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Judiciary and Caste: A Study on the Caste System affecting Judicial System

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ABSTRACT

This paper delves into the intersection of the judiciary and the caste system in India, examining how caste dynamics influence the functioning of the legal system. The introduction highlights the inherent subjectivity of judicial decisions shaped by personal perspectives, emphasizing the need for a diverse judiciary in a pluralistic democracy. The paper scrutinizes the under-representation of Scheduled Caste (SC) and Scheduled Tribe (ST) judges in the Indian judiciary, analyzing its implications on the distribution of court judgments.

The section on representation presents a disheartening scenario, revealing the historical dominance of male Brahmins and other forward castes in the judiciary. Despite seventy years of affirmative action, the under-representation of SC/ST judges persists, impacting the fairness and balance of the judicial system. The opacity in the appointment process, influenced by caste considerations, is also discussed.

The prejudice section explores the ramifications of caste bias within the judiciary. Low conviction rates for crimes against SC/ST communities are linked to the upper-caste judiciary's lack of understanding of their struggles. Judicial decisions, exemplified by cases under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, often reflect inherent stereotypes and contribute to maintaining the status quo in favor of upper-caste members.

In the conclusion, the paper advocates for a more inclusive judiciary, emphasizing the necessity of adequate representation of SC/ST judges at all levels. Recommendations include the enforcement of reservations for underrepresented communities and the establishment of an All-India Level Judicial Review to uphold constitutional values of justice, liberty, equality, and fraternity.

Keywords: *Judiciary, Caste System, Caste Bias, Representation, Scheduled Caste, Scheduled Tribe.*

I. INTRODUCTION

In compliance with the letter of the constitution, the judiciary's job is to make decisions.

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Although the statute sets down general rules, legislation requires the judiciary to assert ample power in particular cases to exercise its objective reasoning to give fairness to the specific factual circumstances. It is in exercising this power that judges derive on their own personal perspectives and worldview. It would not be appropriate for a monolithic, homogeneous ideology of the judiciary to do justice to our pluralistic democracy in which every individual holds a different political role dependent on different kinds of hierarchies. In India, caste plays a important role in the creation of socio-political structure, which has been taken into account from birth to death of a person in different instances. The judiciary is still not removed from this caste-based bias.

For example, many have found that the low conviction rates for crimes committed against members of the Scheduled Caste and Scheduled Tribe communities are primarily due to the privileges of the largely upper-caste judiciary, which does not comprehend the everyday abuse and structural injustice of lower-caste communities. Several studies have also shown that disadvantaged socio-economic segments, especially SC and ST individuals, are more influenced by death penalty convictions. Taking from these findings, this paper aims to examine the comparative presence in the judiciary of judges from the SC and ST groups and seeks to analyze whether their under-representation/absence has any impact on the process of court distribution of judgments. This essay also thoroughly examines how caste played a key role in the appointment of judges to the Indian Supreme Court.

II. REPRESENTATION

The representation of the SC/ST staff in high courts and supreme courts is quite depressing. Between 1950-1989, 92.2% of the Judiciary comprised of male brahmins and other forward castes. Not much has changed since then, with only 24 judges belonging to the SC/ST community out of the total 850 judges in all the high courts but no judges belonging to SC/ST in 14 out of 21 high courts.³ Similarly, there is only one judge in the Supreme Court belonging to the SC/ST community, who was appointed last year after a decade of there being no SC/ST judge in the Supreme Court.

Furthermore, the process of appointment remains opaque, even though the collegium has started publicising its decisions recently there are many unnamed criteria for appointments other than the written qualifications stipulated under the Constitution. Caste plays a vital role in it as can

³ Namit Saxena, Disproportionate representation at the Supreme Court: A perspective based on caste and religion of judges Bar and Bench - Indian Legal news (2021), <https://www.barandbench.com/columns/disproportionate-representation-supreme-court-caste-and-religion-of-judges> (last visited Jan 20, 2024).

be seen in various scenarios.⁴ Justice V.R. Krishna Iyer wrote in his book, *Law Versus Justice*: "I remember once CJI telling me long ago that he owed his position to his caste and so would, gratefully, help the caste".⁵ In July 1978, as a substitute for Justice K. K. Mathew, who resigned in January 1976, Chinnappa Reddy, who was a Christian, was nominated to the Supreme Court. Mathew was a devout Christian. Reddy found it particularly funny that he was succeeded by Justice TK Thommen, a Christian, after he resigned, who was chosen at least partially because he was a Christian and was supposed to represent the identity of Reddy on the bench.⁶

Despite seventy years of "affirmative" action, the situation of the marginalized communities has not improved. To wait for people from these communities to find their own way naturally into a system entrenched with casteism is to leave too much to luck and passage of time. Given that these communities are not adequately represented in the higher Judiciary it follows that their future prospects are automatically lowered. Again, people from marginalized communities are less likely to come from well-established families which is another stumbling block in their appointment.

