Lifting the Blindfold: Investigating Urban Dalit Women’s Access to Justice in India

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'The human meaning of caste for those who live it, is power and vulnerability, privilege and oppression, honour and degradation, plenty and want, reward and deprivation, security and anxiety' (Berreman 1971, 88).

A Note:

This entire project is premised on a process of learning and un-learning. One of the most important things I learned, was that I could not separate myself and my identity from the work that I was conducting; I could not simultaneously criticize the way that caste was rendered invisible in the urban milieu, while failing to acknowledge my own position within that system. Similarly, I had to unlearn the ways in which caste and my Canadian identity framed how I viewed sexuality, violence, and justice. Unsurprisingly, this is still a work in progress, and I acknowledge that I will not have done everything right. I hope however, that this piece will still be valuable in its attempt to bring attention to gaps in how urban Dalit women's experiences are understood.

Terminology:

The dominant sociological approach to caste views it exclusively as a form of ritually justified social stratification. This perspective is deeply informed by ancient Brahmanical texts, which divide Hindu society into four *varnas*: Brahmins, Kshatriyas, Vaishyas and Shudras. Importantly, these groups are ritually ordered from most pure to least pure, and those who fall outside of these four varnas are seen as impure, or polluting. Protecting the 'purity' of those at the top from any 'polluting' effects provides the basis of the caste system. However, two means through which 'purity' is maintained, are the assignment of menial and dirty tasks to those at the bottom of the hierarchy, and the strict regulation of marriage (specifically through the regulation

of women's bodies and sexuality) (Chakravarti 2018). Thus, it is impossible to divorce caste from both class and gender hierarchies, requiring that the traditional approach to caste be discarded in favour of one that acknowledges it as a material reality.

This alternate framing of caste is partially why I will be using the term 'dalit' (meaning 'broken' or 'downtrodden') to refer to those who fall outside the varna caste system. There are other terms that are also used, such as 'untouchable', 'pariah', 'harijan' or more recently, 'scheduled castes' or 'scheduled tribes.' Each of these other labels were rejected either because of their connotation, or their inability to capture the nuanced, but particular, social reality of outcaste groups. For example, the term 'untouchable,' apart from evoking painful memories for those who have been subject to practices of untouchability, only describes one facet of the experiences of outcaste groups in India. A focus on explicit practices of untouchability renders invisible the more subtle ways in which caste and embedded notions of purity operate materially (i.e. the ways in which they limit socio-economic mobility, or access to various opportunities). The term 'pariah' is rejected for its similar cruelty, along with the fact that it is primarily a colonial-era word, making it less useful within the contemporary context. Likewise, the term Harijan, translating to 'children of God' is dismissed because of its association with Gandhi's attempts to include outcaste groups into the folds of Hinduism, as part of his political effort to create a Greater Hindu Nation (Roberts 2016, 135). Apart from being associated with this political project, the term also spiritualizes caste, designating it as a 'Hindu problem' and as such, obfuscates the ways in which caste operates to consolidate economic and political power in the hands of those who are at the apex of the system (Viswanath 2014). Then we arrive at the terms scheduled caste or scheduled tribe: these are most often used in official government

documents, and refer to those outcaste groups that have received official recognition. As such, the terms are limiting because they fail to acknowledge those peoples who have been similarly socially disadvantaged, but do not fall under the state's list of recognized scheduled castes or tribes. One might also have noticed that in this discussion, I have used the term 'outcaste' as opposed to Dalit; I am opting to use Dalit for the remainder of the paper becuase 'outcaste' simply denotes the structural position of this group of people (i.e. that they fall outside of the varna caste system), whereas Dalit is preferred because of the way its meaning captures the *material implications* of being part of an outcaste group.

Framing Caste:

Though the term Dalit may emerge as the most appropriate, the above discussion does not address the more fundamental argument that the very usage of a single term to describe such a large and diverse group, is inappropriate. This is merit to this argument: the practices, religions and occupations of different outcaste groups vary greatly, thus affecting the ways in which they interact with the 'caste' community. As Viswanath argues, however, despite this diversity, everyone within this group shares a common essential characteristic: they are structurally positioned as morally inferior outsiders (2014, 20-21). Thus, the term Dalit is necessary to acknowledge both this positioning itself and the ways in which it is the product of a particular and 'complex configuration of political-economic and cultural forces'(ibid, 22). Given the argument for this common structural positioning, it might seem paradoxical that this paper chooses to focus on the experiences of urban Dalit women in particular. There are perhaps two embedded questions: why urban centres, and why women?

