

Justice Denied: Violence against Migrant Dalit Women labour in India

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Abstract

The Issue of Migrant labour is deeply associated with the process of urbanization. Although the seasonal movement of agricultural labour from one region to another is experienced in India. These migrants are unskilled labour and engaged in unorganized sectors. In general, the migrants are situated at the margins, but in the case of migrants Dalit women worker, the situation is far more measurable. Class-Caste-Gender nexus produces a complex frame of exploitation, which made migrant Dalit women labour the most vulnerable section of our society. Although the preamble of the Indian constitution upheld the philosophy of Liberty, Equality and Justice and the Indian Constitution guaranteed legal and social equality, in reality, the situation differs in the case of Dalit Migrant Women labour. It has repeatedly proved that the Indian state and its agencies treat different classes and castes of citizen differently. This is very much applicable to the Indian Judiciary.

Keywords: Dalit Migrants women worker, Justice, Migrant worker, Class-Caste-Gender Nexus.

Introduction

A migrant worker is a person who migrates either within their home country or outside it to pursue work. Migrant workers usually do not have the intention to stay permanently in the country or region in which they work. Source says that near about 140 million of India's rural poor migrate to cities, industries, and farms in search for work. This migration is mainly seasonal. These migrants move back and forth undertaking a vast array of casual work in the construction, manufacturing, services, and farm sector. They form the vast unorganized, informal workforce of India. It is estimated that over 140 million of migrants excluded from services and rights of workers and citizens. The movement of workers happens from underdeveloped rural regions to the more developed urban and industrial regions. Previously flows of migration occurred from the improvised regions of UP, Bihar and Jharkhand to relatively affluent Punjab, Maharashtra and Tamil Nadu. Neo-liberal policies adopted by the state from the early 90s intensified the regional imbalances and widened the gap between rich and poor expanded the out-migrant region and includes the states such Rajasthan, Odisha, Madhya Pradesh, West Bengal. Regional imbalances, even within the prosperous states, there is a considerable intra-state movement of workers from improvised rural region to relatively rich cities and industrial regions. Generally, megacities and industrial centers are always the preferred destination of migrant workers. Poor wages, erratic employment, hazardous work conditions and lack of essential services are the predicaments of migrant workers. Access to public entitlements in India is linked with the proof of residence, which the migrants are unlike to possess – this Results in their exclusion from subsidized food grains, housing, health care and other benefits available to local citizens. The problem of inaccessibility of public entitlement makes the life of migrant most distressful. The whole nation as well as the world has witnessed this reality in the time of nationwide lockdown during the Corona pandemic in recent past. Further rural migrants are unable to cast votes in cities, which alienates them from the rest of the nation.

What makes the injustice to migrants workers are more acute in the case of Dalit migrant workers in general and Dalit women workers in particular. Dalit women are at the bottom of our society. They experience caste, class and gender-based discrimination and violence as an outcome of social inequality and conflict. Dalit is known as an ex-Untouchable caste where Dalit identity is regarded as an identity of assertion against caste oppression. The post-colonial state intervention through reservations gave



Suchita Sen

Assistant Professor,
Dept. of Political Science,
Belda College
Belda, Paschim Medinipur
West Bengal, India

Dalits social mobility but the larger section of the Dalit community is deprived of basic rights. Capitalism and neoliberal policy continue to hamper the livelihood and harassing the labour of Dalit in the neo-liberal era. Dalits are large to be found in the unorganised labour market as daily wageworker. In the Indian labour market, the construction industry is the second-largest informal sector after agriculture. The erratic village economy and cultural oppression compel Dalits to migrate to urban areas, where lower castes and the Dalit population engage substantially in the informal sector¹ and Dalit women participate in larger number than upper-caste women, contributing to their family and husbands and sometimes being the sole earner in the family². The present paper explores the nature of caste and gender discrimination experienced by Dalit women migrants in their place of migration (where they live temporarily), at the hands of 'upper-caste contractors, builders and landlords and men of their community. The humiliation and oppression take place at work sites, nakkas (checkpoints), slums and in their own homes. The experiences of recurring and multiple marginalities and vulnerabilities of migrant Dalit women labour expose how the state, its policies and agencies treat different classes of citizen differently. Based on various reports the paper wants to grasp the injustice in case of sexual harassment, faced by Dalit women because of their unfavourable socio-economic and cultural position. The main objective of this study is to unfold the discrimination, social exclusion and marginalisation faced by Dalit migrant women, even at the end of the state.

Objective of the Study

The main objective of this study is to unfold the discrimination, social exclusion and marginalisation faced by Dalit migrant women worker. In India, Dalits are regarded as the outcaste and they are situated at the bottom of society because of their inaccessibility of means of production (they are landless).

