and release of State and District level statistics concerning position of Scheduled Castes in various spheres and publication of reports of Commissions of Inquiry in respect of specific incidents of atrocities.
- (vii) **Code of conduct for state agencies:** Drawing up a Code of Conduct for State agencies including judiciary in dealing with complaints of atrocities against Scheduled Castes.
- (viii) **Overcome the handicap created by Supreme Court ruling:** Amendment to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the context of order passed by the Hon'ble Supreme Court in the *Ganguli Ashok Kumar Vs Andhra Pradesh* case to authorize special courts to take cognizance of cases filed before them without commitment of a Magistrate as required under Section 198 of IPC.
- (ix) **Right to separate settlement:** Separate settlement through physically shifting from their existing habitat where SC victims unequivocally feel that their protection cannot be ensured otherwise, except by totally disengaging themselves from the communities inflicting violence against them.
- (x) **Enhanced central share in schemes for SCs:** The centrally sponsored scheme for implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc., should provide higher percentage of assistance to States regarding compensation to be paid to the victims of atrocities so that the States' financial position does not constrain implementation of provisions relating to relief and rehabilitation.
- (xi) **Non-official monitoring agencies:** Setting up independent monitoring agencies to review cases of atrocities against Scheduled Castes, including activists working for them and to provide feedback to the State agencies including Vigilance Committees on the status of complaints of atrocities against Scheduled Castes.

It would be evident that these recommendations are non-contentious and merely suggest effective implementation of existing laws and programmes. Therefore, creating mechanisms for such implementation holds the key for ensuring protection of Scheduled Castes against caste based violence.

THE PERSPECTIVE

What perspective has this paper brought to bear on the subject and what is the framework suggested therein to deal with it?

We had, in the beginning of this paper, spelt out the multi-pronged strategy of dealing with problems of discrimination and violence against Scheduled Castes. This

strategy had consisted of measures in three directions so as to achieve the objectives of liberating the Scheduled Castes from traditional stranglehold of subjugation and oppression. The major thrust was in the direction of creating an overall framework of rights which confers equality of status on them and removes all their disabilities which the customary relationship had imposed on them. This was provided by the Constitution. In pursuance of this constitutional scheme, various laws were enacted and programmes were undertaken to remove the specific disabilities so as to give concrete shape to this equalization policy. This was attempted through the Protection of Civil Rights Act on the one hand and through measures to eliminate manual scavenging, Devdasi system, bonded labour system, to regulate ways and working conditions as labourers and introduce land reforms, etc. on the other. After having realized that State policies of equalization and consequent assertion on the part of Scheduled Castes are increasing incidents of violence against them, additional legal provisions were made through the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide deterrence against perpetrators of atrocities and to create a sense of added protection for the victims. The pathway to the second direction consisted of measures which would have the effect of giving the Scheduled Castes important positions in governance and this was done through reservation in recruitment to jobs and promotion to posts under Government PSUs, etc., and of seats in the legislature and PRIs. Reservation was also provided for them in entry to various educational institutions and professional courses to enable them to compete for other positions in society. The measures taken for narrowing down the gap between them and the rest of the society in development so as to alleviate their poverty and improve their quality of life signified the third direction of the strategy.

The analysis made in this paper has brought out that the implementation of this strategy has not yielded substantial gain. It has not reduced violence/discrimination against Scheduled Castes to any appreciable degree. Considerable gap in the development status between SCs and others continues to exist despite mandating that a specified share of resources should be earmarked for this purpose and programme benefits accrue to them. Reservations, have, no doubt, helped a small section of Scheduled Castes in disengagement from traditional occupations and give them a sense of freedom and confidence. But even this entitlement has been denied to them by a number of Government funded autonomous institutions which have not implemented reservation provisions and some segments of services where principle of reservation has not been accepted. Therefore, the overall picture that emerges from the experience of nearly 50 years is that there is no significant change in the condition of a large majority of Scheduled Castes, though improvements have no doubt been registered in case of some and even a small middle class among them has emerged.