"Why Urban Centres?"

Much of the existing literature on Dalit communities' access to legal remedies tends to focus on the most terrible, distinct, and salient forms of violence and discrimination experienced, notably: atrocities[1], untouchability practices, or forced participation in degrading forms of labour. There are three points to note here: first, that these forms of discrimination are all outlawed — either in the Constitution of India, or through legislation like the Scheduled Caste/Scheduled Tribe Prevention of Atrocities Act (1989), the Bonded Labour (Abolition) Act (1976), or The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 — thus establishing a legal basis for the protection and advocacy of Dalit rights. Second, that these forms of discrimination are more prevalent in rural parts of India, and third, that Dalits living in rural India constitute over 75% of the overall Dalit population (IDSN 2013). This combination of factors provide sufficient evidence for the focus on rural Dalit experiences; however, the near exclusivity of this focus leads to a massive gap in understanding whether caste is a relevant concept in urban life.

This gap becomes particularly problematic given the increasing population of urban Dalit communities; for example, according to the Indian Census, the reported number of people from Scheduled Castes living in urban centres increased by over forty percent between 2001 and 2011 (IDSN 2013). Though there are undoubtedly other factors at play, much of this increase is attributed to migration (ibid). According to some urban geographers and sociologists, this movement is thought to be motivated partially by the pull of economic opportunities, as well as a desire to escape the intensely discriminatory social structures in rural districts (Bishnu and Lovett 2016, 135). It then becomes important to understand whether, and in what ways, the

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[1] Atrocity is "an expression commonly used to refer to crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) in India" and "denotes the quality of being shockingly cruel and inhumane (SC/ST Prevention of Atrocities Act 1989)

experiences of Dalits living in urban centres are still ordered by these structures. It is true that caste is less easily perceived in cities; because of their size and diversity, cities are not governed by the same strict rules that define the relationships between different *jatis* (endogamous groups within the caste system) in villages. However, despite the blurred boundaries between different jatis, the distinction between Dalits and non-Dalits remains stark, suggesting that caste is still involved in organizing urban life.

For example, the great overlap in cities between those who are poor and those who are Dalit cannot be explained away as mere coincidence. The caste system, as briefly outlined in the 'Terminology' section, determines labour relations by delegating the most menial and 'polluting' tasks to those who belong to lower castes, thereby *linking their ritual position with their role in the socio-economic and political order*. Since these occupations are assigned at birth, fixed throughout one's life, and passed on to ones' progeny, there is very limited potential for economic mobility; because of these intergenerational effects, even migration to cities does not radically increase available economic opportunities.[2] There are people, like those in the manual scavenging community[3], who are still subject to the same degrading forms of labour as those in villages, and even amongst those who have been able to leave their traditional occupations, limited access to education, capital, and social connections, restricts their ability to move up the socio-economic ladder. This poverty, compounded by discrimination in housing, ensures that most Dalit migrants congregate in urban slums, and are subject to the same sorts of infrastructural deficiencies as those in villages (Irudayam, Mangubhai, and Lee 2014, 80).

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[2] For a fuller discussion of the caste-class nexus, see: Chakravarti (2018) and Viswanath (2014).
[3] Manual scavenging is the cleaning, carrying and disposing of human excreta from dry latrines or sewers.

I do not wish to suggest that class and caste are collapsible concepts; there are many people from upper castes who are poor, and a growing number of urban middle class Dalits. However, I do want to stress that people are not 'simply poor' or 'simply rich'; caste not only continues to play a large hand in creating these categories, but also fundamentally changes the way in which these economic realities are expereinced. However, further research still needs to be done to understand the particular and multi-faceted ways in which class and caste interact in urban settings.

Why Women?

Thus far, the framework has only focused on two factors: caste, and class. There are two interrelated reasons however, as to why the focus of this paper is on Dalit women in particular. One, Dalit women are disproportionately subject to caste-based forms of violence and discrimination, as compared to Dalit men; two, despite the frequently public forms of violence and discrimination that Dalit women experience, existing research on rural cases demonstrates that very few result in legal remedies, and fewer still that are commensurate with the harm suffered, and sensitive to the needs of survivors (Irudayam, Mangubhai, and Lee 2014). Given the contention that caste is strictly a rural phenomenon, it becomes incredibly important to investigate whether these patterns manifest themselves in urban centres in India as well.

