

# Boycotting Social Boycotts: Towards Emancipation from the Tyranny of Caste Panchayats

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Thomas Jefferson in his speech on American Declaration of Independence, 1776 said, “*We hold these truths to be self-evident, that all men are created equal, that they are endowed by the creator by certain inalienable rights.*”

Social boycotting is the shunning of a person -- a society's collective refusal to engage in the normal social and commercial relations that make life palatable and, in some cases, possible for an individual.<sup>2</sup> It is undoubtedly one of the worst kinds of cruelty meted out which plunges one into a world of isolation, insecurity and impoverishment. Reasons for imposing of the boycotts by the extra judicial bodies such as caste panchayats or community and religious heads pertain primarily to inter-caste marriages, marrying within the same gotra or attempting to transgress social norms like contesting local body elections without the consent of its panchayat,<sup>3</sup> travelling abroad or wearing jeans, not sporting a mangalsutra or bindi.<sup>4</sup> The boycotts continue to be enforced for years altogether extending to successive generations. It strikes at the very basic tendency of human beings to associate with members of their community, live a dignified life. Such alienation has far-reaching emotional, physical and economic consequences which often go unnoticed on account of lack of adequate sensitisation towards the issue. The repercussions of imposing such boycotts can at times be as severe as to drive individuals to take their own life or the life of another.<sup>5</sup> Instances of such

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<sup>2</sup> Wendy McElroy, *Social Boycott*,

WendyMcElroy.com, <http://www.wendymcelroy.com/articles/socialboycott.html/>

<sup>3</sup>Vijay Chavan, *HC Issues IPC Guidelines For Caste Panchayats*, Pune

Mirror., <http://punemirror.indiatimes.com/pune/cover-story//articleshow/31158325.cms>.

<sup>4</sup>Aarefa Johari, *To ban social boycotts, Maharashtra may get a second chance*, scroll.in (Jun 18, 2015 · 05:30 PM).

<sup>5</sup>Shoumojit Banerje, *Second FIR filed under Social Boycott Act*, The Hindu ( July 19, 2017 04:24),

<http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/second-fir-filed-under-social-boycott-act/article19305271.ece>; Anusha Ravi, *An honour killing led to Maharashtra's law criminalising Social Boycott*,

OneIndia (July 14, 2017).

boycotts are not just restricted to mofussil areas but are also prevalent in cities.<sup>6</sup> Social boycotts serve as an effective deterrent to compel people to toe the line or face the wrath of the caste panchayat.

### **The Interlink Between Caste Violence and Social Boycotts**

Dr. Babasaheb Ambedkar advocated the need for anti-boycott law since as noted in his submissions to the Minorities Committee of the Round Table Conference, he identified social boycott as “*the most formidable weapon in the hands of the orthodox classes with which they beat down any attempt on the part of the Depressed Classes to undertake any activity if it happens to be unpalatable to them*”.<sup>7</sup>

Caste violence against the minor and lower communities like Dalit Community has been surging incessantly. It is riveting attention and is vehemently opposed by the whole World. The perpetuation of caste violence and atrocities is intimately connected with social boycott and oppression of lower communities which leads to lack of basic rights including land rights, freedom of expression, access to justice, access to education, water, food, decent work and other services and equal participation in cultural and religious activities like imposing a bar on taking water from a common well or entering a temple or making dalit children sit outside the classroom. Even seemingly minor signs of resistance from these communities have resulted in brutal retaliation and backlash by the feudal lords resulting in mass killings and other crimes.<sup>8</sup> The rise in violence is seen despite having tough legislation like The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities), 1989 and Protection of Civil Liberties Act, 1955 being in place in India prohibiting discrimination against Dalits. They are often not able to even access justice on account of the deeply entrenched discrimination in the orders passed by the Jila Panchayat which are predominantly consisted with High Caste Upper class group.

