

LAND TO THE DALITS

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ABSTRACT

The ownership of agricultural land determines the social status of a person or a community in a rural agrarian society. The high incidence of landlessness amongst Dalits is a consequence of historic injustice. This article is a comparative constitutional law study. It argues for the insertion of an enabling constitutional provision under Part III (Fundamental rights) of the Constitution of India for the redistribution of land to Dalits along the lines of a similar provision that exists in the Constitution of Nepal (2015).

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I. INTRODUCTION

Being 'landless', particularly in rural areas, means being below the bottom rung of the socio-economic ladder, bereft of any social status and political influence.¹ An analysis of the 70th Round of the Land and Livestock Holdings Survey by the National Sample Survey Office ("N^{SSO}") conducted in 2013 shows that about 58.4 per cent of rural Dalit² (the term used in the Constitution of India is 'Scheduled caste'; however, the term Dalit is now being used by the community itself as an expression of their identity. This paper uses the term Dalit because it is the term that has been used in the Constitution of Nepal) households are landless, much higher than those in any other social group. The incidence of landlessness among Dalits is more severe than overall landlessness. In Haryana, for instance, the proportion of landlessness among Dalits is more than double the overall landlessness in the state. Gujarat is next in line, with landlessness among Dalits being 1.7 times the total landlessness across all social groups.³

Comparing the ownership of non-homestead land in rural areas with the percentage, it is found that Dalits constitute 20 per cent of the population but own only 9 per cent of the non-homestead land, whereas the so-called upper castes constitute 23 per cent of the population and own 32 per cent of the land. As far as Other Backward Classes (OBCs) are concerned, they own a whopping 45 per cent of the land; it seems almost

¹ GRANVILLE AUSTIN, *WORKING A DEMOCRATIC CONSTITUTION* 119 (1st ed. Oxford University Press 1999) (*hereinafter* "GRANVILLE").

² Ishan Anand, *Dalit Emancipation and the Land Question*, 51(47) EPW 12-14, (Nov. 25 2016), https://www.epw.in/journal/2016/47/commentary/dalit-emancipation-and-land-question.html?0=ip_login_no_cache%3Df0cd731a70caf6b6785933af8aa936b8.

³ *Id.*

compatible with their population share though which is 44 per cent.⁴ As per the Agriculture Census (2015-16), 36.7 per cent of Dalits own less than 1 hectare of land.⁵ Due to such a high incidence of landlessness, most Dalits work as agricultural labourers on the land owned by the dominant castes.

Post-independence, certain land ownership reform laws were enacted by many states including Bihar, Uttar Pradesh, Madhya Pradesh, Rajasthan, Andhra Pradesh, West Bengal, Kerala, Orissa Punjab, Maharashtra, Gujarat, Assam and Tamil Nadu. Some of the principles underlying the legal reforms were the abolition of tax intermediaries, the end of the *zamindar*'s extortionate relationship with the tenant, security of tenure to the tenant, reduction in the size of large landholdings (through land ceilings) and the redistribution of the excess lands to tenants and the landless.⁶ However, the caste factor was not properly deliberated upon during the law-making process, even though most of the landless people were Dalits and Adivasis, and the cause of their land deprivation was the direct outcome of the social hierarchy created by the caste system. The result was that, despite the allotment of land, the Dalits were not allowed to take possession of the land by the dominant castes.⁷

⁴ NATIONAL STATISTICAL SURVEY, HOUSEHOLD OWNERSHIP AND OPERATIONAL HOLDINGS IN INDIA, 70th Round January-December, Ministry of Statistics and Programme Implementation, Government of India (2013).

⁵ DEPARTMENT OF AGRICULTURE, COOPERATION & FARMERS WELFARE, ALL INDIA REPORT ON NUMBER AND AREA OF OPERATIONAL HOLDINGS, Ministry of Agriculture & Farmers Welfare, Government of India (2019).

⁶ GRANVILLE, *supra* note 1.

⁷ Nihar Gokhale, *Across India, Dalits are still fighting to claim lands promised to them*, SCROLL, (Dec. 27 2021), <https://amp.scroll.in/article/926264/across-india-Dalits-are-still-fighting-to-claim-lands-promised-to-them>.