To understand why Dalit women are more likely to experience violence than their male counterparts, one must first understand the role that gender plays in the perpetuation of the caste system. As previously established, the caste system is constituted by *distinct groups,* where membership is determined at birth, fixed for life, and *passed down* to one's progeny. The only way to ensure both that there are clear boundaries between different groups, and that these

distinct groups are reproduced, is through endogamy[4]. Endogamy, at least in the Brahmanical context, is predominantly achieved through the control of women's bodies and sexuality. The complex system that ensures this ordering is what recent feminist scholarship refers to as 'brahmanical patriarchy.' (Chakravarti 2018). Though a comprehensive discussion of this system is outside the scope of this paper[5], for the purposes of our discussion, it is important to understand that the brahmanical patriarchy sets up different codes of behaviour for different caste groups, with the "most stringent control over sexuality reserved as a privilege for the hightest castes" (Chakravarti 2018, 33). This control over high caste women's sexuality results from beliefs about their inherent purity, and the potential of that purity to be diluted through marriage with those from lower castes (Chakravarti 2018, 80). By contrast, Dalit women's sexuality is not controlled, resulting in assumptions about their sexual availability, creating conditions for harassment and violence perpetuated on that basis. Violence against Dalit women is also used as a means to punish the entire caste group for perceived transgressions of caste boundaries or practices, and to deter future resistance or noncompliance.

Limitations:

Before moving to the primary data that has informed my conclusions, I would like to acknowledge several limitations of this paper: my research took place over twelve weeks over two summers. The first summer, I was able to travel to New Delhi to conduct field work. Given the dearth of available research both on urban Dalit women, and specifically, their quest for justice, this trip was immeasurably helpful. Though I was eventually able to build an informal network, it took me a long time to find the right people to talk to, since most New Delhi based

[4] The practice of exclusively marrying within a particular social group.

[5] Refer to Chakravarti (2013) or Chakravarti (2018) for a more detailed discussion.

NGOs focused on the experiences of *rural* Dalit women, if they focused on Dalit women's experiences at all. This summer, the pandemic prevented further fieldwork, and though I am infinitely grateful for the virtual interviews I was able to conduct — especially since I was no longer bound to a particular geographical region — I understand that their nature entails the loss of some valuable context. Furthermore, given either the valuable COVID-relief work many of my interviewees were engaged in, or the ways in which COVID-19 affected their schedules, there were fewer opportunities for follow-ups within the research period. As such, though there are some discernible patterns, this paper is largely concerned with the project of identifying gaps in our understanding, and suggesting directions for future work.

Patterns of Violence

As expected, the nature of discrimination and violence in urban centres differs discernibly from rural India in some respects, but nonetheless serves to fill the same structural function. For example, though there are fewer atrocities, or public instances of rape and abuse, urban Dalit women still experience verbal abuse and harassment, often guided by the same attempt to disparage the entire community to which Dalit women belong. Unlike their rural counterparts however, the public spaces where many urban Dalit women experience this kind of violence happen to be online. Though there is not yet an established repository of research on how Dalit women experience online violence, there are some indications that they experience it in a way that is distinct from other upper caste women. As Munusamy (2018) illustrates, when Dalit women are sexualized or 'slut-shamed' online, the perpetrator uses language that specifically alludes to the hereditary nature of this label, or the ways in which it flows from her identity as an outcaste woman. Furthermore, this sort of harassment is often a response to Dalit

women's assertion of rights, or transgression of caste norms. In this way, online violence is structurally similar to other forms of gendered violence that rural Dalit women face: it arises from an instance where there is a blurring of, or contention surrounding caste-boundaries, and involves a response that publicly denigrates a woman in a manner that is sexualized and caste-informed, in an attempt to undermine her and the community to which she belongs. In publicly humiliating and undermining her, the perpetrator attempts to maintain the power relations that underpin the caste system.

Other forms of discrimination centre around Dalit women's work: many Dalit women's work as household help leaves them vulnerable to abuse and exploitation; others work in unsafe and unsanitary conditions, and even those who work in the corporate sector, the education sector, or the legal profession report being ostracized by their colleagues, passed up for promotions, and discriminated against on other counts. Though many cases of violence against Dalit women are perpetuated by upper caste men (and to a lesser extent, women), they also experience violence at the hands of Dalit men, often in the form of domestic violence. There are a number of potential factors that exacerbate the likelihood of domestic violence in these situations: early marriage (a consequence of family's limited economic resources), Dalit men's drinking habits, (often attributed to the many hours of gruelling labour they are subject to), along with limited opportunities available to Dalit women in terms of financial independence (Roberts 2016).

