
“Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Bill: A Magnum Opus in the Making.....”

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Abstract

In the present scenario when the entire country is striving for gender equality, young minds voicing in favor of legalizing homosexuality, the Indian government is preoccupied in economic and technological advancements with our “The” Prime Minister emphasizing on the Clean India drive, there exist legion citizens in diverse corners of the country who are denied their basic fundamental rights. They are living a life of bare survival while the Courts all over the country bags pending countless cases on defamation, such is the condition of several rural Indians who are left to live a life filled with misery and isolation and are subjected to severe indignation.

It is heartening to note that the extrajudicial institutions working at the rural level for example the ‘Gavki’ panchayats, Kangaroo Courts are filled with members who lack merit and are seated in these institutions because of political forces. When it comes to administering such rural areas, these ‘hollow and unqualified’ members build decisions based on their traditional and orthodox conceptualization.

Ultimately their decisions and value judgments are responsible for the languishing state of victims of evil practices. For instance, the Constitutional provisions already provide for penalizing social boycott but the legal gap arises due to lack of effective implementation. The Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Bill proceeds in the same fashion, lamenting upon the failure of existing laws in complete eradication of such evils.

The instant study shall in an attempt to critically analyze the bill bring into limelight the legal loopholes in the provisions of the bill along with the required solutions and amends as perceived by the author. The legislature of Maharashtra government deserves immense applause as this bill is indeed a path breaking advent for social inclusion.

Introduction

A perusal of various constitutional articles unequivocally illustrates that dispensing justice is inherent in the key functions of panchayats but the author finds that the concept of 'nyaya' in panchayats has long lost its intrinsic meaning and now the panchayat system stems on the practice of sterile orthodoxy.

There exists an appalling sum of cases involving extreme forms of oppression, discrimination and even violence in several pockets across India. It seems that the Kangaroo courts of many panchayat councils run a parallel justice system grounded on their own notions of right and wrong. Those seen as flouting social customs have been eschewed by their communities and even hurtled out of their villages. Has anybody ever wondered why are they subjected to such indignity inspite of the existing institutions meant to impart justice?

Widely known are the ghastly stories of panchayati raj in the northern states such for instance the diktat to rape innocent girls or suggestions such as abolishing the marriageable age limit in order to prevent sexual assault, and in contemporary times, Maharashtra too has experienced a spurt in number of such incidents concerning imprudent justice centered on caste and gender doled out by community courts. For many years now, activists have been rallying for the necessity to invigorate laws to baulk such violence and social boycotts. Against this backdrop, it emerges as the first state to adopt a inclusive law to exterminate subjugation carried out in the name of age old traditions, caste and religion. The author unequivocally holds that it is in the interest of public welfare that such social reform mechanisms be introduced tout de suit and for the same the present article shall also provide a required background of the various existing anti-boycott laws and its misuse.

The coercive mechanism of exclusion is more serious than simple disfranchisement that comes from illiteracy or patriarchal values that are enforced and internalized. (Jayal)

As the title suggests, the purpose of this to-be law shall be to foil and punish the persistent community-driven exercise of social boycotts. The Chief Minister of Maharashtra Devendra Fadnavis has aptly termed the passage of this bill "historic".

Somebody who unswervingly participate in social boycott, incite others to do the same, or engage in deliberations of any assemblages arranged with the prime purpose of enforcing a boycott ought to be dealt with severely under the law. Meanwhile it is pertinent to note that this

bill will fail to meet the constitutional threshold if the process of implementation is not accurately planned considering the ground realities of rural society and the unyielding minds living in such societies.

Background

For an extensive analysis of any work of the legislature, reaching its roots holds immense significance. In this light the author attempts to canvass the scene prior to the passing of this impugned bill.

At the behest, it was in the period of mid 19th century when the Intra-community battles over access to public goods under the colonial state had begun. In 1856 the Bombay government denied admission to a Christian Mahar convert into a public school on the ground that caste Hindus did not want to “associate” with a Mahar student. (BHATIA, 2016)

Towards the end of the 19th century, the students belonging to the lower ladder of caste were allowed to attend public schools but were directed to sit separately in a verandah outside the classroom; also barred from accessing the common water supply. B.R. Ambedkar, the man against social boycott vehemently expressed:

“The issue is not entry, but equality”.

