Invoking Human Rights

Dalits and the Politics of Caste Violence in Gujarat

Gopika Solanki

The body of literature on the vernacularization of human rights discourses suggests that nongovernmental organizations (NGOs) play a role in appropriating and adapting this framework to demand and promote social justice in local contexts, often merging the local and the global (Goodale and Merry 2007; Kennedy 2004). It is argued that the legitimacy of these organizations, the politics of donor assistance, NGOs’ embeddedness within local societies, NGOs’ relationship with the political elite, the content of these organizations’ ideas, and the strength of existing hierarchies and norms all influence the success of these processes, and that the efforts of NGOs are often more successful when international rights norms resonate with local values (An-Na’im 2001; Levitt and Merry 2009). Dalit groups in India have successfully merged human rights values with national legal structures. A number of influential NGOs for Dalit human rights in Gujarat have addressed caste violence through litigation and by working towards improving the implementation of the law criminalizing everyday and ritualistic violence against Dalits and Adivasis, namely the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth, POA).

The POA defines atrocity as an offense and lists a variety of practices of caste discrimination and humiliation as criminal offenses under sections 3(1) and 3(2). It also imposes exemplary punishment; endeavours to erase practices of caste discrimination, exploitation, and violence; gives financial assistance to victims to realize justiciable rights; and makes provision for the relief and rehabilitation of victims of violence under Rule 12(4) of the Act. Under the rules laid down for the implementation of this Act in 1995, state governments must create special courts to try these cases. This law co-exists with the Protection of Civil Rights Act of 1955 (henceforth, PCR), but as early as 1995 we find that offences of caste discrimination and violence are largely recorded under the POA.

Scholars have argued that exclusive and excessive reliance on the law and legal platforms to operationalize human rights norms and address questions of social justice and equality does not adequately address the complex dilemmas that accompany resistance to inequality and discrimination. They suggest that liberal legalism reduces the role of politics by relying on courts, not open-ended political processes, to determine interpretive frames, and limits the normative aspirations of the left (Brown and Halley 2002; Hastrup 2003; Rosenberg 1991). In the context of this debate, this chapter engages with the following question: under what conditions is the privileging of legal action an effective resource for human rights organizations that aim to redress caste discrimination?

The Puzzle of the Atrocity Act in Gujarat

In 2012, the National Campaign on Dalit Human Rights (NCDHR), along with other organizations working on Dalit rights (such as India-based Western NGOs, Navsari Jan Trust, the Behavioural Science Centre, and Janvikas) organized public meetings across India to discuss potential reforms to the POA. The NCDHR also coordinated the National Coalition for Strengthening Scheduled Castes (SCs) and Scheduled Tribes (STs) (POA) Act. During a meeting at Ahmedabad,
Table 10.1  Records of crimes against SCs registered under the POA Act, 1989, in states where SCs make up 7–10 per cent of the total population

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>SC population: in lakh as per 2001 census and as a percentage of the total population</th>
<th>Number of cases registered under the POA Act, 1989, per state</th>
<th>Total number of cases registered in India under the POA Act, 1989</th>
<th>Number of cases registered per lakh population as per 2001 census</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>446</td>
<td>14,758</td>
<td>12.20</td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>187</td>
<td>14,758</td>
<td>1.89</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>135</td>
<td>14,758</td>
<td>4.32</td>
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<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>N/A</td>
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<td>N/A</td>
</tr>
<tr>
<td>2002</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>1192</td>
<td>26,177</td>
<td>33.11</td>
</tr>
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<td></td>
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<td>98.8 (10.3)</td>
<td>812</td>
<td>26,177</td>
<td>8.21</td>
</tr>
<tr>
<td></td>
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<td>31.2 (9.8)</td>
<td>469</td>
<td>26,177</td>
<td>15.03</td>
</tr>
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<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>N/A</td>
<td>26,177</td>
<td>N/A</td>
</tr>
<tr>
<td>2003</td>
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<td>1056</td>
<td>20,290</td>
<td>29.33</td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>870*</td>
<td>20,290</td>
<td>8.80</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>335</td>
<td>20,290</td>
<td>10.73</td>
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<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>N/A</td>
<td>20,290</td>
<td>N/A</td>
</tr>
</tbody>
</table>

(Continued)
<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>SC population: in lakh as per 2001 census and as a percentage of the total population</th>
<th>Number of cases registered under the POA Act, 1989, per state</th>
<th>Total number of cases registered in India under the POA Act, 1989</th>
<th>Number of cases registered per lakh population as per 2001 census</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>991</td>
<td>26,665</td>
<td>27.60</td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>1017</td>
<td>26,665</td>
<td>10.30</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>364</td>
<td>26,665</td>
<td>11.65</td>
</tr>
<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>282</td>
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<td>15.45</td>
</tr>
<tr>
<td>2007</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>1038</td>
<td>29,825</td>
<td>28.80</td>
</tr>
<tr>
<td></td>
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<td>98.8 (10.3)</td>
<td>1146</td>
<td>29,825</td>
<td>11.60</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>477</td>
<td>29,825</td>
<td>15.30</td>
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<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>125</td>
<td>29,825</td>
<td>6.80</td>
</tr>
<tr>
<td>2008</td>
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<td>36.0 (7.1)</td>
<td>1228</td>
<td>33,367</td>
<td>34.10</td>
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<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>1172</td>
<td>33,367</td>
<td>11.90</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>519</td>
<td>33,367</td>
<td>16.60</td>
</tr>
<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>104</td>
<td>33,367</td>
<td>5.70</td>
</tr>
<tr>
<td>2009</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>1180</td>
<td>33,426</td>
<td>32.80</td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>1072</td>
<td>33,426</td>
<td>10.80</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>467</td>
<td>33,426</td>
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<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>0.0</td>
<td>33,426</td>
<td>0.00</td>
</tr>
<tr>
<td>2010</td>
<td>Gujarat</td>
<td>36.0 (7.1)</td>
<td>1008</td>
<td>32,569</td>
<td>28.00</td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td>98.8 (10.3)</td>
<td>1107</td>
<td>32,569</td>
<td>11.20</td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td>31.2 (9.8)</td>
<td>583</td>
<td>32,569</td>
<td>18.70</td>
</tr>
<tr>
<td></td>
<td>Assam</td>
<td>18.3 (6.9)</td>
<td>7</td>
<td>32,569</td>
<td>0.40</td>
</tr>
<tr>
<td>2011</td>
<td>Gujarat</td>
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<td></td>
<td>33,719</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Maharashtra</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kerala</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assam</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

These results are striking for several reasons. We find that, on average, the number of cases registered per lakh (100,000) as per the 2001 census is also high for Kerala. However, this can be explained by the state's record in human development and that it has the highest levels of literacy and social awareness, as these factors strongly correlate with high levels of legal mobilization and legal awareness. Maharashtra has a history of caste riots, but it also has a history of anti-caste discrimination and social movements. In addition, a strong civil society, and several lower caste-based parties (such as the Republican Party of India (RPI) and the Bahujan Samaj Party (BSP) are present in Maharashtra; still, its rate of crime registration is lower than that of Gujarat. Gujarat does not have a history of anti-caste discrimination movements, and lower caste-based parties are not politically significant in state politics. The state has a history of caste violence and caste riots; since the 1990s, Gujarat has been the stronghold of the Bharatiya Janata Party (BJP), a Hindu nationalist party. The BJP has converted anti-caste violence into anti-Muslim violence (Shani 2007) and has selectively appeased lower castes while continuing to pursue a rigid vision of a caste-differentiated society. Nonetheless, Gujarat demonstrates higher levels of crime registration under the POA.