Moreover, even after *Zamindari* was abolished on paper, the possession of lands was retained and ceilings were evaded by the former Zamindar by declaring the land to be reserved for personal cultivation⁸ (because limits on land holdings were not provided in the land reform laws of many states), or by *benami* transactions. The laws were so inapt in many cases that they divested the former Zamindar “*only of his uneconomic fragments*”.⁹ Consequently, a few fortunate ‘landless’ (agricultural labourers as well as sharecroppers) got only tiny plots of land.¹⁰

It is important to point out here that “*more than 75 lac hectares of excess land is available for redistribution, with a ceiling limit of eight hectares. Of the excess land, 94 per cent belongs to the caste Hindus (OBC–General category). Dalit households have no excess land in any state other than Rajasthan.*”¹¹ This is when the calculation of the excess land seems to be an underestimation.¹²

II. REASONS FOR THE LANDLESSNESS AMONGST DALITS

The caste system leads to the creation of a hierarchy headed by a dominant landholding caste on which the people of other castes become dependent.¹³

The obstacles to the Dalit ownership of land have been multi-faceted. Historically, in some cases, the impediments have even been in the

⁸ INDIA CONST. art. 31A, cl. 1(b).

⁹ *Granville, supra* note 1, at 120-121.

¹⁰ *Id.* at 121.

¹¹ Ishan Anand, *Dalit Emancipation and the Land Question*, 51(47) EPW 12-14 (Nov. 25 2016) https://www.epw.in/journal/2016/47/commentary/dalit-emancipation-and-land-question.html?0=ip_login_no_cache%3Df0cd731a70caf6b6785933af8aa936b8.

¹² *Id.*

¹³ Awanish Kumar, *B R Ambedkar on Caste and Land Relations in India*, 10(1) RAS (2020), <http://ras.org.in/9537f8b9e25675f8de579ef0e1db6beb>.

form of legislative acts such as the Punjab Alienation of Land Act (1900) under which only the castes that were classified as “agricultural tribes” could buy agricultural land¹⁴. Dr. B.R. Ambedkar said:¹⁵

*“In an agricultural country, agriculture can be the main source of living. But this source of earning a living is generally not open to the Untouchables.”*¹⁶

Ambedkar then mentions reasons for the same, the first being that the purchase of land is beyond their means. And the second being that even if a Dalit had the money to purchase land he still could not because in most parts of the country the caste Hindus would resent a Dalit coming forward to purchase land, trying to become the equal of the class of Hindus, and such an act of daring on the part of a Dalit would not only be frowned upon but might easily invite punishment. Thirdly, in some provinces like Punjab, Dalits were disabled by law from purchasing land. For instance, in Punjab, the Land Alienation Act specified which communities could purchase land, and the Dalits were excluded from the list. The result was, for the most part, that the Dalits were forced to be landless labourers. As labourers, they could not demand reasonable wages. They had to work for the upper caste Hindu farmer for such wages as their masters chose to give.¹⁷

¹⁴ *Id.*

¹⁵ B.R. AMBEDKAR, DR. BABASAHEB AMBEDKAR, WRITINGS AND SPEECHES 23 (Secretary Education Department, Government of Maharashtra, 1st ed. Vol. 5. 1979).

¹⁶ Here Dr. Ambedkar is using the word ‘Untouchables’ for Dalits.

¹⁷ B.R. AMBEDKAR, DR. BABASAHEB AMBEDKAR, WRITINGS AND SPEECHES 23 (Secretary Education Department, Government of Maharashtra, 1st ed. Vol. 5. 1979).

III. CONSTITUTION OF NEPAL

The Constitution of Nepal (2015) is secular and federal, much like the Indian Constitution. The majority of the population of Nepal is Hindu. The feudal Hindu caste system is well entrenched in Nepalese society, as it is in Indian society.¹⁸ In Nepal, “*those who view Dalits on the basis of caste consider them to be part of the Hindu caste system and at the bottom-most rank in the caste hierarchy.*” They treat the caste hierarchy to be the cause of their economic, social, educational, and political backwardness.¹⁹ The untouchable status of Dalits even in Nepal is largely considered to have arisen from the Hindu ideology of the *varna* system.²⁰ Dalits have been systematically deprived of several social and economic opportunities due to the practice of untouchability.