Ambedkar launched **Mahad satyagraha** and vociferously directed towards opening up access to local water tanks the access to which had been barred exclusively for the Dalits. He conceptualized legal solutions to the problem of community suppression, and in his submissions to the Minorities Committee of the Round Table Conference, he pointed social boycott as *“the most formidable weapon in the hands of the orthodox communities with which they beat down any attempt on the side of the Depressed Classes to undertake any activity if it seems to be unpalatable to them”*.

On a perusal of the report of Starte Committee(1928) he quoted, “committee had observed that [the social] boycott is often planned on such an large scale as to include the prevention of the Depressed Classes from using the commonly used roads and the stoppage of sale of the necessities of life by the village Bania... cases have been by no means rare where a rigorous boycott has been proclaimed simply because a Depressed Class man has put on the sacred thread,

has bought a land, has put on good clothes or ornaments, or has carried a marriage procession with the bridegroom on public street." Ambedkar's contributions in raising the socially boycotts can never be undermined. The basic concept of the Act of 2016 has been incorporated from Ambedkar's idea of anti-boycott law which specifically prohibited the practice of social boycott. Few of Ambedkar's proposals found their way into the post-Independence Protection of Civil Rights Act of 1955.

In 1949, State of Bombay passed a law called Bombay Prevention of Excommunication Act, which outcast the practice of excommunication within religious communities. The constitutionality of this Act was challenged by the head of the Dawoodi Bohra community, who argued that by reducing his powers of excommunication, the law interfered with thier religious freedom.

In the reknown case of *Sardar Syedna Saifuddin v State of Bombay*¹ (Dawoodi Bohra case) 1962, the apex court struck down the Act of 1949. The judges in majority held that under Article 26(b) of the Constitution the Act violated right of religious denominations to manage its own affairs, and so was not saved by Article 25(2)(b) social welfare or reform exception (Indian Constitutional Law and Philosophy, 2016), since it outlawed even those excommunications that were made purely on religious grounds. Excommunicated members of the Bohra community approached Jayprakash Narayan the political reformist who helped to set up the Justice Narendra Nathwani Commission, but later separated himself from it. The Nathwani Commission in 1979 recommended that excommunication in the Bohra community should be made illegal. (Sharma, 2016)

The Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act of 2016 represents another chapter (1st: first in the country to enact anti superstition law) in a long-standing battle to secure individual freedom from the suffocating hold of ascriptive communities, whether based on caste or religion. It carries forward the judicially-aborted goals of the Excommunication Act, 1949 and the rarely-used Protection of Civil Rights Act. The sole purpose of this act is to prevent and punish the continuing community-driven practice of social boycotts.

¹ 1962 AIR 853

Scheme of The Bill

Analyzing the legal lacunae...

The Bill labels social boycott of any kind a criminal offence. This criminal offence shall be bailable and cognizable in nature. It interdicts social ostracism of any kind by caste panchayats or groups of entities or by its members or by social or economically powerful persons. Socially excluding an individual or his/her family for reasons of noncompliance of any rituals of worship, inter caste marriage, witchcraft, standard of living, pattern of dressing or occupation is covered under the bill and the offenders shall be stringent penalized.

The bill in its opening gambit reiterates the fundamental ideals of fraternity and promotion of the same thereof. It talks about what immense significance the fundamental right to live with dignity as enshrined in Article 21 holds for individuals.

It engrafts fifteen illustrations of "social boycott" that covers impeding individuals from observing religious observances and customs, dissolving social, cultural or commercial ties, affecting intra-community "discrimination", eviction from the community, denying a person from performing funeral rites, depriving access to facilities such as water supply. It is unfortunate that inspite of enactment of laws to prohibit social boycott in forms of untouchability(Article 17), excommunication such evil practices are yet widespread in many states, particularly in rural areas the worst part being that it is shamelessly practiced by extra-judicial institutions like community and caste panchayats. Therefore, in a way this bill holds great significance as it is a legislation, first of its kind framed by a state to end the menace social boycott.

Representation and participation are two distinct dimensions of democracy. It is relatively easy to legislate representation, but a far more complex and challenging task to create the conditions for participation. Proficient enactment does not suo moto lead to proficient implementation. The author holds that any institution which is meant for fostering the cause of justice when starts perpetrating injustice it becomes the problem and not the solution in eradicating the same. The bill proceeds in the same fashion, lamenting upon the failure of existing laws in complete eradication of such evils.

