

Suggestions to Justice Punnaiah Commission

K. Balagopal

26.01.2000

To
Justice Punnaiah Commission
Hyderabad

Sir,

Sub: Suggestions to end discrimination and atrocities against dalits -
Law and policies of the Government.

We want to place before you some suggestions which we consider will be useful in the prevention of discrimination and atrocities against dalits in the State. We hope that they will find a place in your report to the government. These suggestions are based on our fifteen years of experience in the human rights movement. We hope that you will consider these suggestions made in the light of our experience and make them a part of your report.

1. We would like to clarify one thing before going into a discussion of the suggestions. The best way to offer justice to any oppressed people is to strengthen them socially and economically. Then they will be able to oppose such oppression on their own, and the class or social group that oppresses them will think twice before taking any action against them.

The State government should be commended for appointing the Commission to analyse the discrimination, oppression and atrocities experienced by the dalits in the State and to suggest solutions. But the government is itself closing off one of the most important means of fighting such situations. That is called welfare. It has many dimensions to it.

There are many policy measures that go a long way in socially and economically empowering dalits. Creation of employment opportunities for dalit youth, implementation of land reforms that will equip them with resources, maintenance of social welfare hostels that will give them opportunities to study, running government schools which will provide them with free education, provision of subsidised rice, provision of other subsidies to poor dalit peasants, especially subsidised electricity, and provision of accessible and quality health care. All these policy measures increase their social and economic strength. They give them the confidence and strength to resist upper caste oppression. At the same time they inhibit the arrogance of the upper castes.

The government, however, is systematically withdrawing from these policies and measures. We feel that it would be very difficult to find solutions for the problems faced by dalits without reversing this trend in government policies.

2. However, we do not intend to suggest that such an attempt is not useful. We would like to suggest some concrete measures that would help in stopping the discrimination and atrocities against dalits.

There is a strong pressure in the villages where untouchability is practiced, that everyone should participate in the inhuman practice. Of course the pressure works also on the dalits who would want to oppose it but it works on everyone in the village.

To overcome this pressure it is necessary to concentrate action on the dominant sections of the village who sustain these practices. However, Criminal law is not adequate to this task because their role in sustaining these practices cannot be clearly demonstrated. In order to check their power, social and economic measures are needed. They should be made to feel that they will not get political and economic benefits offered by the system as long as they practice and take a lead in sustaining the practices of untouchability.

For example, civil contracts involving 'development work' are a major source of earnings for this village elite. Government should stop taking up development work in the villages which practice untouchability. Even those works which are undertaken under 'janmabhoomi' should not be sanctioned in these villages. It should be made clear to the village elite that no contracts will be awarded to them till they cease to practice and enforce the practice of untouchability.

Basic necessities such as water tanks can be exempted from such a ban. But even here, the contracts for such work should not be given to anyone from the village. If this is sought to be subverted by an outsider who takes the work on contract but subcontracts it to any one from that village, the government should be authorized to cancel such a contract.

Apart from economic pressure, political pressure is also necessary. At present none of the electoral laws, from the Representation of the People Act to the Panchayat Raj Act prohibits persons who are a party to a crime related to untouchability from contesting elections. As with other criminal offences, the person is disqualified only when the crime is proved. However it is necessary that those chargesheeted under Protection of Civil Rights (PCR) Act or SC, ST (Prevention of Atrocities) Act should be automatically disqualified from contesting in any elections. The law should be amended to this effect.

In villages where untouchability is practiced in any form (separate glasses, separate wells, separate tanks etc) the government should give notice to the concerned gram panchayat that it should be stopped within a certain time period. In case it is not stopped, the government should have the authority to dissolve such a gram panchayat.

On the whole, efforts should be made to create circumstances where it is impossible for the dominant sections in villages to maintain their status as people's representatives, and their opportunity for making money as civil contractors, while sustaining the practice of untouchability in their

villages. Unless such pressure is applied on the village elite, villages will not be liberated from the enforced practice of untouchability.