More important, however, is the indictment, based on evidence available both from Government as well as non-government sources, that the existing delivery mechanisms for laws, policies and programmes for SCs have not shown sincerity and understanding expected of them at various levels. SCs have encountered apathy, bias and even outright hostility. Since the State is the chief instrument for operationalizing the entire strategy for their emancipation enshrined in the constitution, the character of the State machinery

and the attitude and behaviour of its agents hold the key to achieve better results in future. This task cannot be offloaded to any agency outside the State. The question addressed, therefore, is how State personnel should be equipped to discharge this responsibility with empathy for SCs.

This paper also explored the other dimension of the problem, i.e. response of the civil society. Since the entire set of measures in all the three directions of the strategy impinge upon relationship of SCs with the rest of the civil society, the attitude and response of the civil society affects in a major way the ability of the State to deliver its promises and assurances. We have seen in this regard that the civil society, by and large, has continued to be hostile to the Scheduled Castes, more openly in rural areas but less demonstratively in urban areas. The caste Hindus carrying on with their traditional prejudices are still fighting to retain their customary privileged position in different forms and this undermines not only the policies and programmes of the Government for SCs, but the foundations of the polity based on the constitutional scheme itself.

The paper has also referred to the way in which Scheduled Caste communities have reacted to this situation, considering the failure of the State to decisively come to their support and the attempts of the civil society to frustrate various programmes introduced for their benefit. In this context, the Scheduled Castes' assertion by joining radical left political organizations or through religious conversion, etc. have failed to exert requisite pressures either on the Government to determinedly and forcefully pursue the agenda of social equalization and break the stranglehold of caste orientation, or on the civil society to accept the norms of liberal society and treat SCs as equal members of it. Rather the participation in armed struggle by SCs to change the existing social and economic relations has lead to retaliatory violence both by the armed militias and vigilant groups of the caste Hindus and the suppressive use of force by the security forces, often in tandem, which have increased atrocities against SCs even more. The issues addressed to deal with this development are how

- (i) The state can be committed to demonstrate stronger will, greater vigour, effectiveness and urgency in implementing its programmes and policies for SCs to remove the sense of alienation from them, and
- (ii) To break the resistance of civil society in this process of social transformation.

Taking into account these issues, a set of recommendations have been made in this section. These recommendations touch upon the role of all the three stake holders, i.e. The State, civil society and the SCs. Since the State constitutes the most crucial partner and critical to the success of any effort in this configuration, a large part of recommendations has obviously been focused on its direct role. This role, as this paper has brought out, is characterized by indifference of its agencies to the plight of SCs in respect of atrocities they face and bias against them vis-a-vis their tormentors who inflict this violence on them. The recommendations have tried to tackle the problem of apathy and passivity by activating various instruments already available within the system so

as to create greater will and determination to deliver results expected of them. This process of activation of the system has been suggested through measures, which include:

- (a) Reviewing/reiterating instructions, guidelines, policy articulations as a renewed reminder to State agencies about what they are expected to do under law, executive instructions, development programmes, so that expression of political will is reinforced and clear signals are available to them that the State really wants them to act sincerely and firmly.
- (b) Intensive training aimed at capacity building of key personnel engaged in implementing the laws and programmes so that lack of knowledge and skills is not presented as an alibi for lack of performance.
- (c) Arrangements for regular monitoring, with participation of SCs, structured at various levels within the Government for enhancing accountability of officials.
- (d) Setting up of alternative arrangements for exerting pressure on Government agencies to act by mobilizing NGO/Human Rights activists and even empowered individuals from the community itself as support structures, where the competent authority may not respond to the complaints of SCs or may distort them.