An alternate explanation for the data, and more frequent mobilization of the POA in Gujarat, is that the effectiveness of judicial redress results in higher conviction rates under the POA. Table 10.2 outlines the disposal rates of crimes against Dalits in state courts. Although only about 15 to 20 per cent of total cases pending before the judicial system result in final outcomes (as pendency rates are high), the nationwide conviction rate under the POA has decreased from 34.1 per cent in 2001 to about 29.6 per cent in 2010.

Gujarat has the lowest conviction rate of crimes against Dalits and Uttar Pradesh has the highest. Also, the conviction rate is much lower in Gujarat than it is nationally. Final judicial decisions are the outcome in 11.3 per cent of cases (Annual Report of the NCSC 2004, 240–2). The rate of conviction in Gujarat was 3.7 per cent in 2001 and 6.3 per cent in 2009. Anecdotal evidence from Gujarat also supports this trend.

These data raise the following question: what explains the high rate of mobilization of the POA Act in Gujarat despite the area's low rate of convictions? Drawing upon the idea that the political environment shapes legal and social policy outcomes, I suggest that given the rise of Hindu rights in Gujarat in the aftermath of caste-based violence and its capture of state power since 1995, the political context of Gujarat has constrained Dalit rights organizations' ability to bring about radical social change and limited their mass appeal on many issues. In response, most organizations working on Dalit rights have increasingly turned to the law to safeguard and advance Dalit rights; they have specially focused on the implementation of laws penalizing caste violence on the ground and have integrated national and international human rights norms into their discourses and strategies. Their efforts have increased rights consciousness and Dalit assertiveness and resulted in piecemeal and ad hoc processes of change, but they have failed to realize the transformative potential of embedding human rights values in the realm of the state and society.

### Table 10.2 Disposal of Cases of Crimes against SCs and STs before the Courts, 2001–9

<table>
<thead>
<tr>
<th>State</th>
<th>SC population as percentage of total population</th>
<th>Conviction rates in IPC (Indian Penal Code) cases</th>
<th>Conviction rates in special cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uttar Pradesh</td>
<td>21.1</td>
<td>54.9</td>
<td>58.6</td>
</tr>
<tr>
<td>Gujarat</td>
<td>7.1</td>
<td>24.7</td>
<td>30.9</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>10.2</td>
<td>13.1</td>
<td>11.7</td>
</tr>
<tr>
<td>Kerala</td>
<td>9.8</td>
<td>50.0</td>
<td>51.2</td>
</tr>
<tr>
<td>India</td>
<td>16.2</td>
<td>40.8</td>
<td>42.4</td>
</tr>
</tbody>
</table>

Source: Data adapted from Ramaiah (2011: 161).

#### Outlining Political Developments in Gujarat and the Context of Caste and Hindutva Politics

During the independence movement, Gujarat was a stronghold of nationalist politics. Lower-caste groups and Adivasis adversely affected...
by the taxation policies of the British government mobilized in support of the nationalist movement, but were not meaningfully integrated into the leadership or organization of the Indian National Congress (or Congress party) (Hardiman 1981). The support for the Gujarati nationalist movement came mainly from upper and middle castes, especially Patidars, Brahmins, and Baniyas. Congress strongman Sardar Patel, who led nationalist campaigns in Gujarat, kept alive the idea of a strong, united, masculine, military nation as an ideal—a nationalist ideal—that was appropriated later by the Hindu right-wing BJP (Bharatiya Janta Party) and its affiliates, together known as the Sangh Parivar. Following independence, the Congress Party in Gujarat was led by upper-caste groups, and it maintained ties with Hindu revivalist organizations such as the Arya Samaj. It also maintained policies such as land reforms in Saurashtra under the slogan 'land to the tiller', which redistributed land to Patel peasants, not to Dalit landless labourers, and did not challenge caste politics. Patel peasants emerged as successful economic players in Gujarat politics.

In 1967, the Gujarat Congress Party split; the conservative faction, the Morarji Desai-led Congress entered into an alliance with the Hindu right-wing Jana Sangh party (the predecessor of the BJP). Politically excluded groups, Dalits, and Adivasis, many of whom were first-generation recipients of the Indian state's reservation policy for the advancement of SCs and STs, had begun to mobilize during this time. The early 1970s saw the beginning of the deinstitutionalization of the Congress Party at the national level; Indira Gandhi began concentrating power in the party, side-lining regional leaders who might challenge her power, and expanding the social support base of the party with the slogan 'remove poverty'. In Gujarat, as a result of national deinstitutionalization, the Congress party under Madhavsinh Solanki stitched together an electoral alliance popularly referred to as KHAM (backward castes, religious minorities, and Dalits and Adivasis), and began to field electoral candidates from these groups; their numbers rose from 38.7 per cent of candidates in 1967 to 68.6 per cent in the 1980 Legislative Assembly election. These groups also began to dominate state patronage driven public-sector undertakings and government boards (Sheth 1999).

The upper castes responded violently to the perceived loss of political power, economic patronage, and social dominance, and turned to the political outfits of the Hindu right. In 1981 and 1985, the Congress-led government's proposal to implement reservations in educational posts for economically and socially backward castes was met with anti-lower-caste violence in Ahmedabad and other administrative units of the state. The purpose of the upper-caste violence was to oust the Congress government, which was led by lower castes, Adivasis, and Muslims. The violence subsided only when the Chief Minister was forced to resign. This moment marked the demobilization of Dalit politics in Gujarat: the countermovement affected the Dalit and Adivasi state employees' unions, the nascent Dalit Panther, and textile workers' unions. In 1986, the Dalit and non-Dalit youth activists working with the Behavioural Science Centre and unionizing bonded landless labourers in Golana (a village in north Gujarat) were fired at by upper-caste strongmen. Four workers were killed, eighteen were injured, and Dalit houses were burnt. The youth activists realized that both routine and retributive violence were actively used to weaken Dalit movements. They pursued upper-caste landlords in the Supreme Court for thirteen years and placed the legal enforcement of anti-caste discrimination legislation high on the agenda of Dalit emancipatory politics. India opted for economic liberalization in 1993; since then, civil society organizations have multiplied and some of the politicized Dalit activists have formed and worked for NGOs. Currently, some of the largest NGOs working on Dalit human rights at local and international levels, such as Navsaran Trust and Janvikas, are headed by activists who share this history.