In Nepal, the ownership of both irrigable and dry land is highest among the caste Hindus and the lowest amongst the Dalits.²¹

The Constitution of Nepal (2015) has a provision specifically dedicated to the rights of the Dalits, including the right to the land of the landless Dalit, under the Fundamental Rights chapter. Article 40 of Part-3 (Fundamental rights and duties) states:

“40. Rights of Dalit: (1) The Dalit shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. Special provision shall be made by law for the empowerment, representation and

¹⁸ UNITED NATIONS DEVELOPMENT PROGRAMME, REPORT: THE DALITS OF NEPAL AND A NEW CONSTITUTION (2008) (*hereinafter* “UNDP”).

¹⁹ AMAR BAHADUR BK, THE STIGMA OF THE NAME MAKING AND REMAKING OF DALIT IDENTITY IN NEPAL 18 (1st edn, Himal Books 2013).

²⁰ *Id.* at 7.

²¹ UNDP, *supra* note 18.

participation of the Dalit community in public services as well as other sectors of employment.

(2) Provision of free education with scholarship, from primary to higher education, shall be made by law for the Dalit students. Special provision shall be made by law for the Dalit in technical and vocational education.

(3) Special provision shall be made by law in order to provide health and social security to the Dalit community.

(4) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill and technology. The State shall accord priority to the Dalit community in modern business related with their traditional occupation and provide skills and resources required therefore.

(5) The State shall once provide land to the landless Dalit in accordance with law.

(6) The State shall, in accordance with law, arrange settlement for the Dalit who do not have housing.

(7) The facilities conferred by this Article to the Dalit community must be distributed in a just manner so that the Dalit women, men and Dalit in all communities can obtain such facilities proportionately.’²²

²² NEPAL CONST. art. 40.

Thus, Article 40(5) makes it obligatory for the State to provide land at least once to the landless Dalit. Further, since Article 40 has been put under Part 3 which is subject to Article 46²³ (which provides for constitutional remedies for enforcement of the rights provided under the said Part), it gives Dalit's right to land a very high pedestal. Even though the Nepalese Constitution makes the right to property a fundamental right, an exception has been carved by virtue of its clause (4) in favour of land reforms.²⁴

A possible reason for the Nepalese Constitution makers to give so much importance to the redistribution of land to Dalits was to curb social unrest and the Maoist insurgency, which was further exacerbating political unrest.²⁵ The failure of the past land reforms in redistributing land is reckoned by some scholars to be one of the reasons for the stronger support from Dalits and landless people for the Maoists.²⁶ A study in the western part of Nepal also found that Dalits were though land-poor, but they were more productive farmers compared to non-Dalits.²⁷ To put it simply, "*land redistribution in Nepal is linked with several important issues such as equity in distribution, efficiency of production, and minimizing the possibility of political and social unrest*".²⁸

²³ NEPAL CONST. art 46.

²⁴ NEPAL CONST. art.25.

²⁵ JEETENDRA P. ARYAL & STEIN T. HOLDEN, *CASTE DISCRIMINATION, LAND REFORMS AND LAND MARKET PERFORMANCE IN NEPAL* (Palgrave Macmillan, London. 2013) ("CASTE DISCRIMINATION").

²⁶ *Id.*

²⁷ JEETENDRA P. ARYAL AND STEIN T. HOLDEN, *Caste, Land and Labor Market Imperfections, and Land Productivity in Rural Nepal*, Working Paper No. 06/11 CLTS, (2011), http://www.umb.no/statisk/clts/papers/CLTS_WP6_2011.pdf.

²⁸ CASTE DISCRIMINATION, *supra* note 25.