The bias reflected in the attitude and behaviour of officials and even political authorities is sought to be counteracted by a series of recommendations. Firstly, provision has been suggested for flow of information to the competent authority in the Government through alternative sources so that in the absence of correct information flowing from its own agencies, it can set in motion the process of enquiry and investigation. In this manner, behaviour of its personnel, if biased, would be exposed. Secondly, putting in place mechanisms for enquiry and investigation independent of official/authorized agencies have been given a great deal of importance so that allegations against Government officials can be verified to ascertain their truth and on that basis to proceed further. Thirdly, watchdog organizations are being assigned greater role by sharpening mechanisms which would make implementing Government agencies more accountable, such as intensive monitoring, alternative methods of looking into grievances, obtaining feedback from non-Government sources and institutional arrangements for inter-face with affected SCs and activists/organizations helping them. This would enable such organizations to scrutinise the behaviour and action of officials and thereby provide greater confidence and hope to the complainants and victims. These mechanisms would hopefully create pressure on the Government machinery to act as per provisions of law, lest they face punitive action if found guilty of acting in a biased manner. Therefore, the activating process has also extended to capacity building of watchdog organizations to undertake this enlarged role effectively. Fourthly, measures to mobilize non-governmental organizations have been recommended in a big way for providing assistance to SCs in registering complaints, creating pressure on the Government agencies to act, seeking intervention of watchdog organizations, wherever required, and helping victims of atrocities cope with trauma and generating confidence in them for dealing with the offenders subsequent to the incident.

As regards the civil society, the suggested approach has been to concentrate on sensitization process through multi-pronged long duration campaigns with a view to building a social climate in which the caste Hindus recognize the validity and propriety of measures for enforcing social equality, eliminating degrading customary practices and raising the level of the economic development of SCs for progress and well being of the entire nation including their own. This approach is sought to be supplemented by institutional arrangements for encouraging those who dedicate themselves to transform existing social relations from its caste orientation to those reflecting the norms of a genuinely liberal society. This has been suggested through a system of rewards so that good work done by some are replicated by others and in this manner a movement in that direction gets built up. The other aspect of the approach is to continue with rigorous enforcement of laws and vigorous implementation of supportive programmes so that the hardliners in civil society who continue with their atrocious behaviour towards SCs suffer punishment, face social isolation and do not get support from others. Another direction in which influence is being exerted on civil society is to use information, education and communication as instruments for mobilization of their opinion in favour of existing policies and programmes in correct perspective so as to counteract attempts at spreading disinformation and circulating distorted views about them. Considerable attention in the recommendations, however, has been devoted to measures which can help disengage Scheduled Castes from the existing relationship of a degrading and humiliating nature with the civil society, thereby breaking the nexus of degenerative forms of human subjugation and control and at the same time giving a signal to the civil society that it should desist from enforcing these relationships.

As for the SCs themselves, the major thrust in the suggested recommendations has been on building their capacity to look after their interests and problems themselves. These include becoming aware of rights and entitlements, using available channels/mechanisms to obtain relief/justice when faced with their violation, increasing level of participation at all levels, promoting organization to forge favourable alliances for their struggle and acquiring necessary skills to negotiate within the political processes for a more honourable deal. The other consideration has been to strengthen their bargaining power in the unequal economic relations they are confronted with, by seeking to reduce their vulnerability through focused execution of regulatory and development programmes in a convergent mode. These measures would help them assert rather than acquiesce in illegal and unjust compromises and thereby enable them to slowly move forward towards a more liberated existence. The mechanisms/arrangements which create support systems for them, both within and outside the Government constitute the third set of measures. Through them Scheduled Castes can access individuals, organizations/institutions helpful to them with their grievances or complaints when they find that the existing official agencies have failed to respond. These support structures would exert pressure on Government agencies to act and, where necessary, mobilize watchdog organizations for intervention.