Throughout the 1990s, in the aftermath of caste riots and to prevent the loss of power, the upper castes turned to the Sangh Parivar, which realized that the numerical strength of the upper castes was not sufficient for electoral victory. However, in keeping with its ideology of building a Hindu nation, the Sangh Parivar began to promote an alternative socio-political alliance that stressed Hindu unity, attempting to bring Dalits and Adivasis into its fold and demonizing the Muslim as 'the other'. The deinstitutionalization of the Congress Party, the absence of strong leftist politics, the rise of an aspirational upper caste and middle class that aligned with the Hindu right, and the closure of Gujarat's textile mills (which provided a political base for solidarity between Muslim and lower-caste workers in unions)
further eroded these groups' solidarity. The BJP and its affiliates also attempted to include these groups by providing social services; by opening schools, hostels, medical clinics, and forest dwellers' organizations in tribal areas; by training its youths to uplift the lower caste, prevent religious conversions, and carry out *shuddhi* (purification) programmes for converted Tribals (including Dalits and Adivasis who act as foot soldiers in the BJP's ideological programmes); and by directing public violence against Muslims rather than Dalits; thus breaking the solidarity between lower-caste, Adivasi, and Muslim groups (Shani 2007; Sud 2007). Between 1990 and 1995, in unstable coalition governments, the BJP intermittently ruled the state. And in 1995, it came to power. The strategy of orchestrating public violence against minorities, especially Muslims and Christians, for electoral gains was used in Gujarat in 1998. In 2002–3,\(^\text{14}\) when the police failed to prevent such violence and conduct arrests, government prosecutors intimidated and bought off witnesses, state ministers led rioting mobs and exhorted people to loot, murder, and burn, and local media fuelled rumours of mythical counter-attacks by Muslims. Some of the Dalits and Adivasis, targets of violence in the 1980s, now participated in anti-Muslim violence, affirming in some ways the success of the BJP’s strategy of Hindu unity.

The assimilation of lower-caste groups into the Hindu identity by the Hindu right is an unfinished, uneven, and internally inconsistent project of Hinduization, involving ‘contestation and construction’ and a desire to include Dalits in the Hindu project, all the while maintaining upper-caste hegemony of the state and society (Sud 2007).\(^\text{15}\) Being in government has enabled the Hindu right to build a popular consensus around exclusionary politics and to unevenly channel the benefits of public goods and services to some Dalit sub-castes, leaving out more vulnerable sub-castes among Dalits (Sud 2007). Dalit politics in Gujarat face different challenges: while some sections of Dalits have benefited from state patronage, the state's neo-liberal policies have prevented the entry of Dalits into the public sector as jobs are no longer filled, but rather contracted. As a result, Dalits' access to employment in the public sector has been blocked. Economic liberalization in Gujarat has also strengthened the economic clout of dominant castes and adversely affected the urban and rural poor; routine civic life for many Dalits and Adivasis is marked by caste-based segregation and discrimination as well as private violence against Dalits. In other words, the success of the Hindu right’s project has strengthened upper-caste dominance and the Hindu right’s militant authoritarianism on the ground has narrowed the scope for Dalit protest and opposition, weakened the resistance against caste-based and communal violence, and politically co-opted and fragmented Dalit and backward caste groups.

As a result, a new kind of Dalit politics emerged in the 1990s. Three trends characterize it: a re-routing to and containment within the cultural sphere (especially through the promotion of Dalit literature),\(^\text{16}\) a shift from Dalit movements to NGOs and ‘NGOization’, and the use of courts to address issues ranging from routine governance to social justice. Dalit groups are constrained by the political manoeuvres of the Hindu right and the lack of a mass base, similar to many other rights-based NGOs that also emerged in Gujarat in the 1990s.\(^\text{17}\) In this chapter, I focus on the programmes of Navsarjan Trust, as it is one of the largest organizations working on Dalit rights in Gujarat, and it was established and staffed by Dalit workers. In addition, it sees legal mobilization and legal advocacy as central to addressing caste violence.

### The POA and the Question of the State

Studies\(^\text{18}\) point to a lack of political will and institutional shortcomings when explaining low rates of conviction in atrocity cases. Activists\(^\text{19}\) suggest that there is little political and social support for government interventions to reduce caste inequality and there is much resistance to policies that may actually help reduce caste inequality. Institutional factors—delays in framing charges and police investigations, incomplete investigations, perjury in court, police and judicial bias exercised through discretion, compromises between the parties, the prevalence of bonded labour, and the economic dependence of Dalits on perpetrators of violence—also explain the low conviction rates in cases of caste violence (National Coalition for Strengthening SC & ST POA Act, 2010).\(^\text{20}\) The following sections discuss these political and institutional factors.
The POA in the Police Chowky (Station House) and NGO Activism

Scholars have argued that while the law has the capacity for symbolic change by communicating positions on ideological issues and shaping values, its instrumental effects are evident when legislation and court rulings affect the behavior of citizens, officials, and organizations (Rosenberg 1991). Scholars have also focused on changes in police behavior—reporting, investigations, and arrests—as they impact convictions (Goldstein 1977). In the Indian context, studies and reports show that high rates of acquittal in POA cases are due to loopholes in police investigation. The police harass and detain Dalit members who file cases, force the parties to compromise, refuse to record the case, ask for bribes to register and investigate a case, refuse to apply the relevant act, conduct incomplete and shoddy investigations, and fail to act as per the law. Police are also pressured in politically sensitive cases and often collude with political bosses to dilute cases. Documents are often forged, post-mortem reports or DNA tests can be falsified or go missing; corruption is an everyday part of the legal process. Local police stations are often staffed by police officers who, embedded in social ties, safeguard the interests of their own castes. Police officers also tend to implicate vocal Dalit activists in criminal cases. Direct and indirect caste discrimination colours the attitude of the police and often results in converting POA cases into private vendettas. Even when Dalit respondents manage to overcome internal conflicts and hurdles to legal action, they may face hostility from within the state judicial machinery, which can respond with coercion and its own rhetorical, political, and legal arsenal. As Raju Solanki, an activist with the Council for Social Justice, suggests:

Casteism is all-pervasive. It shows itself in the way in which the legal machinery thinks of the Atrocity Act…. All progressive legislation in India is derided, referred to as the misuse of law. In most cases, the police call the POA an extortion law—implying that Dalits use this law to force forward castes to attempt a compromise and offer money in exchange for dropping the case by turning hostile in court.

Besides, the state government also maintains vigilance over the registration of crimes under the POA and controls crime registration in order to maintain its political agenda of assimilative and authoritarian forms of Hindu unity. How do state-level Dalit human rights groups respond to the judicial and administrative machineries' unresponsiveness? Dalit organizations pursue a rights-based approach to legal mobilization and institutional reform, and prioritize accessibility, including access to legal processes, institutions, information, and redress or complaints mechanisms. Their intervention in a large number of disputes and a cross-pollination of ideas across platforms enables them to generate expertise. To cite just one example, Navsaran has offices in many districts of Gujarat and monitors crimes against Dalits. Local newspapers report atrocities cases and Navsaran workers initiate contact with families if they hear that no crime has been registered. In Navsaran's field offices, victims' families can approach civil society organizations. The activists monitor cases and hold local public meetings, where they list aloud cases that remain under investigation. They monitor the implementation of POA provisions, insist on a senior police officer's presence while registering a crime to prevent corruption, ensure proper investigation, and hold the police accountable. They actively resist the state's human rights violations and torture while in custody. For instance, a young Dalit man, picked up under suspicion of burglary, died while in police custody. His family suspected torture. The police attempted to hand over the body to the family after the post-mortem report exonerated the police. Navsaran activists, along with the victim's family, insisted on an official inquiry, sat outside the police station in an overnight public demonstration, and refused to leave the police station with the body until an inquiry had been initiated.