3. Apart from the above, there are villages where untouchability may or may not be routinely practised, but where social boycott is imposed on dalits when they fight for their rights, in order to bring them to their knees. During the boycott, dalits are not given any work, they are not sold any goods in the village shops and everybody severs all link with them. This is a frequent occurrence in the villages of Rayalaseema and North coastal Andhra. This social boycott is implemented under enormous social pressure. The measures discussed above should be implemented even in these villages too.
4. However it can be asked as to why one should concentrate only on the village elite. We do not mean to say that all the people above the village level are innocent of casteism. In fact, all the political parties in the State have got used to a double faced attitude towards untouchability. At the level of policies proclaimed from the top, all parties oppose untouchability and caste discrimination. However, the village elite who form the base of all these parties plays a major role in sustaining untouchability and caste discrimination in the villages and localities. But they in turn enjoy all the economic and political benefits offered by the society and form a major support base for the political parties.
5. Though some powers are already provided for in the law for applying such social pressure, they are not being implemented. There is a provision in Sec 10-A of the PCR Act and Section 16 and SC, ST (Prevention of Atrocities) Act, that the government can impose collective fines on the inhabitants of an area who are involved in the commission or abetment of offences against dalits. Section 17 of the SC, ST (Prevention of Atrocities) Act empowers all the executive magistrates from the level of MROs to Collectors to declare an area as one that is prone to atrocities and take

preventive action against individuals and groups to prevent atrocities against dalits. Section 17(3) also says that the government can devise schemes laying down the manner in which the above power may be exercised.

If these powers had at all been exercised against the caste Hindu groups, that would have created some pressure on them. But they have never been exercised. The Commission should make it clear to the government that such powers should be exercised whenever the situation requires.

The schemes suggested under section 17(3) have never been formulated in the State. Externment of the individuals who play a key role in or abet the commission of atrocities is one such measure which can be implemented under this section. Such a measure is already provided for under section 10 with reference to tribal areas, that is the scheduled areas (it is a different matter that even this is not used anywhere). Such powers can be extended through the provision in section 17(3) to the dalit localities also. It should be suggested to the government that such attempt should be immediately made.

It would be presumptuous on our part to remind a jurist like Justice Punnaiah that the government should use the beneficent powers given to it by the law for the good of the people, and not confine them to the statute books. The Supreme Court has said so in many judgements.

6. Regarding the criminal cases, there are very few police officers who forthwith register a case of atrocity and investigate it sincerely. Section 4 of the SC, ST (Prevention of Atrocities) Act provides a measure for dealing with this. It says that any official who wilfully neglects the performance of the duties under the Act can be punished with imprisonment of up to six months. There is not a single instance known to us in which this provision has been used. It should be insisted that the government should use this provision whenever an opportunity arises.

It should be suggested to the government that a note of explanation be added to Section 4 to the effect that it would amount to an offence under this section if a police officer tries to effect a compromise between the accused and the victims in any case of atrocities against dalits. Instead of conducting an honest inquiry into the complaint made by the dalits, the police officers usually resort to the method of taking a counter complaint from the upper caste groups, however unreasonable such a complaint may sound, and then proceed to effect a compromise between the two. This is one of the chief causes for failure to prove the cases of atrocities against dalits. It is necessary to declare such 'compromise attempts' an offence under Section 4.

7. In recent times, many people have expressed doubts about the scope of the Act, namely whether the act is applicable to offences against dalit Christians; whether it can be applied when there are some dalits in the group which attacks dalits, etc. The district collector of Kurnool, the Supdt of Police of Rangareddy district, and the Special Judge for atrocities cases, Kurnool have expressed such doubts in recent times.

When such doubts arise, the Social Welfare department gives an explanation and the problem is resolved for the time being. But that is only for the time being. Moreover the doubts expressed by the Special Judge of Kurnool cannot be answered in such a manner. They should be answered either by the Higher Courts or the Parliament. As the present government is a part of the ruling coalition at the Centre, we hope that the Commission suggests to the government to try for an amendment to the law to set the doubts at rest. It should be made clear that since dalit christians are treated no differently than ordinary dalits by caste Hindus, the Act applies equally to offences against them. And that even if the attacking group consists of some dalits too, the Act would apply as far as the non-dalits among them are concerned.

8. Regarding the implementation of the reservations, the government should not stop with merely expressing unhappiness about their non-implementation. Strong measures should be taken. The problem of backlog is huge in the educational institutions because the upper castes have a stronghold on them.