### **The Despotic Rule of Caste Panchayat**

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<sup>6</sup>Anagha Sawant, *Dadar police station registers first case under new law*, DNA (Sat, 22 Jul 2017-07:50 AM), <http://www.dnaindia.com/mumbai/report-dadar-police-station-registers-first-case-under-new-law-2510155>

<sup>7</sup>Gautam Bhatia, *Law that makes us human*, The Hindu (October 18, 2016 1:42 PM), <http://www.thehindu.com/opinion/lead/Laws-that-make-us-human/article14255339.ece>

<sup>8</sup>National Commission for Scheduled Castes and Scheduled Tribes, *Highlights of the Report of the National Commission for Scheduled Castes and Scheduled Tribes for the Years 1994-95 & 1995-96* (New Delhi: Government of India, 1997), p. 2.

“Jaat Panchayat” or “Caste Panchayat” which exercise tremendous power over their members are not only restricted to the State of Maharashtra but has bounteous presence across the country like in Uttar Pradesh, Haryana, and Rajasthan. Their flagrant and discriminatory orders of ostracizing people from the society are unbridled by any law and still continue to regulate the conduct of the minds of the people even in this age. Other than curtailing Dalit community from using public places and treating them inferior and outside the caste system, inter caste marriages are also strictly prohibited. According to a survey made by Navsarjan, a Gujarat-based Dalit rights organization and the Robert F. Kennedy Center for Justice and Human Rights, inter-caste marriage is forbidden in 98.4 percent of villages and inter sub-caste marriage is prohibited in 99.1 percent of the villages surveyed in India. Inter marrying continues to be a taboo, while legally it is not barred and various states have formulated provisions but still in this modern era even the progressive thinking people prefer marrying in one’s caste and forbid themselves to cross the caste boundaries as they cringe after reckoning the deeply entrenched caste norms of these so called upper caste class men.<sup>9</sup> Human Rights Watch notes that, according to an independent study, at least 900 honour killings, in which people are killed for marrying outside their caste or religion, or within their kinship group, occur each year in Haryana, Punjab, and Uttar Pradesh states (18 July 2010). Inter caste couples are often forced to leave their homes and face social ostracism. In these states Panchayat functions under the name of “khap Panchayat”. These are mainly found in the Northern India, particularly among the Jat Community of Uttar Pradesh and Haryana. Even after having no sanction of law, they continue to function as extra constitutional authorities delivering verdicts amounting to Human Rights violations.<sup>10</sup> Their whimsical ways of delivering justice often result in social ostracism, social excommunication, public humiliation and social boycott.<sup>11</sup>

The Supreme Court has in catena of cases declared ‘khap panchayats’ as illegal which often decree or encourage honour killings or other institutionalised atrocities against inter caste couples.<sup>12</sup> The Courts have categorically stated that there is nothing honourable in honour killing or other atrocities like social boycott and, in fact, it is nothing but barbaric to interfere in the personal lives of people by these brutal, feudal minded persons deserve harsh

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<sup>9</sup> Annie Amala, *Quiet murders passed off as suicides, to pre-meditated, long-drawn public humiliation and social boycott*, (22 Jan. 2012).

<sup>10</sup> Swaran Singh and Ors. v. State thr. Standing Counsel and Anr. (2008) 12 SCR 132 (India).

<sup>11</sup> The Guardian . 24 June 2010. Kaushik Barua. "Caste is Still the Tie that Binds in India." ;British Broadcasting Corporation (BBC). 16 November 2011. "India 'Honour Killers' Face Death for 1991 Murders." [Accessed 27 Mar. 2012]

<sup>12</sup> Lata Singh v. State of U.P. &Anr., (2006) 5 SCC 475 (India).

punishment.<sup>13</sup> It would not be prudent to allow such mindset of people which has a detrimental effect over the society, especially against the weaker sections of the society.<sup>14</sup> "The police respect a patriarchal form of society and have been unable to deal with extraordinary cases of humiliation and hardship caused by Khap Panchayats as is evident from the slew of judgments passed by Supreme Court.<sup>15</sup> Other than Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Civil Rights 1955, Governments have taken various initiatives like the Haryana government operates "protection homes" for runaway couples who are initially allowed to stay in the shelters for 10 days, after which the threat is reassessed and length of stay extended if deemed necessary.<sup>16</sup> Even after these initiatives it is of paramount importance to escape these people from the vicious circle of atrocities and boycott which wean away their fundamental rights by framing Social Boycott Act for the whole country which puts a complete ban on these Panchayats from passing such prejudiced orders against any member of the society.