Group mobilization is another strategy. In Sayla Taluka, in the Surendranagar district of Gujarat, Anil, a Dalit man who had served in the military, built his house at the outskirts of the Dalit mohalla, the segregated area where Dalits lived. His house, near the panchayat office, was as big as the houses of dominant castes, and he was often derided as an upstart keen to challenge upper-caste dominance. Unlike some of the village's Dalits who worked as agricultural labourers in the fields of upper castes, he had a 'government' job with a pension; hence, he could not be harassed through economic boycott. From the balcony of the panchayat office, some local village youths routinely
sexually harassed Dalit girls who walked past the building; whistling, using derogatory language, and attempting to molest them. Anil, who was working in his house one morning, reprimanded the local youths. That afternoon, the local youths shot him dead in retaliation. In the aftermath of the shooting, Dalits in the village feared that violence targeting other Dalits may continue and that the case may be treated as one of private vendetta, rather than one of caste violence motivated by caste prejudice. Dalits in Sayla Taluka approached the Dalit rights organization Navsarjan.

On 13 April, the organization planned a big rally. The Dalit community took care of the food and organized a mandap for public meeting. Navsarjan distributed pamphlets in all the district’s villages that highlighted the facts of the incident and explained the Atrocity Act. Some upper-caste leaders of the village declared that Dalit peoples would face severe retributive violence if the public meeting went ahead (Bhega thayu to mari nakhshu). The police were informed of this development.

On the day of the public meeting, Dalit people (including a large number of Dalit women) and other supporters began arriving in the thousands. The organizers were aware of the possibility of tension; the police officials had spoken to the organizers and warned them that a curfew might be declared if any violence occurred during this meeting. The village was divided across caste lines and, in this instance, the Other Backward Classes (OBCs) living in the village decided to support the Dalit mobilization and joined the rally. Political leaders got news of the public meeting, and Dinesh Parmar, an ex-MLA (Member of Legislative Assembly) of the Congress party, attended the rally and declared political support. The Rajkot-based BJP MLA also attended the public meeting. On the day of the meeting, Anil’s wife addressed the meeting and narrated the sequence of events that had led to Anil’s death. She also gave context to the crime and narrated earlier incidents of caste prejudice. Anil’s economic advancement was seen as a challenge, and he had been threatened several times for not deferring to the power of upper castes. Prominent local Dalit leaders and members also spoke of practices of untouchability prevalent in the area, cited other recent cases of atrocities against Dalits in Gujarat, and gave information about the Atrocity Act. Dalit leaders and organizers distributed literature on laws and public schemes for Dalits and on Dr Ambedkar’s views on the elimination of caste prejudice; they also provided information about the legal procedures for filing cases under the POA and shared details about the activities of the National Campaign on Dalit Human Rights. Such meetings serve many purposes: they send a message of Dalit organization to dominant castes, prevent backlash, generate media interest to publicize the incident and related issues, assure other Dalits of political support, spread legal awareness, shape legal consciousness, and send a message to political parties to rein in elites who threaten violence.

The POA in Courts: Some Glimpses into NGO Interaction with the Judicial System

Dalit activists and organizations have evolved successful counter-tactics against these obstacles, which has led to a greater understanding of the law and political, administrative, and judicial processes. The judicial system offers many challenges as well, and activists attempt to challenge and check judicial immunization, minimize judicial discretion, and implement accountability. However, the Hindu rights ideology has also captured state institutions, and lawyers and activists suggest that about three-fourths of Gujarat’s higher judiciary share the ideology of the Hindu right. In addition, personal and political connections between judges, police, and dominant elites often result in the subversion of justice. In a well-publicized case of six teachers’ gang rape of a minor girl from a deprived and vulnerable background, two of the teachers were known to have political connections with rival political parties, and one of the teachers was the nephew of a state minister. The director of Navsarjan, Manjula Pradeep, who intervened in the case and helped the girl through counselling and the legal process, consistently had to ward off ‘political requests’ to accommodate the nephew of the minister. If the girl’s father accepted money, a witness would lie during the trial, and the case would be dismissed due to the lack of evidence. However, Navsarjan resisted the pressure, and the girl, assured by the organization’s support, refused to compromise. The accused were convicted in the district court.

NGOs help to prepare witnesses for trial, ensure and track media coverage, provide legal research, and deal with police pressure and
touts wishing to mediate between parties, violence and backlash, and political interests. Frequently, the victims are defended by state-appointed prosecutors, who often are unprepared, uninterested, and do not meet their clients; cases fall through because of legal technicalities. "In many cases, the perpetrators are acquitted because the prosecutor does not even cross-examine the accused." In one case, a presiding judge made casteist comments informally to the victim, and the organization filed a complaint and succeeded in effecting the transfer of the presiding judge. NGOs such as Navsaran maintain a list of lawyers who can step up at such times and take over the case. Dalit organizations file applications to change the prosecutor and to appoint special prosecutors under the POA. Given that conviction rates are low, Dalit groups often organize informal public hearings where victims can describe their experiences with the judicial system. Juries consisting of prominent citizens, human rights activists, police officials, retired judges, and Dalit intellectuals are appointed. The judges presiding over the informal hearings and testimonies analyse the cases, highlight the lack of implementation of the POA, and offer a set of recommendations for the government. These exercises are also routinely carried out in Gujarat districts and at the state level.

The Dominant Elites and the POA

In the context of the POA, mobilization of the law is likely to produce coercion from the state and counter-mobilization from the entrenched elites. The elites resist by using private violence or accessing state officials, power, and money. Despite the myth of misuse of the POA, not all cases of atrocities are even reported by Dalits. From the standpoint of litigants, filing cases under this act is often costly, lengthy, and cumbersome; bargaining between parties often occurs before and after the court has ruled; and initiation of a legal case, or even the resolution of disputes, does not necessarily eliminate private violence, but rather can exacerbate it under certain conditions, deflecting from legal action. In many atrocity-prone districts of Gujarat, Navsaran has formed human rights committees comprising eminent social workers, judges, public servants, and educationists, largely from Dalit, but also from other communities. These committees speak to civic associations in the area and spread awareness through social networks. They represent Dalit interests in cases filed under the Atrocity Act and advise local people on how to access legal aid. For instance, they meet with the police officials who refuse to register cases and follow up on legal complaints and filings. To the families of victims, they offer legal and other advice, referrals to other resources like medical facilities, and assistance in accessing legal aid and the compensation that is due to them.

The government of Gujarat denied the prevalence of incidents of the social boycott of Dalits until 2006, when grassroots activists forced this issue into the open. In the Anand district of the village of Sojira, the president of the gram panchayat, the sarpanch, was a Dalit. The village's panchayat office was rented out regularly for social events, but Dalits had never succeeded in doing so. When the Dalit sarpanch went to book the hall for his daughter's wedding, he was denied permission on the grounds of untouchability. The Dalit sarpanch filed a case under the Atrocity Act for practices of untouchability. The village panchayat decided to announce in public the social boycott of Dalits (saad padavyo). The Dalits in the village, facing the brunt of this boycott, contacted Dalit human rights organizations; but in the end, the village's factions decided to compromise, as the Dalits could not live with the hardships. The size of the village's Dalit population, the political clout of different communities, the social and economic ties between different social groups in the village, and the terms of negotiation affected whether or not the dispute was fought until the very end. See the following illustrations from cases registered at Navsaran:

The whole village gathered and they announced the boycott over [the] loud speaker. We could hear everything from here. They said that dheda were against development and that we have to give them punishment…. If any dheda points at us, we will cut off their fingers. If they speak to us, we will cut off their tongues. It went like this from 9 p.m. till 11 p.m. We made a call to the Chuda police station but they said that no one was available…. At the end of the meeting, they sounded the drum. Social boycott has enormous consequences. Dalit families would be forced to go to the next village or even further, if nearby villages also joined in the social boycott, to get milk for children or to even...
buy salt; daily labourers would have to migrate as they would not be hired by their employers in the village, sick Dalit children would not be able to reach the hospital as no one will drive them there. And the threat of violence to the group would always loom large. At times, Dalits are forced to migrate in large numbers, with their cattle, and camp in the district collector’s office, abandoning their properties, fields, crops, to ask for resettlement as they feared for their lives in the village.\footnote{21}

Navsarjan conducted a study and identified 17 current cases of social boycott (Palez n.d.). The organization publicized the results through the media. They wrote letters to the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, the regional office of the SC Commission in Ahmedabad, the Chief Minister, MLAs, and the national and state human rights commissions. The government of Gujarat was forced to acknowledge this in its 2006 annual report to the federal Ministry of Social Justice and Empowerment.