If an aided educational institution does not implement reservations, the government should, after an initial notice, cancel the aid to the institution. In the case of government institutions, departmental action should be taken on the concerned officials. It should be made a part of the service rules that not enforcing the rule of reservations amounts to punishable misconduct.

Utmost importance should be given to filling backlog posts in all departments, and required exemptions should be given for eligibility conditions.

Conclusion

The above suggestions are directed towards using the force of law to prevent discrimination against dalits and atrocities upon dalits . Though they are very important, there are more important things to be done: one is to promote the social culture that is against casteism and caste arrogance, and to encourage those who overcome these diseases. Apart from giving certain remuneration for those who marry outside their caste, the government, at present is not doing anything else towards the above ends. Though we do not say that the entire, or primary, social responsibility in the matter should be borne by the government, in view of the enormous hold that the government has on the educational institutions and the media, it should take considerable responsibility for such a task. But the government has done little in this direction.

The following are some of the measures that could empower dalits in our society:

1. The implementation of land reforms in our State has been very unsatisfactory. Whatever lands have been identified as surplus lands should be immediately distributed. Distributed lands which have been reoccupied or recaptured by the landlords should be returned to the legitimate owners.

Though these are necessary measures, they are not sufficient. A new land reform law should be formulated. The ceiling law should be amended and the ceiling reduced taking into consideration non-agricultural income along with agricultural income. Such a law should be without loopholes and should be implemented properly.

The current thinking that the government land should be sold off or should be given on lease to the big multinational corporations, instead of being distributed to the dalits and the rural poor should be stopped. All government lands should be used for the benefit of the poor and the dalits only.

2. At present the State is not taking the responsibility of implementing the minimum wages. The poor labourers have to struggle for their implementation. At many places even this is not possible. The government should take responsibility for its implementation. Instead of the arbitrary revision of minimum wages once in a while, a provision of Variable Dearness Allowance that would automatically revise the minimum wages in accordance with the rise in prices should be made in the schedule of minimum wages.
3. Most of the dalits do not get work for even half the days in a year. So the government should formulate and implement employment and development policies with a view to provide full employment.
4. Education plays as major a role in helping the dalits to face atrocities and discrimination as adequate income, availability of resources and

employment. At present dalit students` educational interests are being eroded by the privatisation of education and the indifference of the government educational institutions. This situation needs immediate rectification. State government should stop thinking in the direction of closing down the welfare hostels and starting ashram schools instead. Such a proposal has been withdrawn in the face of stiff resistance from the student organisations. This proposal should not be renewed. We do not have any objection to the starting of ashram schools, indeed the more ashram schools there are the better, but we strongly oppose any move to close down the welfare hostels.

There is a great need to improve the conditions in the existing welfare hostels. Cleanliness should be maintained and nutritious food should be provided to the boarders.

5. Another important service that is out of reach of dalits is the health system. Next to adivasis, dalits form a major proportion of those who fall prey to the epidemics such as gastro-enteritis. It is essential to improve the quality of services offered by the government health system and to eliminate the corruption and the exploitative attitude of the hospital staff towards the patients. Right now, the government medical services are in a bad shape.
6. Casteism and discrimination against the dalits are very much prevalent in urban areas, especially in the area of housing. In many localities it is impossible for the dalits to find a house, even on rent. In this context, we feel it is essential to make a provision in the Urban housing act that 15% of the houses in any housing colony, or locality should be reserved for dalits. Such a provision is in practice in States like Madhya Pradesh.

7. Public sector employment has till now provided a secure source of employment for dalits and has significantly contributed to their empowerment. In the context of increasing privatisation and shrinking employment opportunities in the public sector, it is essential that provisions for reserving jobs for dalits in the private sector should be made.

8. Though reservation in the gram panchayats has enabled many dalit women and men to enter the political institutions at the local level, which have been hitherto denied to them, it is widely reported that they are being overridden by the upper caste members of the panchayats at the village level. This situation needs immediate rectification. The government should take up the responsibility of training these newly elected members in the administration of the village.

26/1/2000

Hyderabad

Human Rights Forum.