### **Legislative Attempts to Curb Social Boycotts**

As noted above one of the principal weapons employed to confine Dalits to the lower echelons of society is through social and economic boycotts and acts of retaliatory violence in the event of refusal to carry out caste-based tasks or attempts to defy the social order.<sup>17</sup> Taking cognizance of these elements, *The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015* adds new offences of atrocities such as imposing or threatening a social or economic boycott. Social boycott has been defined as, "a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others."<sup>18</sup>

The Bombay High Court in 2013 urged the State of Maharashtra to act expeditiously to ensure to punish those indulging in boycotts and protect constitutional rights of its victims.

<sup>19</sup>The increasing instances of boycotts of individuals or families being called for by caste

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<sup>13</sup>ArumusugamServai v. State of Tamil Nadu, AIR 2011 SC 1859 (India).

<sup>14</sup>Preetha K.K. &Ors. v. State of Kerala and Ors., 2016 (2) KHC 808 (India).

<sup>15</sup> Justice V.S. Verma Commission Report, para 58, p.48.

<sup>16</sup> The Indian Express 19 Apr. 2011; India Today 9 May 2011.

<sup>17</sup>Report by Human Rights Watch for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Durban, South Africa, September 2001.

<sup>18</sup>The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, Act No. 8 of 1989, Acts of Parliament, S. 2(eb) (India).

<sup>19</sup>Santosh Krishna Jadhav &Ors. v. State of Maharashtra &Ors., Writ Petition No. 3816 of 2012 (India).

panchayats who meted out such extra-judicial punishment upon non-compliance with their rules, emphasised the need to ameliorate the situation by enacting a special law.

Against such a backdrop, Maharashtra was the first state in India to put into place a law in the form of *The Maharashtra Protection of People from Social Boycott Act, 2016*, [hereinafter referred to as the “Social Boycott Act, 2016”] that strives to put an end to the rampant social discrimination faced by marginalised communities across the state. At the time of tabling the Bill in the legislative council, the Chief Minister of Maharashtra, Mr. Devendra Fadnavis stated that 68 instances of social boycott have been reported in the state at that point of time and 633 people from Raigad had been identified.<sup>20</sup>

The predecessor of the Social Boycott Act, 2016 namely the Bombay Prevention of Excommunication Act, 1949 was struck down by the Supreme Court by a 4-1 majority as unconstitutional in 1962 on the ground that it infringed Article 26 of the Constitution, which confers upon religious denominations the freedom to manage their religious affairs.<sup>21</sup> Chief Justice Sinha dissented on the ground that the object of the Act was in fact the fulfilment of the individual liberty of conscience guaranteed by Art. 25 (1) of the Constitution as it is “intended to do away with the mischief of treating a human being as a pariah, and depriving him of his human dignity and his right to follow the dictates of his own conscience.”<sup>22</sup>

### **The Social Boycott Act, 2016**

The Social Boycott Act, 2016 came into force on July 13, 2017. The Social Boycott Act, 2016 provides for critical legal mechanism for redressal of the victims of social boycotts. The absence of such a law to cater specifically to incidences of such boycotts has previously hindered attempts to afford victims the necessary legal protection for violation of their human rights at the hands of the caste panchayats.

