

Slurs hurt too: Review the blind spots in anti-caste law

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Sumit Baudh

A Dalit woman and a Muslim man had an affair. The man's mother opposed their marriage, hurling caste-based abuses at the Dalit woman. Bombay High Court recently ruled that no offence is caused under Sections 3 (1)(r) and 3(1)(s) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act known in short as the SC/ST Act or the PoA, because the insults were not made in public view. The law often deploys the public-private divide to exempt the state from its responsibility to redress individual injuries emanating from social inequalities. For example, until the passage of the Protection of Women from Domestic Violence Act of 2005, the state could easily ignore domestic violence against women as a private and personal matter in India.

Remove private-public divide

While 'the personal is political' had long emerged as a slogan in the 1960s feminist movements in the US, when the contemporaneous civil rights movements in the US protested racially segregated 'White Only' lunch counters, the lunch counter owners claimed private ownership of their premises as a basis for their freedom to deny service to coloured people. The Civil Rights Act of 1964 famously discarded these ideas of the public-private divide. The Constitution of India also espouses the idea of non-discrimination in private places. Article 15(2)(a) prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, or any of them in access to shops, public restaurants, hotels, and places of public entertainment. Despite this explicit constitutional provision, also known as the enshrinement of horizontal equality in India, legislators and judiciary have been mostly reticent about advancing the full realisation of its potential.



Toll of slurs

The SC/ST Act ignores the psychological effects of humiliation caused to the abused persons. The delivery of caste-based slurs in private, muttered venomously, snarled under the breath, grumbled inaudibly, or hissed quietly can cause immense psychological injuries to the abused. The Act must place the abused at the centre of its attention and redress their injuries. The surrounding circumstances (of public places and views) should not be discounted but rather considered exacerbating factors in gauging the severity of the offence. Matters of love, sexual intimacy, and marriage are historically and contemporaneously recurring sites of caste-based inequalities. This is because caste operates and survives on endogamy. Even just a quiet breakup of a platonic friendship with a Dalit person only because of their caste can be psychologically devastating. The opposition to marriage with a Dalit person because of their caste, combined with caste-based abuse at the very moment, inflicts intense levels of psychological pain and humiliation that could last a lifetime.

Lessons from Mahabharata

In the Mahabharata, Draupadi laughed aloud when Duryodhana, accidentally slipped and fell to the floor of her palace. Even though he was not blind, Draupadi called Duryodhana “blind son of a blind father” only because his father, Dhritarashtra, was blind. The palace was not a public place, yet the offence caused to Duryodhana at this moment became the core motivating sentiment for him to order the public disrobing of Draupadi later. A chain reaction followed, exploding into a brutal war that destroyed almost all its characters. In an alternative retelling of this story, rather than sulking silently and

harbouring deep feelings of ill will toward Draupadi, Duryodhana could voice his hurt feelings at that moment. Draupadi could acknowledge the offence caused by her flippant remark and apologise, thereby averting a crucial link to the impending doom.

Power of apologies

Neither Mahabharata nor contemporary law in India recognise the significance of acknowledgement and apology as means of conflict resolution. When the amendments to the SC/ST Act were being formulated among Dalit groups before 2015, a well-known human rights activist, Martin Macwan, suggested that there should be a provision for apology to resolve the complaints. While some people in this group were wary of the more dominant caste groups threatening the subordinated caste group complainants into accepting their facile apologies, the provision of apology could not be incorporated into the draft amendments because the formal legal doctrinal underpinnings of criminal law pitch the accused against the state. This rules out any formal legal possibility of the complainant's role in resolving the conflict.

Acknowledgement, apology, public-private divide and other legal blind spots must be reviewed in anti-caste legislation for the law and state policies to foster harmonious relations among all its people.

Baudh teaches at O P Jindal Global University. Views are personal.