

CONFRONTING MARGINALISATION

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▶ INTRODUCTION

1. Though powerless, such groups have fought, protested and struggled against being excluded or dominated by others. They have attempted to overcome their situation by adopting a range of strategies in their long history. Religious solace, armed struggle, self improvement and education, economic uplift – there appears to be no one way of doing things. In all cases, the choice of struggle has depended on the circumstances that the marginalised find themselves in.
2. Adivasis, Dalits, Muslims, women and other marginal groups argue that simply by being citizens of a democratic country, they possess equal rights that must be respected. Many among them look up to the Constitution to address their concerns. The Constitution of India is something that marginalised groups invoke in the course of their struggles.

▶ INVOKING FUNDAMENTAL RIGHTS

1. The Constitution, lays down the principles that make our society and polity democratic. They are defined in and through the list of Fundamental Rights that are an important part of the Constitution. These rights are available to all Indians equally.
2. Far as the marginalised are concerned, they have drawn on these rights in two ways:
 - (a) first, by insisting on their Fundamental Rights, they have forced the government to recognise the injustice done to them.
 - (b) Second, they have insisted that the government enforce these laws.
3. In some instances, the struggles of the marginalised have influenced the government to frame new laws, in keeping with the spirit of the Fundamental Rights.
4. Article 17 of the Constitution states that untouchability has been abolished – what this means is that no one can henceforth prevent Dalits from educating themselves, entering temples, using public facilities etc. It also

means that it is wrong to practise untouchability and that this practice will not be tolerated by a democratic government. In fact, untouchability is a punishable crime now.

5. There are other sections in the Constitution that help to strengthen the argument against untouchability – for example, Article 15 of the Constitution notes that no citizen of India shall be discriminated against on the basis of religion, race, caste, sex or place of birth
6. Therefore, Dalits can ‘invoke’ or ‘draw on’ a Fundamental Right (or Rights) in situations where they feel that they have been treated badly by some individual or community, or even by the government. They have drawn the attention of the government of India to the Constitution, demanding that the government abide by it and do justice to them.
7. Likewise, other minority groups have drawn on the Fundamental Rights section of our Constitution. They have particularly drawn upon the right to freedom of religion and cultural and educational rights. In the case of cultural and educational rights, distinct cultural and religious groups like the Muslims and Parsis have the right to be the guardians of the content of their culture, as well as the right to make decisions on how best this content is to be preserved.
8. Thus, by granting different forms of cultural rights, the Constitution tries to ensure cultural justice to such groups. The Constitution does this so that the culture of these groups is not dominated nor wiped out by the culture of the majority community.

➤ LAWS FOR THE MARGINALISED

There are specific laws and policies for the marginalised in our country. There are policies or schemes that emerge through other means like setting up a committee or by undertaking a survey etc. The government then makes an effort to promote such policies in order to give opportunities to specific groups.

◆ **Promoting Social Justice :**

As part of their effort to implement the Constitution, both state and central governments create specific schemes for implementation in tribal areas or in areas that have a high Dalit population. For example, the government provides for free or subsidised hostels for students of Dalit and Adivasi communities so that they can avail of education facilities that may not be available in their localities.

In addition to providing certain facilities, the government also operates through laws to ensure that concrete steps are taken to end inequity in the system. One such law/policy is the reservation policy that today is both significant and highly contentious. The laws which reserve seats in education and government employment for Dalits and Adivasis are based on an important argument- that in a society like ours, where for centuries sections of the population have been denied opportunities to learn and to work in order to develop new skills or vocations, a democratic government needs to step in and assist these sections.

◆ **How does the reservation policy work :**

Governments across India have their own list of Scheduled Castes (or Dalits), Scheduled Tribes and backward and most backward castes. The central government too has its list. Students applying to educational institutions and those applying for posts in government are expected to furnish proof of their caste or tribe status, in the form of caste and tribe certificates. (Many government and educational institutions also ask for candidates to mention their caste/tribe status.) If a particular Dalit caste or a certain tribe is on the government list, then a candidate from that caste or tribe can avail of the benefit of reservation.

For admission to colleges, especially to institutes of professional education, such as medical colleges, governments define a set of 'cut-off' marks. This means that not all Dalit and tribal candidates can qualify for admission, but only those who have done reasonably well and secured marks above the cut-off point. Governments also offer special scholarships for these students.

➤ PROTECTING THE RIGHTS OF DALITS AND ADIVASIS

Our country also has specific laws that guard against the discrimination and exploitation of marginalised communities.