The Social Boycott Act, 2016 sets forth 15 instances of acts constituting a social boycott such as when an individual or group prevents another member or members of the community from observing religious or social customs, participating in social gatherings, cutting off social or commercial ties with a member resulting in making his life miserable, disallowing access to places used by or for the benefit of the community, obstructing children of the community

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<sup>20</sup>Bhavika Jain, *Social boycott now a crime in Maharashtra, a first for the country*, Times Of India (Apr 13, 2016, 10.21 PM), <http://timesofindia.indiatimes.com/city/mumbai/State-Assembly-okays-Prohibition-of-Social-Boycott-Bill/articleshow/51815989.cms>.

<sup>21</sup>Sardar Syedna Saifuddin v State of Bombay, 1962 AIR 853 (India).

<sup>22</sup>Sardar Syedna Saifuddin v State of Bombay, 1962 AIR 853 (India).

from playing with children of specific family or families in the community, discriminating amongst members of the community on the grounds of morality, social acceptance, political inclination, sexuality etc, compelling a member to wear particular type of clothes or use specific language.<sup>23</sup>

The Social Boycott Act, 2016 criminalises imposing of a social boycott and aiding or abetting its commission which is punishable with imprisonment of up to three years or a fine of extending upto Rs.1 lakh or both.<sup>24</sup> The Social Boycott Act, 2016 further forbids assembling for the purpose of imposing social boycotts. Such an assembly would be regarded as unlawful assembly and persons responsible for convening or participating therein would be punished with a fine extending to Rs. 1 lakh.<sup>25</sup> Notably, the Court may order the whole or any part of the fine recovered to be given to the victim and his family as compensation.<sup>26</sup> There is a specific requirement to pass the sentence only after hearing the victim on the quantum of sentence.<sup>27</sup> The punishment stipulated has been diluted as the earlier draft imposed imprisonment of up to seven years and a maximum penalty of Rs.5 lakh.<sup>28</sup>

Further, previously imposed social boycotts would be treated as void post the commencement of The Social Boycott Act, 2016.<sup>29</sup> The Act envisages the appointment of a Social Boycott Prohibition Officer to look into incidents of social boycotts, take necessary action, report such cases to the Magistrate and assist the police and Magistrate in the performance of their functions.<sup>30</sup>

The Social Boycott Act, 2016 facilitates the framing of changes under Indian Penal Code including S.34, S. 120-A and S. 120-B dealing with criminal conspiracy, S. 149 dealing with offences committed by an unlawful assembly, S. 153-A dealing with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., 383 to 389 dealing with extortion and S. 511 if the essentials of the section are met.<sup>31</sup> Since other states in India are yet to enact such a law, the aforesaid sections of the Indian Penal Code would be generally applied there in case of social boycotts.

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<sup>23</sup> S.3, The Social Boycott Act, 2016.

<sup>24</sup> S.4, The Social Boycott Act, 2016.

<sup>25</sup> S.6, The Social Boycott Act, 2016.

<sup>26</sup> S.18, The Social Boycott Act, 2016.

<sup>27</sup> S.9, The Social Boycott Act, 2016.

<sup>28</sup> S.6, Maharashtra Prohibition of Social Boycott Bill, 2015.

<sup>29</sup> S.8, The Social Boycott Act, 2016.

<sup>30</sup> S. 15, S.16, The Social Boycott Act, 2016.

<sup>31</sup> S. 19, The Social Boycott Act, 2016.

The Social Boycott Act, 2016 defines a victim as, “*any individual who has suffered or experienced physical or monetary harm or harm to his property as a result of the commission of social boycott and includes his relatives, legal guardian and legal heirs.*”<sup>32</sup> However, the draft bill extended the definition of a victim to also include persons who have suffered or experienced *mental, psychological, emotional harm* due to the social boycott.<sup>33</sup> Given the object and purpose of the legislation and the nature of injury emanating from acts of social boycotts which extend beyond visible harm, the wider ambit of the definition is preferable.

The victims often face difficulty in procuring evidence pertaining to the imposition of a social boycott since often there is no tangible or written proof to substantiate such a claim. Hence, the burden of proof in such cases must be placed upon the accused. Although, the draft bill contained provision to this effect<sup>34</sup>, it does not find place in The Social Boycott Act, 2016.