As Supreme Court has the last word on laws governing millions of people in all sections of life therefore, it is necessary that judges should come from all sections of society. A more representative judiciary brings a new perspective to pressing issues of rights of marginalized communities. A more representative judiciary would also be a balanced judiciary which is likely to promote an open and broader discussion on matters of constitutional importance.

A judge from a different section of the society is also more likely to understand the specific problem faced by their community. Also, by reservations in the higher Judiciary, it will encourage younger members of these communities to reach the highest levels of the profession. All this can be accomplished through a well-drafted law that does not compromise independence and quality and is the absolute foundation of any judiciary.

III. PREJUDICE

The marginalized classes have paid a huge price just because of their social backgrounds. As the majority of the Judiciary belongs to the upper caste, they have little or no idea about the problems faced by these communities. Each and every judicial verdict necessarily is the

⁴ TNN, 75% of judges appointed in HC since '18 from Upper Castes: Government: India News - Times of India The Times of India (2023), <https://timesofindia.indiatimes.com/india/75-of-judges-appointed-in-hc-since-18-from-upper-castes-government/articleshow/102027540.cms?from=mdr> (last visited Jan 20, 2022).

⁵ V. R. Krishna Iyer, *Law Versus Justice: Problems and Solutions* (Deep & Deep 1981).

⁶ Abhinav Chandrachud, Former Supreme Court judges discuss the influence of caste in judicial appointments The Caravan (2018), <https://caravanmagazine.in/law/supreme-court-judges-influence-caste-judicial-appointments-chandrachud-extract> (last visited Jan 20, 2022).

explanation of every personal instinct of the judge in accordance to the scenario before him, and the character of these instincts is determined by the judge's life-long series of previous experiences, with their subsequent integration in emotional tone. These predispositions, with variable degrees of importance, unconsciously add themselves to the conscious deliberation of every question a judge confronts. Judicial conduct may be tracked by a chain of causation going back to the initial infancy. The research of analytic psychology tries to find some of the "potent, yet hidden impulses regulating the actions of judges"⁷ and determines that "there can never be a judge without predispositions (or prejudices)".⁸ It is reflected in the abysmally low conviction rate of people reported under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The conviction rate under the act is as low as 16.3% according to the data released by the Ministry of Home Affairs for the years 2015-2018. The rate of conviction for all the crimes that attract penal provisions is barely better at 29.4%. Even the of the prisoners sentenced to death in India, 76 percent (279 prisoners) belong to backward classes and religious minorities, with all 12 female inmates belonging to backward classes and religious minorities.⁹

Even after such low conviction rates, the judiciary has furthermore given judgements that have diminished the scope of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989¹⁰ under the name of "protecting innocents" and "enforcing fundamental rights". On 5 November 2020, a three-judge bench of the Supreme Court held that the provisions of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not attract all instances of intimidation and harassment of individuals belonging to the Scheduled Castes and Scheduled Tribes. The Court quashed a complaint about the intimidation of a member of a Scheduled Caste community because the incident took place within the "four walls of her building" and could not be said to have taken place from a public perspective. The case once again drew attention to a flaw in the Act on Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) that helps to maintain the status quo in favor of upper caste members.¹¹

The judgement followed a long line of similar decisions. Further, the language in these judgments clearly reflects the inherent stereotypes an example being the Bhanwari Devi case.¹² Bhanwari Devi was a sathin, a worker at the village level in the women's empowerment program

⁷ Theodore Schroeder, "The Psychologic Study of Judicial Opinions," 6 Cal. L. Rev. 89 (1918), <https://doi.org/10.2307/3474193>.

⁸ Timothy J. Capurso, How Judges Judge: Theories on Judicial Decision Making, 29 U. Balt. L.F. 1 (1998), <http://scholarworks.law.ubalt.edu/lf/vol29/iss1/2>.

⁹ National Crime Records Bureau (NCRB). "Crime in India" (2020), <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%202.pdf>.

¹⁰ Protection of Civil Rights Act, 1955.