IV. INDIAN CONSTITUTION

Land reforms are considered one of the principal instruments for the creation of an egalitarian rural society. This is in tune with the socialistic spirit of the Constitution of India, as reflected by the Preamble, the Directive Principles of State Policy and the Ninth Schedule.²⁹

Article 39 of the Indian Constitution is headed as follows: “*Certain principles of policy to be followed by the State.*” Clause (b) of the same article says, “*That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.*” It is a general provision that deals with the entire population and is not specific to the historically oppressed social groups that have a higher incidence of landlessness. A provision that specifically deals with Dalits is Article 46.³⁰

Both articles, Article 39 and Article 46, have been placed under the Part IV of the Constitution which has been titled as follows: “**Directive Principles of State Policy.**” These are guidelines for the State, and are, thus, unenforceable.³¹ It is right to say that these are neither constitutional rights, nor do they legally oblige the State to make a law to implement them.

The article that enables the State to make land reform laws is Article 31A.³² The said article begins with an overriding clause in respect of Article 13 (judicial review vis-à-vis the fundamental rights). Land is a state subject. The exact language that has been used in **List II of the Seventh Schedule** is “*Land, that is to say, right in or over land, land tenures including the relation of*

²⁹ B.B.Mohanty, *Land Distribution among Scheduled Castes and Tribes* 36(40) EPW 3857-3868 (2001).

³⁰ INDIA CONST., art. 46.

³¹ *Minerva Mills Ltd. v. Union Of India*, 1980 AIR 1789 (India).

³² INDIA CONST., art. 31A.

landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.” The first proviso to clause (1) of Article 31A makes it pretty much clear that the assent of the President (actually, ‘Central government’ because the President cannot act without the aid and advice of the council of ministers, as per Article 74³³) is required in case such law is made by any of the states for such law to receive the protection of Article 31A.

V. IMPORTANCE OF CONSTITUTIONAL PROTECTION

Dalits have been given reservation, a form of affirmative action, in higher public education and public employment under laws made in pursuance of Article 15(4)³⁴ and Article 16(4)³⁵, respectively. But these have been beneficial more for the urban Dalits than their rural counterparts because, in a rural society, which is largely agrarian, the main source of earning is land, a resource that was not open to purchase to Dalits for centuries, and the obstacles to Dalits owning land were beyond economic in nature.³⁶ It is pertinent to note here that most agricultural land still is hereditary in nature in Indian society; thus, if the ancestors of Dalits did not have any land, how could their successors be expected to own any?

Dr. B.R. Ambedkar was of the view that the economic dependence of Dalits on the upper caste Hindus made it difficult for Dalits to defend themselves or take legal action against them in case of criminal acts

³³ INDIA CONST., art. 74.

³⁴ INDIA CONST., art. 15(4).

³⁵ INDIA CONST., art. 16(4).

³⁶ Awanish Kumar, *B R Ambedkar on Caste and Land Relations in India*, 10(1) RAS (2020), <http://ras.org.in/9537f8b9e25675f8de579ef0e1db6beb>.

perpetrated against them by the caste Hindus.³⁷ This holds true for rural India all the more. This has been, recently, pointed out by the Delhi High Court's³⁸ judgment in the *Mirchpur* case as well. Mirchpur is a village in the Hissar District of Haryana. A minor altercation had broken out between boys of two communities, and as a punishment, the milk supply to Balmiki (a Dalit community) families was cut off by the dominant caste. The milkman, on whom the Balmiki were dependent for the supply of milk, was beaten up by the Balimikis. In retaliation, on 21st April 2010, a mob of the dominant caste torched the houses of people belonging to the Balmiki community causing an old man and his specially-able daughter to be burnt to death. Many Dalits suffered injuries and loss of residential property. Besides, over two-hundred Balmiki families had to flee in the aftermath due to the fear of violence. During the trial, some witnesses to the violence belonging to the Balmiki community were not deposed by the prosecution and the trial took this as an adverse fact against the case of the prosecution. The High court of Delhi acknowledged the fact that the members of the Balmiki community earned their livelihood working as daily wage labourers in the fields of the *Jat* community (dominant caste). Acknowledging the dependence of the Dalits upon the dominant caste for survival, the court said:

*“The trial Court should have been alert whilst perusing this kind of evidence, particularly after it had noticed that many Balmiki witnesses had been won over by the dominant Jat community even before the trial began. **It is clear that the Balmikis who stayed back in Mirchpur had to buy***