### **Implementation**

The success of any Act lies in its proper implementation. In the short span that The Social Boycott Act, 2016 has been in force, three cases, out of which two are in Pune and one in Mumbai have been filed under it.<sup>35</sup> The first case under the Social Boycott Act, 2016 was filed in Pune by around 14 families on July 17, 2017 against 17 committee members of Pune Telugu Modelvar Parit Samaj alleging ostracism by the panch committee on account of marrying outside the community.<sup>36</sup>

The fact that such social boycotts haunt the entire nation calls for the need to emulate such legislation across India. The Punjab and Haryana High Court exhorted the State of Haryana to consider passing a legislation along the lines of the Social Boycott Act, 2016 for suitable incorporation alongside particular directions given in the context of honour killings. It called upon the State and the society to avail of law as an instrument of social engineering and as a potent weapon for triggering social reform.<sup>37</sup>

### **Conclusion**

<sup>32</sup> S.2(1)(h), The Social Boycott Act, 2016.

<sup>33</sup> S.2(1)(h), Maharashtra Prohibition of Social Boycott Bill, 2015.

<sup>34</sup> S.19, Maharashtra Prohibition of Social Boycott Bill, 2015

<sup>35</sup> Manoj R Nair, *Maharashtra's long fight for a law against kangaroo courts*, Hindustan Times (Jul 23, 2017 21:31), <http://www.hindustantimes.com/mumbai-news/maharashtra-s-long-fight-for-a-law-against-kangaroo-courts/story-Gi9l67cQpEb1rEk1SuNHsN.html>.

<sup>36</sup> Sonali Pimputkar, *All you need to know about Maharashtra Social Boycott Law*, The Free Press Journal (Jul 20, 2017 12:48 pm), <http://www.freepressjournal.in/mumbai/all-you-need-to-know-about-maharashtra-social-boycott-law/1106792>.

<sup>37</sup> Manmeet Singh v. State Of Haryana & Others, C.M. No. 2638 of 2016 (India).

The Social Boycott Act 2016, a unique legislation which is a progressive step to free people from the atrocity of ostracism and boycott by the Caste Panchayats. Tantamount to this reformative legislation, other States should also work on the footsteps of making a comprehensive anti-social boycott law which will further ameliorate our society's position and bring about a change in the attitude of the people for a progressive country. Firstly, for expeditious implementation of The Social Boycott Act, 2016, it is necessary that the psyche of the people needs to be changed by spreading awareness among the general public about the menaces of social boycott. Training workshops are required to be arranged to broach this topic for public discussion as the masses need to be educated so that they can be upfront about the sufferings caused due to social boycott. Further, the offence of imposing social boycotts should be non-bailable with a stricter and rigorous punishment to be imposed on the offenders so that it deters other people from committing such offenses.

It is quintessentially important that the Social Boycott Prohibition Officers who have been entrusted with major responsibility of detecting commission of offences under The Social Boycott Act, 2016 are appointed only if they are qualified and sensitive enough with prior experience to tackle the gravity of these issues with due cognizance. Sensitization and awareness is key towards the proper implementation of the Act in its true spirit since it would have a bearing on the manner in which the functionaries under the Act deal with the victims and the manner in which the investigation is conducted. There is a dire need for the Social Boycott Prohibition officers and Police to work independently and give victims due protection without succumbing to the influence of power-wielding community leaders or intimidating the victims. Political parties can leverage their vast reach and platform that they have access to for taking a robust stance and opposing the Caste Panchayats openly which run amok without considering the vote bank politics. Considering the adversities victims and their supporters have to face when they speak out against the social boycott, it is necessary to address the question of their safety. One of the ways to address this is by requiring the Social Boycott Prohibition Officer and the police to prepare a Safety plan in consultation with the victims. Such a plan must include adequate safeguards against further backlash after taking cognizance of the associated perils. All this could well pave the way for emancipation of society from the clutches of the caste panchayats where one can truly exercise one's freedom of choice.