The developmental process carried out by the Indian state after independence displaced them from their Homeland. Right to land, forest snatched out from them, besides, the inadequacy of rehabilitation offered by the state compelled them to become a migrant worker. But, the conditions of Dalit women are far more miserable than their male counterpart. In a class-divided, caste-ridden and patriarchal society like India Dalit women experience three prone oppression- she is poor-belongs to a low caste and a member of 'second sex'. This paper also wants to grasp the injustice in case of sexual harassment, faced by Dalit women because of their unfavourable socio-economic and cultural position, even at the end of the state.

Review of Literature

The International Women's Decade, 1975 - 85, provided an impetus to the growth of Social science literature on women in general- their status of Indian society- and issues related to gender-based discrimination and inequality in particular. Social science literature on various aspects of gender has increased considerably during the 1980s and 1990s.

During these decades, women's groups upheld the issues directly affecting women. In their book, N. Desai & V. Patel (Desai Neera & Patel Vibhuti. 1985. Indian Women: Change and Challenges. Bombay Popular Prakashan), wrote that during the eighties the issues of rape, sexual harassment in the workplace, violence against women in the family and public sphere have been major issues on which women at a micro and macro level have struggled. Demonstrations, dharnas, public mass petitions etc. of the urban middle class were sparked off with the Mathura Rape Case in 1978. The judgement given by the honourable Supreme court in Mathura Rape Case added fuel to the sparking of the Women movement. Women in different cities protested against the incident and the courts' judgements. Women's group condemned the state and society by saying that it is not the nature but human society, its laws and institutions, which have created hierarchies between man and woman, class and caste, that rape is not a random unpremeditated act but a form of violence by the powerful on those who are powerless, poor and disadvantaged. Omvedt, in her book, 'We Shall Smash the Prison' (Omvedt Gail.1980.We Shall Smash the Prison. New Delhi. Orient Longman) gives a detailed account of the formation of a 'united women's Organisations' in central India in the year 1975. Her account highlights the nature and the level of consciousness of women from different strata of society-tribal, Dalit, middle-class caste, urban-rural, agricultural-construction labourer- and the adequacy and inadequacy of the urban middle-class women in organizing women in India. Organising Women into a homogenous category became problematic and were posing/ raising some serious questions towards women movement. The problem facing by women from different strata are not the same. Rohini, Sujata and Neelam (Rohini, R.R., Gothoskar, Sujata and Chaturvedi, Neelan. n.d. 'My Life Is One Long Struggle: Women, Work, Organisation and Struggle.Belgaum.Pratisbhad) observed that failure of identification of women primarily an oppressed group has weakened the intensity of women movement. Iris Marion Young uses the term Seriality or Collective Seriality to describe a reconceptualization of the category of women in her easy Gender as Seriality (Iris Marison Young. 1994. Gender as Seriality Thinking about Women as a Social Collective. Journal of women in Culture and Society.19 (3)). The 'Category' of women is necessary to understand oppression and disadvantage as something that is systematically inflicted upon women in a structured, institutionalized process, as opposed to being a natural or unique condition. This structured and institutionalized oppression was vividly described by Rupande Pamela (Rupande Pamela.1990. 'When a poor Women Gets Raped. Manushi. New Delhi. Sep- oct). Aloysius Irudayam S.J, Jayshree P. Mangubhai and Joel.G.Lee in their Article (Dalit Women Speak Out: Caste, Class and Gender Violence In Indian. 2011.Zubaan an Asso. of Kali for Women) pointed out that India Constitution guaranteed the Right to Equality Irrespective of caste and gender as a fundamental right. However, the different State

machinery and mindset of people engaged in the machineries acted against the right of Equality. This study presents an analysis of 500 Dalit women who had been subjected to verbal, sexual and physical by men of the dominant castes, this essay starts as a narrative of individual Dalit women and moves towards an analysis of the reasons for the kinds of responses these women received when they tried to seek justice. Despite the existence of adequate legal measures, Dalit women still face insurmountable obstacles while getting those measures implemented, assuming of course that they know that what has been perpetrated against them is legally actionable. Typically, the responses to such violence include the women not seeking legal remedies in the first place; women getting blocked at the community level (by perpetrators, by the dominant caste community, by dominant caste Panchayats, by their own families, or by Dalit panchayats) from accessing legal remedies; and women getting blocked by the police from accessing legal remedies. The author finds that state impunity, dominant caste impunity and the collusion between the two is the central reason for Dalit women not being able to get Justice. In her book 'The Silence and the Storm: Narrative of Violence Against Women In India', (Kalpana Sharma.2019. Aleph Book Company) gives a historical account of women protest against the attitude of the police, Judges towards the crime against women. She begins from the protest of the Judgment given by the Honorable Supreme Court(1979). The intensity of the outrage especially among the women's groups eventually led to the passing of the Criminal Law(Second Amendment) Act, 1983. Illustrating different incidents across the nation she argues that there have been thousands of rapes of Dalit women and innumerable other atrocities against Dalit women have occurred in India. Irrespective of political affiliation all governments (centre and State both) did not fully acknowledge how caste plays out in this theatre of violence.