³⁷ *Id.*

³⁸ *Kulwinder v. State (NCT Of Delhi)*, 252 (2018) DLT (India).

peace. There is no way that they could have gone back to their homes and continued to live in the village as if nothing had happened after deposing against the Jats in the Court. The trial Court noticed that many of them were accompanied by the accused when they came to the Court to depose...”³⁹

The experience shows that constitutional protection turns the discourse in favour of affirmative action and gives citizens a legal justification for pressurising the government to not only make laws, but also implement them strictly. The same is likely to happen in respect of the land reform laws made in favour of Dalits if a constitutional provision in this regard is put in the fundamental rights chapter (Part III) of the Indian Constitution.

Constitutional protection also makes the laws made in pursuit of the constitutional provision less open to judicial discretion when their validity is challenged in the courts of law. For instance, the U.S. Constitution does not expressly legitimize affirmative action or “benign preferences.” The constitutional validity of affirmative action relies upon an implied justification for such benign classifications under the Equal Protection Clause.⁴⁰ And this has resulted in every affirmative action policy and law being challenged in court, and has made the validity of each affirmative action policy or law dependent upon judicial discretion.

³⁹ *Id.*

⁴⁰ M. Varn Chandola, *Affirmative Action in India and the United States: the Untouchable and Black Experience*, 3(101) IND. INT'L & COMP. L. REV (1992); *See also* *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954); *Regents of the University of California v. Bakke* 438 U.S. 265 (1978).

VI. CONCLUSION

To be 'landless' in a rural society in India means to be 'powerless' – socially, economically as well as politically. The ownership of agricultural land is the chief factor that determines the socio-economic status of a person or a community in a rural agrarian society. Historically speaking, Dalits were prevented from owning any agricultural land not just by the social hierarchy and untouchability, but also through legislation. Most agricultural land still is hereditary in nature in Indian society; thus, if the ancestors of Dalits did not have any land, how could their successors be expected to own any? As a result, most Dalits are forced to work as labourers on the land of the caste Hindus for survival, and thereby become economically dependent on the caste Hindus. The effect is, Dalits are scared to raise their voice against the injustices and atrocities committed against them dreading a boycott by the caste Hindus.

The Constitution of Nepal (2015) is secular and federal, much like the Indian Constitution. The majority population of Nepal is Hindu. Caste discrimination is as entrenched in Nepalese society as it is in Indian society. The source of caste hierarchy in Nepal is the same as that in India. The Constitution of Nepal puts the Dalits' right to land on a very high pedestal by putting it in the chapter of Fundamental Rights, a chapter under which the rights are justiciable through the right to constitutional remedies. As discussed earlier, "*land redistribution in Nepal is linked with several important issues such as equity in distribution, efficiency of production, and minimizing the possibility of political and social unrest*".⁴¹ Thus, an enabling constitutional provision under

⁴¹ CASTE DISCRIMINATION, *supra* note 25.

the fundamental rights chapter in the Nepalese Constitution was essential to assuage Dalits, pull them away from Maoists and win over their support for the new constitutional civilian government.

On the other hand, the Constitution of India has no provision specifically dealing with the Dalits' right to land. The reason can be that no such urgency to have such a provision in the Indian Constitution existed, as it existed in the context of Nepal where social and political unrest was rampant. There is a general provision which is only an enabling provision. Moreover, this general provision enabling land reform laws that makes 'personal cultivation' an exception has generally been misused by the landlords since many state land reform laws did not provide exactly how much land could be retained under the said exception. The Constitution of India should have a provision similar to article 40(5) of the Constitution of Nepal. The proposed provision may look like this: *The State shall at least once provide land to a landless Scheduled caste person in accordance with law.*

The experience shows that constitutional protection turns the discourse in favour of affirmative action and gives the citizens a legal justification for pressurizing the government to not only make laws, but also implement them strictly. The same is likely to happen in respect of the land reform laws made in favour of Dalits if a constitutional provision in this regard is put in the fundamental rights chapter (Part III) of the Indian Constitution. Besides, the constitutional protection limits the scope of judicial review in respect of the laws made in pursuit of the concerned constitutional enabling provision when their validity is challenged in the court of law.