As the author has already discussed above that while the entire country is striving for gender equality, legalizing homosexuality along with economic and technological advancements, there exist legion citizens in various corners of the country who are denied their basic fundamental rights. Hence the bill expresses that it is in the interest of public welfare that such social reform mechanisms be introduced tout de suit. The fact attracting immense ridicule being that leave about filling complaints of such practices, they are ignorant of the fact that the legislature owes some basic fundamental rights for them too.

Upon a meticulous read-through of the bill the author observes certain discrepancies arising between the original draft bill and the **Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act 2016** which went unnoticed.

While the draft bill designates the word “*victim*” encoded under **Section 2(h)** as follows:

“any individual who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of social boycott.”

The Act faces certain diversions as far as the definition of the word “*victim*” concerned as the Act circumscribes its definition to “*any individual who has suffered or experienced physical or monetary harm or harm to his property as a result of the commission of the social boycott.*”

The removal of the words “*mental psychological, emotional*” fails to meet the constitutional threshold as the law makers have ignored the fact that the primary harm occurring to the victims of social boycott is dignitarian in nature. Such practices deprives its victims of the right to live with dignity (Article 21). Denial to access of community resources and any harm to property or which is monetary in nature are though crucial but secondary. The primary suffering relates to mental and psychological embarrassment and the emotional trauma caused thereof. If such is the structure of the Act, it would be a difficult task to mulct its violators as they may easily plead innocent arguing that their acts have caused no harm to property and even if caused mental trauma they cannot be charged for the same. Thus restricting the definition of the abovementioned word provides impunity to such violators.

However, the author is certainly of the view that though the Act does not explicitly cover harm of mental or psychological nature but certain occasions worded in Section 3 are flexible enough

to cover the same. Be it noted that **Section 3(i)**, for instance, deals with impeding an individual or group of individuals from performing any social observances or customs or preventing an individual or their group in taking part in community gatherings.

Clause (ii) of **Section 3** is a mechanism which deserves immense applause. It forbids any individual or group from denying to other members of the area the right to perform marriage, funeral or related ceremonies. In the same lines Section 3(iii) exclusively includes ostracism which is social in nature.

Meanwhile **Section 3(iv)** covers the act of isolating member of any community *"resulting in making the life of such member miserable."*

It is appreciated that the legislative intent has covered certain conditions which are being faced in rural areas. An example could be that one of the characteristic features of social boycott is to prevent the targets from accessing the facilities of any school, educational institution, medical institution, community hall, club hall, cemetery, burial ground or any other place used by, or intended to be used by all. Clause (iv) of the same Section provides the remedy for such morass.

Clause (vii) is particularly a panacea for those individuals or communities who are denied the benefits of charitable trusts meant for the cultural welfare of the community to which the victim belongs as it forbids inflicting such evils upon them.

Clause (viii) inter alia, targets accomplices who engage in inciting other members to practice any forms of social exclusion upon individuals or groups.

Clause (ix) explicitly penalizes those who deny access to places of worship to victims belonging to the community for whom the access to such places of worship or pilgrimage is allowed.

It is certain that the pecuniary interests of those who are socially boycotted gets intensely affected and there are situation that it is almost impossible for the bread earners of the family to fend for the bare survival of the family. It is to eliminate such cases that Clause (x) has been framed.

Undeniably, Clause (xii) is a top notch provision framed under humanitarian lines. It widens the scope of all prohibition by covering any forms of act which potentially deprive any individual or group from enjoying his/her rights fundamental to human beings.

It is not rebuttable that citizens of this country are free to hold beliefs and opinions of their own but what needs to be controlled is the manner in which such opinions are purported. Perhaps Clause (xiii) of **Section 3** is an equality clause which forbids discrimination grounded on morality of a particular individual or community. It is framed in the lines of the constitutional provisions, prohibiting social differentiation based on the sexuality and status of an individual in the society

Clause (xiv) is basically a mechanism aimed at forfending cultural hegemony. There are instances galore featured by newspapers and news channels showing the plight of marginalized or minority groups in several pockets of India who suffer social exclusion due to the failure to adapt the mainstream culture, noncompliance with the linguistic and dressing patterns and have therefore been living in isolation. It is to foil such happenings that this clause has been enacted.

The reasonable restrictions as enshrined in Article 19 of the Constitution which include a restriction to form or engage in any illegal assemblage has been widened by **Section 4**. It puts a bar on congregation of any form meant for the purpose of socially boycotting an individual or a group of persons.

Clause (ii) of this Section labels gatherings of such a kind as "*illegal assembly*" and imposes a fine which may extend to one lakh fifty thousand rupees.