While legal mobilization is a focal point of Dalit groups’ strategies, these groups also attempt to address social and political exclusion, taking into account Dalits’ lack of representation in economic development, position in the caste hierarchy, limited access to basic goods such as health and education, and the effect of all these factors on legal mobilization. Recognizing the power of social and economic dominance in perpetuating caste dominance and inequality, Navsarjan and other organizations offer employment training to Dalit youths, encourage them to leave traditional caste occupations, help foster an entrepreneurial spirit, and mobilize around the state government’s failure to distribute federal funds to Dalit and Adivasi students.\footnote{22} To increase children’s access to educational opportunities, local NGOs have established revolving libraries, children’s rights groups, and residential schools for Dalit children. However, the scale of these interventions does not compare with the scale of the state’s non-intervention. The government of Gujarat, for instance, fails to distribute federal grants to students from Dalit, Adivasi, and Muslim groups.\footnote{23} These organizations have initiated campaigns for the implementation of government schemes to recognize and distribute land, conducted campaigns for minimum wages, and made visible crimes against Dalit women.

NGO support encourages legal mobilization among Dalits and Adivasis. For many litigants, to even engage with the state’s legal system involves acquiring the legal language and learning to navigate the legal system, despite the fact that the legal system may not return a favourable decision, and retributive violence may accompany legal mobilization. Participants in the dispute often become informal political entrepreneurs, replicating and using elsewhere their new legal knowledge, strategies, and experience. They share legal strategies, skills, and documents with others; they create connections (\textit{olkhan}) with legal, state, and political actors, which might be useful in other contexts; and their aspirations change as they become aware of new possibilities. These enterprising litigants may become frequent users of the legal system and, thus, pursue their cases in legal arenas. Many of litigants also volunteer with local Dalit rights groups or participate in other activities.

It is argued that any legislation or intervention addressing racial discrimination must be multifaceted and must operate at multiple levels to address individual and structural discrimination. Because attempts to change discrimination must address the root causes of stigma and limit the power of dominant groups to shape cognitive frames, narrowly conceived interventions will fail to change contextual factors (Link and Phelan 2001). Marc Galanter, who followed the Untouchability Offenses Act, and later the PCR between 1950 and 1980 in India, highlighted that these laws were underutilized despite high levels of awareness of these Acts among Dalits. Conceding the role of institutional factors in the poor implementation of these Acts, he suggested that an increase in the strength of public-spirited lawyers (especially Dalit lawyers), enhancement in the scale and quality of legal services, and the emergence of civil rights organizations specializing in litigation would lead to effective implementation and, subsequently, high mobilization of these laws (Galanter 1989). For Galanter, the latter factor was important; he especially noted the role of the Harijan Sevak Sangh in mobilizing and supporting cases at the grass-roots level. However, we find that the presence of civil society organizations and cause lawyers on their own have proved inadequate mechanisms for the effective implementation of these laws in practice. In contrast, explaining the success of the POA in Uttar Pradesh, several reports point out that Uttar Pradesh, where SCs make up
21.7 per cent of the population, records the highest number of cases under the POA, even when compared to other states with similar concentrations of SC population.39 In Uttar Pradesh, governing parties such as the BSP are ethnic parties with extensive lower-caste mass appeal and base, and the BSP has made the strict implementation of the POA Act one of its priorities. The party has backed up this legislation by implementing job quotas and distributing land to its core constituency of Chamar voters, not as patronage granted to co-ethnics, but as fulfilling a programmatic agenda. However, realizing that the ‘character of the state’ needed to change in order to implement the POA, the BSP attempted to ‘forge a subaltern-friendly state’ by disciplining the bureaucracy through the use and threat of transfer. Once in power, the BSP transferred 62 Indian Administrative Service (IAS) and 105 Indian Police Service (IPS) officers. The scale of transfer was greater during the BSP’s second round in office (Guha 2009: 97–8). Thus, the BSP succeeded in neutralizing entrenched bureaucratic resistance and installed its own favoured bureaucrats to implement its key policies, including the effective implementation of the POA; the result is evident in the data.

In contrast to the situation in Uttar Pradesh, this chapter demonstrates that Dalit human rights groups in Gujarat have used the law, court arena, and adjudication process as a productive encounter between the state, social organizations, individuals, and groups. They have used the adjudication process not only to provide Dalit individuals with protection and legal access, but also to spread human rights norms and to demand that local police and court officials enforce accountability. Groups in Gujarat have sidestepped the state and its limited response by spurring national campaigns to reform and implement the POA Act. However, the chapter also points to the structural factors limiting the potential of this strategy. Dalit organizations are successful in ensuring legal awareness and supporting legal mobilization, but are constrained by the nature of the state and the political field. The gains made through civil society activism, such as state accountability and increased legal awareness and mobilization, are ad hoc; institutional transformation proves to be elusive.

The next section, outlining women’s legal consciousness, offers a potential route towards thinking about the possibility of breaking this deadlock experienced by civil society, for these women activists offer a glimpse of what James C. Scott calls a “shadow history” which remains to be written for political action, for this experienced history often contains many little traditions’ with sub-strata of different values which offer ‘a pattern of profanations—symbolic reversals of the existing social order’ (Scott 1977).

The Many Avatars of the Atrocity Act

This section of the paper focuses on the political agency of Dalit women and demonstrates how Dalit women’s rights committees, through their interventions, have used the Atrocity Act (1989) and, in doing so, have broaden the human rights approach from a legalistic approach to a developmental enterprise. They effected this change by establishing conceptual links between human rights and different conceptions of poverty and development and between law, social hierarchies, and social policies; in doing so, they have challenged the capture of the public distribution system and public policies by the elites and dominant castes, demanded accountability from state administrations, and offered different routes to challenge caste discrimination.

Literature on Dalit women’s rights has highlighted women’s oppression at the intersection of caste, class, and gender. However, recent studies, especially those on the political participation of Dalit women, highlight their agency in processes of political mobilization and social change (Ciotti 2012). Focusing on the Dalit and Bahujan women activists’ role in the BSP and leadership in Uttar Pradesh, Manuela Ciotti presents a counter-image to the portrayal of Dalit women as victims of untouchability and violence—one of claim-makers stressing the politics of difference (Pandey 2006). She demonstrates how lower-rung women BSP leaders have recast the notion of teeva, or service, often associated with upper-caste notions of charity, to negotiate contemporary politics; in doing so, these women have often acted as legal and political entrepreneurs (Krishna 2003), linking the poor with state agencies, politicians, and bureaucrats. In addition, Ciotti suggests that based on upward class mobility, women’s agency is not reducible to unproblematic versions of sanskritization; to a mimicry of women’s activism in India; or to an ethically driven, emancipatory Dalit project from the standpoint
of the oppressed. Rather, their agency is rooted in and constrained by contemporary Indian party politics, economic policies, statecraft, the upward class mobility of sections of Dalits, and developmental practices. In a similar vein, this paper highlights the agency of Dalit women's groups associated with NGOs to link law, social policies, and human rights approaches.