Constitutional Safeguards of the Citizen

Indian state guarantees some constitutional and statutory protection to Women in India. Article 14 of India's constitution ensures equality by providing that: "*The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*". Article 15(1) provides that the "*State Shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them,*" While articles 16(1) and 16(2) prohibit discrimination in general and gender discrimination in matters of public employment. To promote equality, Article 15(3) provides that the state is free to make "any special provision for women and children." Recognising the historical forms of discrimination and oppression faced by the Dalit community, Article 17 of the Constitution also expressly abolishes 'untouchability and forbids its practise in any form. To give effect to these constitutional guarantees, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [SC & ST (PoA) Act] were passed in 1989 to prevent and effectively address caste-based atrocities. The SC & ST (PoA) Act specifies a list of prohibited atrocities.

Besides, serious offences under the Indian Penal Code, including rape, which are committed against a person because they belong to a Scheduled Caste are also subjected to increased punishment. All cases under the SC & ST (PoA) Act must be investigated by a police officer of a rank not lower than Deputy Superintendent of Police (DSP). The law also includes provisions for the protection and rehabilitation of victims.

Part IV of the constitution lists the Directive Principles of State Policy, including Article 39(b) of the constitution, which provides that the state direct its policy towards ensuring equal pay equal work for men and women. Section (a) of the same article provides that the state shall, in particular, direct its policy toward securing that citizen- men women equally, have the right to an adequate means of livelihood.

III

Rhetoric and Reality

However, there is very much difference between rhetoric and reality. Theoretically, the Indian state upheld the principles of legal and administrative equality, but in reality, different governmental organizations practising discrimination against Dalit women especially in case of sexual harassments. Beginning with the lodging of the First Information Report (FIR) at the local police station through to the judge's opinion, should a case reach that far, women in India are faced with a daunting obstacle in prosecuting cases of rape. If a woman is poor, belongs to a lower caste, and migrates to a town or city from her permanent dwelling, it is even more difficult for her to gain access to the judicial system. Class-caste-gender nexus produces a system of exploitation in which Dalit migrants are unable to reach justice. They face entrenched biases at every stage of the process: with the police, the doctors, and the judges. Even if the police agree to file the FIR, they often fail to collect efficiently and deliberately the necessary evidence. If the case manages to get filled and investigated despite those obstacles then new problems arise when a woman goes before a judge whose gender biases and caste affiliation can greatly influence the judgment in the case.³ It would not be unjustified to cite few cases here:

1. Mathura Rape Case(1978)
2. Maya Tagi Rape Case(1980);
3. Rameeza bee Rape Case(1984);
4. Bhambri Devi Case(1992);

In all the above-stated cases, if we carefully examine the attitude of the judges we will see that the honourable judges have taken a contradictory stand and they reflected the biased position of caste and gender.

Because of low reporting, the problems faced by a rape victim to lodge a report the case is stated earlier, the conviction in rape cases is low. From 1989 to 1993, reported crimes against women in India increased by 25.2 per cent.⁴ In a recent study, based on different cities in Hariyana, done by Swabhimani Society⁵, forty cases have found where rape committed against Dalit women and girls. Out of forty cases, in nineteen cases victims are either agriculture labourer (seasonally migrated from their

village, engaged in agricultural work to earn livelihood), or in construction sites, roads etc. Out of the cases for which data is available, the highest number of victims came from the age group of 13 to 17 years old. Further, the vast majority of these 40 cases overall concern girls and young women aged between 13 and 29 years old. The high number of cases against young Dalit migrant girls demonstrates the vulnerability of adolescent girls to sexual violence. The high number of child victims is confirmed by the official NCRB statistics for Haryana for 2019.

In cases of crime against Dalit women and girls in general, and the Dalit migrant in particular, the caste and social status of the accused often play a key role in impacting the access to justice of the victims. In over 80% of the cases in this study, all the accused persons involved in the case were from the dominant caste. At the same time, they are also economically in a better position, either landlords or contractors.