◆ **The Scheduled casts and the Scheduled Tribes (Prevention of Atrocities) Act 1989 :**

1. This Act was framed in 1989 in response to demands made by Dalits and others that the government must take seriously the ill treatment and humiliation Dalits and tribal groups face in an everyday sense.
 2. While such treatment had persisted for a long time, it had acquired a violent character in the late 1970s and 1980s. During this period, in parts of southern India, a number of assertive Dalit groups came into being and asserted their rights – they refused to perform their so-called caste duties and insisted on being treated equally they refused to follow practices located in the humiliation and exploitation of Dalits. This resulted in the more powerful castes unleashing violence against them.
 3. In order to indicate to the government that untouchability was still being practised and in the most hideous manner, Dalit groups demanded new laws that would list the various sorts of violence against dalits and prescribe stringent punishment for those who indulge in them.
 4. Likewise, throughout the 1970s and 1980s Adivasi people successfully organised themselves and demanded equal rights and for their land and resources to be returned to them. They too had to face the anger of powerful social groups and were subject to a great deal of violence.
- (i) this Act contains a very long list of crimes, some of which are too horrible even to contemplate. The Act does not only describe terrible crimes, but also lets people know what dreadful deeds human beings are capable of. In this sense, laws such as these seek to both punish as well as influence the way we think and act.
- (ii) The Act distinguishes several levels of crimes. Firstly, it lists *modes of humiliation* that are both physically horrific and morally reprehensible and seeks to punish those who (i) force a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance; ... (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him or her naked or with painted face or body or commits any similar act which is derogatory to human dignity...
- (iii) Secondly, it lists *actions that dispossess Dalits and Adivasis* of their meagre resources or which force them into performing slave labour. Thus, the Act sets out to punish anyone who (iv) wrongfully occupies or

cultivates any land owned by, or allotted to, ... a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred.

- (iv) At another level, the Act recognizes that *crimes against Dalit and tribal women* are of a specific kind and, therefore, seeks to penalise anyone who (xi) assaults or uses force on any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour her ..

➤ **ADIVASI DEMAND AND THE 1989 ACT**

1. The 1989 Act is important for another reason – Adivasi activists refer to it to defend their right to occupy land that was traditionally theirs.
2. Adivasis are often unwilling to move from their land and are forcibly displaced. Activists have asked that those who have forcibly encroached upon tribal lands should be punished under this law. They have also pointed to the fact that this Act merely confirms what has already been promised to tribal people in the Constitution – that land belonging to tribal people cannot be sold to or bought by non-tribal people. In cases where this has happened, the Constitution guarantees the right of tribal people to re-possess their land.
3. C.K. Janu, an Adivasi activist, has also pointed out that one of the violators of Constitutional rights guaranteed to tribal people are governments in the various states of India – for it is they who allow non-tribal encroachers in the form of timber merchants, paper mills etc, to exploit tribal land, and to forcibly evict tribal people from their traditional forests in the process of declaring forests as reserved or as sanctuaries.
4. She has also noted that in cases where tribals have already been evicted and cannot go back to their lands, they must be compensated. That is, the government must draw up plans and policies for them to live and work elsewhere. After all, governments spend large sums of money on building industrial or other projects on lands taken from tribals – so why should they be reluctant to spend even very modest amounts on rehabilitating the displaced?

➤ **CONCLUSION**

1. As we can see, the existence of a right or a law or even a policy on paper does not mean that it exists in reality. People have had to constantly work on or make efforts to translate these into principles that guide the actions of their fellow citizens or even their leaders.
2. The desire for equality, dignity and respect is not new. It has existed in different forms throughout our history as you have seen in this chapter.
3. Similarly, even in a democratic society, similar processes of struggle, writing, negotiation and organising need to continue.

GLOSSARY

- Assertive:** An assertive person or group is one that can express themselves and their views strongly.
- Confront:** To come face to face or to challenge someone or something. In the context of this chapter, this refers to groups challenging their marginalisation.
- Dispossessed:** To possess is to own something and to be dispossessed is to have to give up ownership or to give up authority.
- Ostracise:** This means to exclude or banish an individual or a group. In the context of this chapter, it refers to a social boycott of an individual and his family.
- Morally reprehensible:** This refers to an act that violates all norms of decency and dignity that a society believes in. It usually refers to a hideous and repugnant act that goes against all the values that a society has accepted.
- Policy:** A stated course of action that provides direction for the future, sets goals to be achieved or lays out principles or guidelines to be followed and acted upon. In this chapter, we have referred to government policies. But other institutions like schools, companies, etc. also have policies.