In a different body of literature, one touching on legal consciousness, Sally Merry argues that human rights are transplanted on the ground through rights-based social services and human rights activities. Discussing the processes of localizing transnational knowledge of human rights (Merry 2006: 179), Merry demonstrates how the appropriation of human rights in vernacular contexts allows individuals to enrich and add to their perception of injustice and to demand accountability from the state for injury to this rights-conscious self. In a similar vein, Marc Galanter (1983), drawing on Clifford Geertz, has argued that law should be seen 'as a symbol of legal and cultural meanings...[that] affects us primarily through communication of symbols—by providing threats, promises, models, persuasion, legitimacy, stigma and so on'. (Galanter 1983: 127).

While citizens' experiences of law and legal institutions shape how they perceive the law, citizens can also stretch the boundaries of legal knowledge and widen their frame, using law in society. Merry, in *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans*, argues that law 'consists of a complex repertoires of meanings and categories understood differently by people depending on their experience with and knowledge of law. The law looks different for example, to law professors, tax evaders, welfare recipients, blue collar homeowners and burglars'. (Merry 1990: 5). Looking at the communication pattern of Dalit women's human rights groups, we find how the promises of the Atrocity Act influenced rights consciousness and contributed to citizenship practices and political participation.

Many NGOs working on Dalit rights in Gujarat have facilitated women's rights committees, some comprising exclusively Dalit women, others crossing caste lines. These committees began as an initiative of Dalit women who were socially active in their villages; some had received paralegal training from NGOs, some had attended meetings on aspects of panchayati raj, and others had accompanied their relatives or friends to NGO offices to address legal issues. Many such women initially came together to address issues of governance in their residential areas and then expanded the scope of their work. They often meet twice or thrice a week, in visible public spaces in the village.

The women's rights groups of Dalit women associated with NGOs in Gujarat act as doorstep courts and political entrepreneurs, and adjudicate, or at times arbitrate, in cases pertaining to women:

The fact that a group of Dalit women can sit in the middle of the village and decide on disputes in itself has a powerful impact on the politics of exclusion in the village. Initially we had taken up issues concerning Dalits—we had conducted a survey of our areas and identified problems of lack of water, inadequate sewage facilities, and approached the panchayat to solve these issues. We also act as a go between; women come to us if they need to obtain BPL [below poverty line] cards, or if they need to get caste certificates; often they don't know which government offices to go to and we help them. Recently, many sarpanchs have been coming to us. In the village school next door, a schoolgirl was raped by her teacher. The sarpanch was a Dalit and he knew about our work and asked us to help. We took up the issue—we were with the family and insisted on her medical check-up and treatment and worked with the police to register the case. Now village sarpanchs from other areas also approach us or refer to us similar cases of crimes against women and domestic disputes.
cremation grounds of the dominant castes in violation of the Atrocity Act, 1989. We request you to follow up with the Government of Gujarat to address these violations of Dalit human rights in Gujarat.

Addressed to the National Commission for Scheduled Castes, the Chief Minister, and the Gujarat Home Minister on 9 April 2011, another letter raises a similar set of issues:

In August 2010, Dalits holding BPL cards were granted free plots of land in the Gareeb Kalyan Mela [Social Welfare Gathering] by the Government of Gujarat. Seven families were to be given plots measuring 30 ft by 30 ft to construct houses. We have followed up on the government’s announcements with the sarpanch, Block Development Officer, District Development Officer, District Collector, and the Chief Minister’s Office. We want to let you know that it has been seven months since this policy was announced and Dalits are under pressure to transfer this land to dominant caste interests for meager sums (ganeen babie daban thayu chhe). This is a crime under the Atrocity Act, 1989.37

Another letter addressed to the Deputy Superintendent of Police, Bhavnagar lists the action required to follow up on recently filed cases under the Atrocity Act (1989) as well as in general cases of crimes against women:

We are writing to ask you about the status of investigation in the following cases of crimes against women and Dalit women in our locality: Rape and murder of a woman named Koklaben on 7 April 2009; kidnap of 17 yr. old Varshaben on 2 January 2009; severe injury due to domestic violence to Nitaben on 30 May 2009.38

The letters demonstrate that Dalit women have found different ways to talk about law, justice, and their associated claims. They see the Atrocity Act as an integrated and cross-cutting element of political participation and development on the ground, rather than just standalone legislation. In these letters, we find that the normative ideas of the Atrocity Act become the marker to highlight forms of violence pervading everyday aspects of rural governance and undermining the implementation of social policy. These and similar letters draw attention to the way in which dominant caste groups use violence, intimidation, and discrimination to funnel policy benefits intended for the whole village.

We find here that Dalit women’s committees’ awareness of legal categories and rules shape the framing of caste-based prejudice and their characterization in public discourse and grievance articulation to the state. Two issues framed women’s sense of injustice. The first is the disjuncture between the equal citizenship promised in law and enshrined in the rhetoric of panchayati raj and the intentional distortion of policies in practice due to prevailing caste norms. The second issue is the generalized everyday experiences of caste-based exclusion and injustice, which Dalit women challenge by using the ethical frame of the law. An enhanced sense of social citizenship and Dalit identity, a willingness to take action, and political decentralization offer these women space for participatory action. For many women’s committees, the law provides the means not only to challenge specific violations of human rights but also to draw attention to political and social norms of caste equality that should accompany governance. Legal mobilization is substituted by proactive legal appeals based on equity, fairness, and the identification of unjustifiable caste violence (that could be justiciable in the future) affecting quality of life.

Women’s human rights committees have a fair knowledge of the law and legal systems themselves and of their limitations in the face of social realities. They realize that law in and of itself may have limited effectiveness as an instrument for social change, depending on the context. In a caste-based structure, the law can be ignored with impunity or interpreted with bias. In some correspondence, women make visible the politics of compromise and its social ineffectiveness as well as the role of the police in diluting the promise of the law, thus silencing their grievances; they also stress the importance of state accountability in such matters, as the following complaints to the district officials suggest:

In the village of Lakshminpura, in the Palanpur district, the street lights were not working, and when we [the women’s group] approached the panchayat, we were beaten and told [by the panchayat members] “have you heard of light in your area?” We had gone to file an atrocity case but the police mediated and worked out a compromise and the case was not filed…. There are ten houses of Dalits and the 500 Rabaris and 100 upper castes in the village and the Dalits saw
no choice but to compromise. However, the lights have yet to be installed and we would like to ask you about the kind of action taken by you in this matter.39

Similarly, in another letter, a group of women write:

We are a group of women from Bavla taluka, Dhandhuka district. We are writing to let you know that our human rights are violated. To begin with, we only get water for an hour every day and the water does not reach our area. The pipeline that delivers water to the village is controlled by the sarpanch who is a Rabari [OBC] and he controls the valve. The Dalit residential areas are located at the end of the village and the water reaches there last. If the water valve is switched off earlier, the water does not reach us. This village has always practiced untouchability in matters related to water—we were not allowed to fill water from other wells in the area. The practice of untouchability with respect to access to water is a crime as per the Indian constitution. Such incidents are punishable under the Atrocity Act and we urge you to take into consideration our application and give us justice....
The gram panchayat is caste-ridden and ineffective and Dalit women's names are not included in the final list of beneficiaries living below the poverty line that are eligible for schemes like Indira Awas, Widow pension, Jawahar Rozgar Yojana, and other schemes that are part of the Integrated Rural Development Programmes. Their names do not figure in the list of names.