The analysis of the cases of sexual violence against the Dalit migrants demonstrates that they face severe obstacles to accessing justice. Now the obstacles faced by the victims, are discussed below:

Community Pressure and Stigma

Interference of other members of the community is probably the biggest obstacle to justice for Dalit women and girls. Data from the National Family Health Survey Indicates that 90% of women and girls who have experienced sexual violence have never sought help⁶. The vast majority of sexual violence cases remain unreported due to the stigma attached to reporting cases of rape. The problem of Dalit women and girls is no different rather is more compounded, particularly when the perpetrator is from a dominant caste. Lack of social, economic and political power on the part of Dalit women and girls make them particularly vulnerable to coercion. It is learned from the study that an FIR is filed in 37 cases. In three cases, FIR was not filed. Victims were unable to access any legal remedies due to various factors, including social and community pressure and culture of silence and stigma around rape.

A Dalit victim may face threats of retaliation and violence by the dominant caste perpetrators, less support from the wider community and fear of pressure from her family if she speaks out about violence. Such retaliation could include threats of further violence, the loss of livelihood and the possibility of spurious counter criminal cases by the perpetrators.

Police attitudes and victim-blaming

Due to sexist and casteist attitudes, police officials tend to disbelieve survivors who complain of rape, particularly Dalit women and girls. Police officers often use highly inappropriate and abusive language against survivors or their families, including caste-based slurs, which is common. The use of inappropriate language and often abusive behaviour shown by police officials towards the survivors, in turn, victimize them further. Dalit women are frequent victims of custodial rape. In the famous Mathura rape case(1972) Mathura, an Adivasi girl of between 14 and 16, was brought to the police station by the police

authority to investigate some matter but she was raped by two policemen inside the police station(Desaiganj Police station in Gadchiroli district of Maharashtra)

In another custodial rape case of a young girl Suman Rani, a complaint could be filed only when she reached her village due to which there was a delay in filing the FIR.(Prem Chand vs. Hariyana, 1989)

Compromise

One of the important obstacles to justice for Dalit women is that the victim or her family was pressured or forced into accepting an extra-legal settlement or compromise with the accused person or persons, whereby they agreed not to pursue the criminal case. "Would you like to compromise?" That is the first question a judge asks when a caste atrocity case comes up for a trial, says Manjula Pradeep, of the Gujrat-based non-governmental organization Navarjan. A study done by Navarjan on atrocity data obtained through RTI for Maharashtra, Gujarat and Tamil Nadu found that between December 2004 and November 2009, "there were convictions in only 0.79 of cases (three cases) of violence by non-Dalits across the three states. In Gujarat, there were no convictions at all. In a submission to the UN Commission on the Status of Women (CSW) Navarjeen states, "Dalit women are considered as easily available for all forms of violence... The Indian judicial system cannot serve as a deterrent for crime when there is no consequence for the preparatory of violence against Dalit women."⁷ Various reports find that Dalit women and girls in Haryana, Gujarat, Maharashtra, and Tamil Nadu are effectively denied access to justice in cases of sexual violence due to the prevalent culture of impunity, particularly when the perpetrators are from a dominant caste. In almost all cases, survivors who seek justice for sexual violence are subjected to stigma, retaliation, threats, violence and extreme pressure to stay silent or stop pursuing the criminal process. They live in fear - of their safety, of losing their access to livelihood (as the landlord and contractors are often from dominant caste), of being forced out of their homes, and of facing caste-based abuse and discrimination from the police, prosecutors and other officials in the criminal justice system. This fear, trauma and pressure faced by survivors and their families are compounded by the obstacles to access them in Justice within the criminal Justice system itself.

Judges Attitude

From the above discussion, it is evident that in most of the cases, the court considers the act of violence against Dalit women from a conservative and reactionary perspective. In this connection little observation is stated below:

1. The attitude of the courts towards rape and the problem of distorting evidence becomes problematic.
2. The courts continued to look at the past conduct of women to Condone rape.⁸The rape is viewed from the perspective of loss of modesty or loss of Virginity or the prospect of marriage, not from the perspective of violence against women.

3. The rape is also approached from a technical angle while social and psychological aspects of the victim are neglected.
4. Moreover, the views of the judges differ from time to time and case to case basis.

Conclusion

By summing up, it must be said that Dalit migrant women labour is in the most vulnerable condition in India. The Indian state not only failed to protect the poorest of the poor but marginalised them. In a liberal democratic state like India, Judiciary is regarded as the protector of human rights, but in India, the caste- gender biases of Police, prosecutors and judges prevents this institution to do so.

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