As already discussed above, **Section 5** prohibits social boycott calls its commission as an offence. Meanwhile **Section 6** fixes the level of punishment for such commissions holding that if one is convicted for committing the said offence shall be punished with imprisonment of either description, which may extend to seven years, or with fine which may extend to five lakhs rupees, or with both.

Explanation to **Section 6** explicitly recognizes such offences being committed or rather say facilitated by Caste Panchayats, penalizing members who voted in favor of social boycott and booking them as violators of this law.

Section 7 is meant to deter individuals or groups from aiding or abetting the said offence, the penalty being imprisonment which may extend to three years, or with a fine which may extend to three lakh rupees, or with both.

In order to prevent chaos and sudden spurt in the number of cases, **Section 8(i)** holds that this Act shall not be retrospective in operation. Clause (ii) of the same Section is the provision which if efficiently implemented may become a legal miracle for the victimized lot. It recognizes the role of Caste Panchayats in perpetrating such practices and in this light Section 8 put a legal bar on Caste Panchayats which allow such evils to be practiced or keep mum on such practices holds that such Caste Panchayats *"shall be deemed to have committed an offence under the provisions of this Act and shall be liable to be punished accordingly."*

Section 9 is quite similar to **Section 235** of the Criminal Procedure Code, 1973 as it provides an opportunity to the victim to voice his opinion on the question of sentence once the conviction is proved. The only difference between these sections being that while in the Criminal code Section 235 gives this opportunity to the convict while in the instant Section at hand endows the victim with this opportunity. This Section enables the victim to serve the purpose for which he/she approaches the Court of Law and have his say over the sentence imposed.

Section 10 holds that an accused charged under the said offence will be tried by a Judicial Magistrate, First Class or a Metropolitan Magistrate as the case may be.

Section 11 however envisages certain ground realities thereby providing for compounding of sentences if it appears to the Court that the victim consents to the same. It being a discretionary power of the Court is subjected to the willingness of the victim. For such compounding, performance of community services becomes obligatory.

Section 12 enshrines an enabling provision for the victims of such social boycott or any member of the victim's family to file a complaint either in the police station or directly to the magistrate. Upon filing of the complaint the Magistrate under **Section 12(2) (ii)** directs the police officials to conduct an investigation. Subsection 3 of the same section gives the power to the Magistrate to direct the police and other concerned authorities to provide the victim and his/her family with any kind of assistance or remedy or protection as the Magistrate thinks fit during the trial of the case.

The police department plays a crucial role in serving the purpose of the Act and hence **Section 13** empowers police officers to take action upon receiving information of commission the offence of social boycott or of the likelihood of commission of the same, a police officer may,-

“(a) remove, or cause to be removed, any barricade or obstruction erected or placed in any place if such police officer has reasonable ground to believe that the barricade or obstruction was so erected or placed in order to be used for the purpose of committing an offence under this Act; or (b) open or cause to be opened any gate or door, if such police officer has reasonable ground to believe that such gate or door has been closed for the purpose of committing an offence under this Act.”

Section 14 with a view to provide unhampered justice to the victims contemplates conduction of expeditious trial under six months from filing of charge sheet which would seemingly ensure time-bound results.

Section 15(1) empowers the Collector and District Magistrate to order prohibiting the convening of an unlawful assembly aimed at imposing any form of social boycott if information of the same is received. Meanwhile Subsection 2 reads:

“The Collector or District Magistrate, as the case may be, may take such steps as he think necessary to give effect to such order, including giving of appropriate directives to the police authorities”

Moreover **Section 16** makes it incumbent on the state government to appoint trained men designated as ‘Social Boycott Prohibition Officers’ to warranty monitoring, spot violations of the same, assist magistrates and police officers in tackling such cases.

For tackling such cases **Section 17** enjoins certain functions to be performed by these Social Boycott Prohibition Officer:

“(a) to detect the commission of offences under the provisions of this Act by any person in the area of his jurisdiction, by taking such action as he deems fit and to report such cases to the Magistrate;

(b) to assist the Magistrate while he is trying the offences and its proceedings under this Act;

(c) to assist the police officers in discharge of their duties under this Act;

(d) to see that the order of community services passed by the Magistrate is implemented, and to forward a report to the court regarding compliance of such order from the accused;

(e) to submit his quarterly report regarding his work to the Magistrate and to the Superintendent of Police or the Commissioner of Police, as the case may be;

(f) to discharge such other functions as may be assigned to him by the State Government."