The Mahila Adhikar Panch (Women's Rights Council) of Parali village in Limbdi Taluka of Surendranagar district wrote to the President of the Village Council, District Collector, District Health Officer, Primary Health Care Centre, and the Deputy Superintendent of the Police in that area on 18 August 2008:

We want you to know that there are many atrocities against us... sewage water is emptied near the Dalit area and since past few years, we have been sick with malaria, TB, and chikungunya.... We want you to know that the legal minimum wage is Rs 100 a day but we are only paid Rs 40 a day. The dominant castes in the village tell us that starvation is the tactic to break your resistance—we will neither employ you, if you protest, nor will we allow you to go outside the village to look for employment—we will break your legs if you venture outside in search of employment—bahir jasbo to tantiya bhangi nakhsha)...sexual harassment of Dalit women is routine in

our village and if we complain, the police come to the village and leave after chai-pani [bribes] with the dominant castes. The Atrocity Act is meant to protect us.

In these letters, Dalit women highlight how elites corner the benefits of development resources intended for legitimate development ends and use force, intimidation, and indirect discrimination to implement policies in a way that protect their own interests. The women highlight caste lines' influence on access to goods and services; as their letters suggest, the distribution of public goods is intrinsically tied to social contexts and the Dalits' political and social struggle. The quest for equitable redistribution of overall gains is a political as well as legal imperative. However, accountability deficits at every level continue to prevent the aggregate gains of development from being translated into human well-being for the poorest sectors of society.

Anupama Rao has argued that the legal-bureaucratic recognition of Dalits through legislation such as the POA Act 1989 recodes everyday and symbolic forms of violence against Dalits as 'atrocities' and that such legislation contains the possibilities of emancipation and conflict; for through its regulatory function, law helps 'the subaltern to enter into circuits of political commensurability and into the value regime of being human'. (Rao 2009: 264). At the same time, it marks the Dalit subject as an exceptional, historically marginalized subject, and re-encodes Dalit vulnerability as crucial to Dalit identity. It invites retributive violence from upper castes and cements the boundaries between groups. Thus, for Rao, the foundation of liberal legality, with its emphasis on universalism and equality, makes criminal law an inadequate tool to end caste violence (Rao 2009). However, a more generous reading of women's human rights committees demonstrates the possibility of a more transformative vision that goes beyond the law. Women's human rights committee members understand that formal legal mechanisms are important instruments for change; they also suggest that human rights need to be seen as open-ended, flexible, and capable of application in diverse situations and in ways not limited to adjudication in courts and tribunals. While human rights are interpreted in a formal legalistic manner by NGOs that parent these groups, women's rights groups on the ground discuss the ways
in which they challenge caste discrimination through demanding societal relations and their work; in doing so, they foreground Dalit women’s agency in the process.

As Dinaben Vanakar, the paralegal worker at Narsarjan who initiated women’s committees in villages, shared:

At first we formed a committee and worked with Dalit women.... Soon, women from other caste groups began to come for help. Here is where the issue of untouchability came in, and we had the opportunity to apply the Atrocity Act in our village through our court, not the sarkar’s [state] court.... What is the purpose of the Atrocity Act? Ultimately, we want to live in a society where this type of caste violence is eliminated. That is what we achieve through our committee also. In order to challenge the practice, we would offer tea and water to them [referring to caste Hindus who would approach them for help] when they would approach us [to challenge untouchability]... we could see them hesitate, thinking about possible sanctions from other villagers, but then they had come for help form us....most people then would take the tea and water offered by us. Over time, they were forced to confront their practice of untouchability and mingle with us....over time we also began to work with some women from dominant castes.... This idea took off and we now have some mixed women’s human rights committees in some villages.46

We find here that Dalit human rights NGOs have taken a broad approach to address the symbolic and instrumental aspects of the law: they use an adjudication process as a productive encounter between state and society, thereby demonstrating that the formal legal underpinnings of a rights-based approach intrinsic to the Atrocity Act can assist in challenging discrimination, but that accountability of crimes also needs to be realized through many other avenues and mechanisms, including monitoring, reporting, public debate, and greater citizen participation in public service delivery. These NGOs enjoy a degree of success in engaging with formal legal processes, in ensuring the implementation of the Act, and in generating rights awareness among Dalits, but the efforts and advancements that they produce occur within a broader political context hostile to their core agenda, thus limiting their ability to bring about institutional change. Besides, Dalit groups have failed to revive and conjoin to legal activism that demobilized Dalit movement and to substantively challenge the ideological and material projects of the Hindu right; therefore, legal reforms and interventions have failed to address structural inequality effectively or enduringly. While we find that women’s collective’s imaginative use of law opens up new spaces for political action, these spaces are still largely within the frame of access to state and good governance; overall, these strategies have yet to realize a transformative effect on everyday forms of power relations in society.

Notes

1. The literal translation of this term means oppressed, broken. It is a self-referential term to refer to the group seen to fall outside the caste system. The term Scheduled Caste is used to refer to Dalits in official discourse.

2. The Indigenous peoples of India; they are officially referred to as Scheduled Tribes.

3. Articles 17, 23, and 25(2) (b) of the Constitution of India (1950) enjoined the state to provide protective recognition to Scheduled Castes. Article 17 abolishes the practice of untouchability in India. Article 23 prohibits traffic in human and forced labour. Article 25(2) (b) provides for throwing open Hindu religious institutions of public character to all Hindus, in order to address the social practice of barring Dalits from temple entry. In response, the Parliament of India passed the Untouchability (Offences) Act, 1955, to give effect to Article 17, and in 1965, it appointed a committee to examine untouchability as well as the economic and educational status of Dalits. The committee submitted its report in 1969, and based on this report the Government of India introduced the Untouchability (Offences) and Amendment and Miscellaneous Provisions Bill in the Lok Sabha in 1972. In 1976, the Protection of Civil Rights Act (PCR), 1955, was introduced as an amendment, making caste discrimination and violence offences punishable by law, and making the eradicating of untouchability a statutory duty of state governments. The law was largely ineffective in practice, and Dalit groups across the country called for a more comprehensive and punitive law. As a result, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act was enacted in 1989, and the rules were framed in 1995.

4. For instance, only 633 cases were recorded nationwide under the PCR in 2002. In Gujarat, under the PCR, 46 cases were recorded in 1998,

5. Population density is an important variable for understanding the mobilization strategy of political parties seeking to organize ethnic groups (Chandra 2004: 15).