Atrocities against Scheduled Castes is a multi-faceted phenomenon. The factors which contribute to the commission of atrocities lie in the whole spectrum of relationships

which bind SCs with the rest of society ranging from economic dimension rooted in control over land and labour to its social manifestation which imposes degrading and humiliating personal existence. Therefore, while the incidence of violence and practices of disability and discrimination per se are captured by the criminal laws, the economic factors contributing to these atrocities are neutralized by laws on labour, land reforms, transactions of credit etc. The degradation involved in social relationship is removed through laws specific to the activity/practice. Strict enforcement of laws covering these relationships is essential to reduce atrocities in the long run though the process of disengagement and assertion may sometimes increase them in the short run. Therefore, elaborate treatment has been given in the recommendations to laws/situations relating to each aspect of economic and social relationships to strengthen the position of SCs.

Atrocities on SCs have of late acquired new dimensions. While SCs have long been victims of violence and brutality by the upper echelons of Hindu social order, direct assault by State agencies of law and order on them, in the context of alternative processes of political mobilization resorted to by them, has emerged as a serious area of concern. When State itself resorts to violence against SCs not sanctioned by law, there is little protection available for them because the police and security forces become both the actors and the adjudicators of their action. Also, when their own personnel are involved there is inaction all along the hierarchy and at times even refusal to register complaints. That is why considerable space has been given to creating alternative arrangements, outside the police and security establishments largely, for complaints of SCs to be entertained and for moving appropriate level in Government agencies into action and, as a last resort, for watchdog institutions to take on the investigation themselves. This has been considered necessary to enforce greater accountability in the law and order machinery, primarily the Police, against unjustified action.

In the range of offences which constitute atrocities, women suffer the most because in their case violence against them is compounded with indignity and humiliation. While they face all forms of violence which are also inflicted on men, they are additionally subjected to sexual offences to break their own morale and the morale of their male folk and the community. Violence against them is used as a weapon of pressuring their men to surrender by the security forces in certain situations and as a retaliatory action by armed militias of adversaries to intimidate them or take revenge for what their men had done to them. They are therefore more vulnerable but less equipped than men to cope with the trauma resulting from it. That is why considerable attention has been devoted to confidence building measures and coping mechanism among SC women and setting up support structures for grievance redressal. But women are sometimes victims of the suspected violence from the community too which leave them with little protection because of social sanction. In such situations, while the community has to be targeted for action, the victim women need help and support from Government. Measures to cater to both these aspects have therefore been dovetailed in the suggested approach.

The impact of development on atrocities has not been researched. But programmes for positive discrimination and development are perceived to contribute to the equalization process for SCs in society. They are additionally intended to strengthen the bargaining

position of SCs in their inter-face with civil society, reduce their dependence on them and create pathways for upward mobility. They create conditions for a decent living. The tardy performance on these fronts does not create any violence per se (though violence may sometime result in specific situations where entitlements are vigorously sought by SCs but resisted or cornered by others or where in accessing community resources restrictions are imposed on them). But effective implementation of development programmes can contribute to reduction in violence against SCs in multifarious ways. The indifferent execution of development programmes and lack of empathy for SCs in the personnel who deliver them therefore is even more striking because there are no adversarial situations to thwart them. The blame has to be entirely shared by the Government and its agencies. By suggesting capacity building within the organization for monitoring and detection of lapses and creating mechanisms for enforcing greater accountability, this dimension has also been covered. Cultural dimensions of SC communities have been completely neglected in the entire discourse on the subject. Perhaps their 'outcast' status and total marginalization in the society to which they are integrated, virtually as 'non-persons', has denied them the capacity to create their culture. Therefore, the strengthening of that culture has also been brought within the domain of recommendations to help SCs overcome their feeling of inferiority imposed on them.

It would be seen from the long list of recommendations included in this paper that a number of them have been made earlier by other bodies. This has, by and large, been acknowledged in the main text, where a recommendation has been made by National Commission for SCs and STs or National Commission for Safai Karamcharis, as their views carry considerable significance in view of the primacy of their role as watchdog institutions for SCs and Safai Karamcharis respectively. There has been no access to information on whether Government have accepted these recommendations and where recommendation has not been accepted what considerations have weighed with the Government in taking that stand. However, endorsement of such recommendations in this paper underlines the significance of the measure/action included therein.