Section 18 deals with the usage of the fine collected by the violators and holds that the amount collected as fine shall be given to the victims or their relatives.

Moreover, **Section 19** enjoins the burden of proving innocence on the accused.

Section 21 deals with framing charges for the offences under this Act and empowers the Magistrate to frame charges under sections 34, 120-A, 120-B, 149, 153-A, 383 to 389 and 511 of the Indian Penal Code, 1860, or any other provision of that Code, if the fact disclose the commission of an offence under those provisions. It shall however be determined by the facts and circumstances of every case.

Significance

Undeniably, this bill is a top notch provision framed under humanitarian lines. It widens the scope of all prohibition by covering any forms of act which potentially deprive any individual or group from enjoying his/her rights fundamental to human beings. The bill holds immense significance as it acts as a deterrent to caste prejudices.

Through the implementation of this act, socially boycotted people will have easy access to available resources like healthcare, education, rivers, wells, temples, schools, forests and other common goods. It will effective in promoting social inclusion in terms of caste (housing, marriages social services etc.), gender and religion (housing in urban areas). This act will be fruitful in arresting practice of social boycott for reasons like rituals of worship, any connection to lifestyle, inter-caste marriage, dress or vocation, thus it helps to pursue life with dignity, which is in harmony with Article 14, 15, 17, 21 and 25-28(Right to Religion) of constitution.

It is widely perceived that act as a strong weapon to counter the inferiority and superiority complex entrenched in society and will lay hold on the centuries old orthodox practices being practiced in the region. It will end the practice of downgrading the lower caste people by the upper castes. It will be a boon for Dalit capitalism.

The act will lead crucial role in eliminating the so called principle of purity and pollution. Its implementation will be effective in addressing the recent challenges like honour killings in the name caste or religion and will act against the parallel forms of justice of the caste panchayats, It has a wide scope of redressal and rehabilitation of victims in terms of monetary, psychological support.

This would be a front runner in curbing stigmatization and social segregation, though it could be amplified in future to be more comprehensive looking beyond the (as of now) included caste - panchayat driven community boycotts.

Suggegstions Attracting Action Tout De Suite

The author holds that for the practical enforcement of the Act, human rights activists will have to work closely with state officials to aware the people about the law. The numerous technicalities and impediments that may occur in the implementation of the Act should be sharply focused. Implementation of any legislation is an onerous task which requires intense support from the executive and various societal forces as well.

Therefore, in this light various stakeholders like Media groups, NGO's, advocacy groups, public policy need to be engaged meaningfully to make sure that act is implemented in effective manner. To spread awareness social movements need to be taken up. The achievements of people who broke this barrier of social boycott and became successful in their live should be popularize by administration. Due to social ostracism and stigma associated with caste people from higher caste do not encourage any business with dalits, if such laws are in place, they can help changing the mentality of people over the year.

The provisions framed in the Act should take into consideration the necessity of rehabilitating the victims this could serve the basic purpose of the Bill in spreading the cause of justice. Social

boycott which is a bailable offence under the Act. It is pertinent to note that the possibility of the perpetrator going scot free looms large. So, it should be made a non-bailable offence.

In opinions of experts legal mechanisms are only a part of the solution. The population need to be educated through workshops, celebrating anti-boycott weeks etc. There is a need of imparting sensitivity training at all levels of administration. Technology like CCTNS projects need to be used for tracking the registration of cases so that Police can not use their discretion to avoid registering cases.

However, the author is certainly of the view that the Bill even after being enacted as a Law in force should be welcomed for **Judicial Activism** as the judicial intervention by Courts enriches the imparting of justice. Courts being the guardian of fundamental rights can in all manner surplus the implementation of the Act.

Also, the fact demanding vital consideration is that it is incredibly hard for officials to find evidence of premeditated boycott because there is immense social pressure on people so these officials must take a prime measure in encouraging people to speak out truth against their own communities.

Therefore, in order to address the various layers of exclusion which occurs along multiple axes: through boycott, through stigmatization and through segregation, a comprehensive anti-discrimination law is desired on the lines of the Civil Rights enactments in the United Kingdom and the United States.

The study of this Bill and its enactment as the law of the future is a matter of extensive analysis and research. The author due to paucity of time and resources attempted to present its views and data collected in the instant study and in the same lines, end the present article.

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