Dalit women navigate these situations by drawing on local support networks, and public and private modes of resistance; the remainder of this paper will investigate whether legal redress is another option that is available to urban Dalit women.

Accessing the Justice System

When asked to walk me through the process of filing a case, Dalit women lawyers and activists highlighted several obstacles: for one, they indicated that they were often met with resistance when they reported a crime to police officers. Police officers often failed to file a First Information Report (FIR),[6] a necessary step in beginning to investigate a cognisable offence. Even if they filed the FIR, they delayed carrying out their investigations, and often needed to be pressured by NGO workers or activists to take the complaint seriously; these delays had potential ramifications with respect to the ease with which evidence was found, or the quality of the evidence collected. There were then issues with filing the chargesheet[7], where, rather than filing under the more stringest SC/ST Prevention of Atrocities Act (1989) (SC/ST PoA Act), charges were filed under the corresponding sections of the Indian Penal Code (IPC). Oftentimes, NGO workers, human rights defenders or attorneys questioned police officers as to why they opted for a more lenient approach. In response, some police officers would amend the chargesheet, and opt to file under the more stringent act. In instances where the case was in fact filed under the SC/ST PoA act, survivors were allowed to hire an attorney to represent them alongside the public prosecutor.

Many of the attorneys hired ended up being from the Dalit community, it is not entirely clear as to why this was the case. There are a few potential reasons: one, attorneys from the Dalit community are be better able to speak to their experiences, and are thus motivated to take on these cases out of a sense of solidarity. Another is that there are a large number of

[6] Police officers must file an FIR upon receiving a complaint pertaining to a cognisable (serious) offence. This enables them to start an investigation without the permission of a court.
[7] A document specifying the nature of the charges being filed against an individual.

obstacles/difficulties, and limited monetary benefits associated with these cases, thereby reducing the likelihood of lawyers from other castes/communities taking on this work. A third reason is that because of the discrimination that Dalit lawyers face in the workplace, they are assigned these cases because these cases themselves are deemed to be of a 'lower status.'

This last point, though problematic in some senses, is particularly note worthy, because as one of my interviewees noted, it links the discrimination that Dalit lawyers face with the ability of Dalit women survivors to access justice. If Dalit lawyers are only assigned cases that are deemed to be of 'low status,' and if these cases are not also taken up by lawyers from other castes/groups, then it means that Dalit lawyers are not able to receive training by, or exposure to the strategies of, more experienced lawyers. This training is instrumental in increasing the likelihood of successfully arguing a case; without it, there is another layer of structural barriers to justice for Dalit women seeking legal remedy.[8]

Furthermore, if Dalit lawyers are unable to work under senior counsel, this precludes them from the opportunity to eventually become judges; in fact, India currently only has one Dalit judge in the Supreme Court, and in 2011, out of the 850 High Court judges, only 24 belonged to a Scheduled Caste/Scheduled Tribe[9] (National Commission for Scheduled Castes 2013, 7). It is unknown how many, if any, of these judges are women. The limited diversity at different levels of the judiciary affects the ways in which laws are interpreted, which in turn affects conviction rates, and sentencing structures.

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[8] Even in instances where these cases are taken on by more experienced advocates on a pro-bono basis, these lawyers often work as defence attorneys, and thus have not been trained in the specific skills required in prosecutorial work.

[9] As mentioned earlier, Scheduled Caste and Scheduled Tribe are terms used in official government documents, and though not wholly inclusive of Dalit population, do represent a fairly large percentage of them.

This pattern — barring the discussion on Dalit lawyers — follows the same description of obstacles described in *Dalit Women Speak Out!* (Irudayam, Mangubhai, and Lee 2014) and other NGO reports, such as *A call for justice. A time for change* (Sisters for Change 2018), which focus predominantly on the experiences of rural Dalit women. This suggests that, even though urban Dalit women may experience different forms of discrimination, they are faced with similar structural barriers when accessing legal remedies, as rural Dalit women. Unfortunately, limited access to relevant legal documents means that much of this data is anecdotal; however, given the additional backing of the theoretical framework established at the beginning of the paper, there is enough evidence to suggest that conducting more in-depth empirical research in this area might be a worthwhile pursuit.

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