8. It may be argued that advances in education and occupational status can explain higher levels of reporting of crimes, but the educational and occupational status of Dalits in Gujarat is lower than that of states that have achieved near universal basic education, such as Kerala, Tamil Nadu, and Himachal Pradesh (National Scheduled Caste Commission Annual report 2004–5: 116). In 2002–3, the drop-out rate of Dalit school children in primary education was 26.6 per cent in Gujarat as opposed to zero per cent in Kerala and 8.6 per cent in Maharashtra; the drop-out rate for Dalit children in high school was 75.5 per cent for Gujarat, 23.6 per cent for Kerala, and 58.7 per cent for Maharashtra (Annual Report of the National Commission for Scheduled Castes, 2004–5: 123).

9. Small-scale studies undertaken by the Navsari Trust and the Council for Social Justice in Gujarat report that of the 14,242 cases of atrocities against SCs and STs completing trials in several district sessions courts in Gujarat from 30 January 1990 to 30 July 2007, 91.8 per cent ended in acquittals, 3.9 per cent in compromise, and a mere 2 per cent in convictions (National Coalition for Strengthening SC & ST POA Act 2010: 25).

10. The term Hinduism refers to political Hinduism, based on the idea that Indian state and society should be organized according to exclusivist ‘Hindu’ norms.

11. The Sangh Parivar refers to the BJP and its affiliates, including its ideological nucleus, the Rashtriya Swayam Sevak (RSS) Dal; its religious and proselytizing wing, the Vishwa Hindu Parishad (VHP); its students wing, the Akhil Bharatiya Vidyarthi Parishad (ABVP); and its women’s wing, the Rashtriya Sevika Samiti (National Service Committee).


14. On 27 February 2002, a train car carrying a number of Hindu nationalist activists was burned during the halt at the Godhra station in Gujarat. Fifty-seven Hindu nationalist activists died in the fire. These activists were returning from a popular agitation to build a temple at a site in Ayodhya, north India, where a 400-year-old mosque, Babri Masjid, was illegally burned down by Hindu right-wing mobs in 1992. The Hindu right interpreted the incident at Godhra as Muslim provocation. The train-burning triggered three days of retaliatory attacks on Muslims in Gujarat, killing more than 2,000 Muslims and displacing thousands more; the state administration was complicit in the attack (Narula 2003).

15. Valsibhai Patel, a prominent Dalit activist who was part of the Dalit Panthers in Gujarat explains:

   The BJP and the Chief Minister of Gujarat practice worst forms of paternalistic politics—they announce garvek kaliyan melas (gatherings for the welfare of the poor), in which the Chief Minister, like the royality of yesteryears, distributes paltry benefits to few poor Dalit families. Mind you, these are actually government schemes that the people have the right to access, but these are announced like the Chief Minister’s daan dakhina, alms, amidst much fanfare and publicity, to the helpless families in order to secure their and the rest of the hopefuls’ loyalty to the party and the Chief Minister. However, Dalits are not integrated into the Hindu order envisaged by the BJP. Under this party, ritualistic Brahminism is part of state policy. For instance, the state government has for many years announced training for Dalit priests in Hindu rituals, serving a dual purpose—continuing the policy of untouchability as Brahmin priests will not have to officiate at Dalit social functions. [In addition], such practices Hinduize Dalits and Adivasis while confining them to their place within the caste hierarchy. (Interview with Valsibhai Patel, 11 August 2012. Ahmedabad).


17. Minority rights groups recently mobilized the courts to ask the Modi government to implement the federal government’s scholarships for economically deprived minority groups. The government of Gujarat has challenged the constitutional validity of this scholarship scheme, arguing that it violates constitutional equality. The court ruled against the Modi government and upheld the validity of the scheme (The Hindu, 7 May 2013).

21. For instance, in the Ved village of Panchmahals, a Dalit woman and her son, carrying pots of water, spilled water on the road. A retired police officer, passing by, reprimanded them for polluting the road. The young man defended himself. The police officer hit the boy with an iron rod and called the nearby police station and informed them of the incident. When six to ten Dalit villagers registered the case under the Atrocity Act at the police station, the police charged the people, arrested and kept in custody three Dalit villagers, and filed a case against them under Section 333 of the Indian Penal Code, 1860, for voluntarily causing grievous hurt to deter a public servant from his duty. The Dalits of the area contacted local NGOs, which took up the matter with higher officials, and local media and newspapers, which covered the event; they also organized a meeting between Dalit leaders from Ved and the area's deputy superintendent of police. This pressure led to the filing of cases against police constables who had assaulted Dalit villagers under Section 133 of the Indian Penal Code, 1860, for abetment of assault by a police officer while on duty, obstructing the police. However, the cases against all parties continued; the three Dalit members of Ved were released on bail, as was the retired police officer. Other constables who were part of the incident were transferred to other police stations. (Manubhai, Navsaran Trust, 12 August 2012, Ahmedabad).
24. The victim's name has been changed to protect confidentiality.
25. A senior government attorney shared with me on conditions of anonymity: 'Lawyers know which way the verdict is going to swing the minute she comes to know which judge is assigned to the case. Most of the judges in the Gujarat High Court share the RSS ideology and it is an open secret'. 18 July 2012, Ahmedabad.
27. Such a hearing was held on 31 March 2008 by the Centre for Dalit Human Rights, Navsaran's legal wing. See, for instance, Navsaran Trust's 2008 report 'Justice Undelivered: Public Hearing on the Lack of Enforcement of the POA in Gujarat'.
28. Sarpanch is the democratically elected head of the village-level institution of local self-government. The 73rd and 74th amendments to the Indian Constitution have introduced a three-tier system of political decentralization and devolved several administrative functions to the gram panchayat, the village assembly, and to elected office bearers of village-level institutions.
29. Dheda is an illegal, derogatory caste-based term used to refer to Dalits in Gujarati.
33. The government of Gujarat, for instance, fails to distribute federal grants to students from Dalit, Adivasi, and Muslim groups. See, for instance, the news item: 'The govt. not using the central grants for welfare of SC/ST and minorities', Gujarat Samachar, 8 July 2008. NGOs lobbied with opposition MLAs to raise this issue in the state assembly. Congress MLAs Sahilesh Parmar, Chandu Dabbi, and Amit Chavda raised this issue in the assembly and met Social Justice and Law Minister Falik Waghela.
34. NGOs in Gujarat had to approach the High Court to order the government to release scholarship funds to minority students (Prakash 2013).
35. For instance, SCs make up 23 per cent of the population in West Bengal and 28 per cent in Punjab.
37. Letter written by the women's committee based in Viramgam district, Gujarat.
39. This letter dated 8 October 2010 was addressed to the District administration and the State Human Rights Commission, Government of Gujarat.

References


11

The State as Religious Gatekeeper

Human Rights, Resistance, and Indian Anti-Conversion Laws

Amar Khoday

Religious conversions are profound, multi-dimensional events and processes that fundamentally implicate human rights concerns. On the one hand, where an individual is forced to convert due to compulsion or threats of physical injury, such acts clearly violate her rights to liberty, the freedom to choose and practice the religion of her own selection, and the right to associate and situate herself within a particular community. A person who is compelled to convert suffers a clear harm because their individual autonomy has been curtailed. However, where an individual voluntarily converts from one religion to another, human rights are also implicated but in a different manner. Rather than violations of their human rights, individuals, acting as legal subjects, exercise and affirm the aforementioned rights. The state has a delicate role to play in deterring and punishing those who would use force or other improper means to secure an involuntary religious conversion while being careful not to create overly broad