The recommendations made in this paper have, as far as possible, identified Ministries/ Departments of the Central Government besides the State Government which need to take a specified action. Ordinarily, the matter could be left to the concerned Ministry/ Department to formulate its response and decide on its own to act. But SCs have not yet reached a stage of empowerment to be able to exert pressure on them. Marginalized as they are both within society and the Government they need an advocate, a pusher. There is no escape for the Ministry of Social Justice and Empowerment, which at the central level has the nodal responsibility for matters relating to Scheduled Castes, from shouldering this responsibility, however onerous. It has to take up with the concerned Ministries/Departments cases of SCs in respect of suggested activities which fall in their jurisdiction. But even for the nodal Ministry to take on this role, SCs need an advocate as they do not enjoy such clout to even persuade or pressurize them. That role in our view would have to be discharged by a watch dog institution. Overall, therefore, it is the watchdog institutions that emerge in these recommendations as the main focus of

our effort for the simple reason that they hold the key to sustaining the hope of the Scheduled Castes. Disillusioned with Government and its agencies against whom most of their grievances are directed, SCs desperately need an independent organization outside the Government to look into their complaints so that some modicum of justice can be delivered. That is why watchdog institutions, and among them the National Human Rights Commission more than others in relation to atrocities, by virtue of its composition and stature, are sought to be mobilized to play a much greater role to this end than what they are able to do at present.

ROLE OF NATIONAL HUMAN RIGHTS COMMISSION

National Human Rights Commission's recommendations and directions carry greater moral weight, both with the Government and the judicial bodies. It also has the capacity to mobilize widespread support on human rights issues from individuals and organizations in the country. Its pointed intervention, therefore, in checking atrocities on Scheduled Castes and eliminating discrimination and disabilities practiced against them could have greater impact in improving conditions of affected persons than those of other Commissions. But even outside the arena of criminal justice administration, the Commission can considerably influence the activities of organizations in Government both Central and State. It is with this expectation that wide ranging gamut of recommendations have been made. Once National Human Rights Commission is convinced that certain measures would contribute to reducing atrocities on SCs and help them lead a more dignified existence, it would certainly prevail upon the concerned Government agencies to act in that direction. The projection of the role of National Human Rights Commission in this context has been broadly conceptualized as follows:

1. As a Catalyst

This role involves activating the system to discharge its mandated responsibilities, bringing to the notice of the Central and State Governments gaps and inadequacies in their action and steps needed to bridge them, as also pointing defaults in the existing conduct of its agencies which needed to be set right.

2. Capacity Building Role

This role would be exercised by suggested strengthening of structures and institutional arrangements and enhancing capabilities of personnel and information system to increase efficiency and effectiveness. This capacity building role extends to both Governmental agencies as well as watchdog bodies.

3. Sharpening Mechanisms of Accountability

This role is signified by putting in place arrangements for regular and purposeful monitoring of activities of the Central and State agencies under specified laws and programmes and creating alternative sources of gathering information and conducting enquiry and investigation so that responsibility of personnel in these agencies for omission and commission is expeditiously fixed and corrective/punitive action taken.

4. Advocacy

This role is discharged by persuasion and pressure on Government agencies to take up additional activities not currently undertaken, which would enhance delivery of benefits to the targeted groups and supplement existing efforts in this direction. This would include revising and expanding the ambit of existing programmes and even taking up new ones.

It has been indicated against each recommendation which of these four categories of role of National Human Rights Commission it would correspond to. This bracketing, however, is not hard and fast as some recommendations could fit in more than one category or anyone of the two categories.

STRUCTURING AND SEQUENCING OF RECOMMENDATIONS

Recommendations have brought together under broad heads which define the target and focus of action contemplated therein. These heads include Implementation of specific laws as well as programmes under the Strategic Component of Protection, Compensatory Discrimination and Development. Within each component, effort has been made to club recommendations subject-wise.

Considering the wide range of recommendations and their long list, a brief statement has also been placed on initiatives which National Human Rights Commission take straightaway.