¹¹ Hitesh Verma v. The State of Uttarakhand & Anr., 2023 LiveLaw (SC) 469 (Supreme Court 2020).

¹² VISHAKA & ORS. V STATE OF RAJASTHAN & ORS. (1997) 6 SCC 241 (Supreme Court 2020).

administered by the Rajasthan government. In 1985, she joined the initiative and was a relentless protester against the institution of child marriage. She successfully stopped the marriage of Ram Kanwar Gujar's one-year-old daughter. Bhanwari Devi was gangraped on September 22, 1992 by five men, including a Gujar. On November 15, 1995, the Jaipur District and Sessions Judge delivered the verdict. The convicted were middle-aged and thus decent men, according to the court, while juveniles were the ones who typically committed rapes. "As the accused are upper-caste men, the rape could not have occurred because Bhanwari was from a lower caste," the judgment went on to declare.

Another example is the Phulsing case,¹³ a Lodhi thakur and former Malgujar, had taken "begar" (forced labor without payment) from Balla, who was a chamar (backward class). Phulsing destroyed Balla's house and kidnapped Balla's wife for five days. Furthermore, with his truck, Phulsing had tried to overtake Balla and kill him. The matter was submitted to the police by Balla and Phulsing shouted at him as he returned, "Chamra mere virudh report kyon ki, main tumse manhani ke 5,000 rupaye loonga (You chamar, why did you report me, I'm going to take Rs 5,000 for defamation) from you. In another case, Phulsing had a land dispute, with Parsadi who was also a chamar. He threatend and abused Prasaadi by saying "Chamra jagah chod dena nahi to goli maar doonga" (You chamar, leave this place otherwise I will shoot you). Parsadi's wife, who was passing by a road in front of his house, was also stopped by Phulsing and told her, "Yahan se chamriya nikli to lat marenge, tere bap ka rasta nahi nahin (You chamariya, if you go this way, I'm going to kick you, it's not the road of your father)."

For insults, under Section 7 (d) on the basis of untouchability of The Protection Of Civil Rights Act, 1955,¹⁴ two separate cases were registered against Phulsing, one with regard to the incident involving Balla and the other with regard to Parsadi and his wife. In both criminal cases, the Madhya Pradesh high court acquitted Phulsing with a rather puzzling observation, "Now it may be an offense to call a chamar a chamar, but it will not be an offense on the ground of untouchability."

Thus, we can clearly see that there is a prejudice in the judiciary against the backward classes and victims suffer similarly adverse consequences. There is no question that the SC/ST Act implements criminal penalties, but it is largely a health and security statute. It should therefore be viewed in a way which best protects its beneficiaries. The substantive legislative amendment must occur by a change of legislation, no matter how broadly the court interprets the rules of

¹³ Phulsing v. State of Madhya Pradesh, 1991 Cri LJ 2954 (Madhya Pradesh High Court 1991).

¹⁴ Protection of Civil Rights Act, 1955, § 7(d) (1955).

the Statute. If the statute needs to satisfy its specified aims, it is important to change this clause, such as this in a way that does not make such false divisions between the public and the private realms.

IV. CONCLUSION

The public domain in India is dictated by the caste since it penetrates and thrives in all facets of private life. In the representative judicial system, it is a necessity to eliminate conscious and unconscious caste bias and to ensure adequate representation for the marginalized classes. To accomplish the vision of the Constitution of India, a judiciary imbued with the value of social justice is crucial. Either by the Collegium System or the National Judicial Appointment Commission, adequate representation of judges from Scheduled Caste and Scheduled Tribe communities is the need of the hour. It is relevant not only because the Supreme Court of India needs to be more inclusive in nature, but also because the insufficient representation/absence of judges from these groups at the top level of the judiciary also adversely affects the process of distribution of judgments in various ways, as is evident in several cases mentioned above. So as proposed by the Kariya Munda committee,¹⁵ which was also echoed by the National Commission for Scheduled Castes in 2011, reservations for the underrepresented communities such as SC and ST communities must be enforced for the better dispensation of justice from the top level of the Indian Judiciary. The plan to provide an All-India Level Judicial Review should also be discussed, but it is important to ensure that the under-represented groups are represented and the values of liberty, equality, fraternity, and justice enshrined in the Constitution of India are upheld.

¹⁵ Welfare of Scheduled Castes and Scheduled Tribes, 13 (Publication Date not available), https://eparlib.nic.in/bitstream/123456789/66474/1/13_Welfare_of_Scheduled_Castes_and_Scheduled_Tribes_13.pdf.