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What Does Justice Mean for Survivors of Caste Atrocities?

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For survivors of caste crimes, a successful case under the SC/ST Atrocities Act is often not legal success, but a chance of improvement in life in their local contexts.

Few laws in postcolonial India have provoked as much debate, resistance, and ambivalence as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, often described as India's only hate crime law. The discourse surrounding this law has fit into moulds. Critics tout the instrument as an overreaching statute prone to 'misuse'. Sympathisers, including many scholars, point to the various ways in which the law is frustrated by the very same power structures that it purports to dismantle.

Sandhya Fuchs' *The Fragile Life of the Atrocities Act: Seeking Justice Against Caste Crimes* is best understood as an intervention to break these moulds of discourse by centring in its narrative the survivors of the Atrocities Act. Drawing from rich ethnographic fieldwork done in Rajasthan over the course of 18 months between 2016 and 2018, the book attempts to trace the social life of the Atrocities Act beyond the institutionalist modes of understanding the law. The narratives of the book, at many instances, fly in the face of the conventional wisdom as to what a successful engagement with the law looks like, especially when understood in the confines of legalism. In this process, it forces us to re-evaluate what 'justice' means to the people for whom this legislation has been enacted.

In some way, *Fragile Life* is in furtherance of conversations that other ethnographies on Indian law have to say on special laws (Suresh 2023) and the life of the law beyond the courtroom (Baxi 2014). However, there are significant points where Fuchs' narratives of the book are at odds with these previous works.

Understanding an Atrocity

Fragile Life goes against the conventional narrative of understanding caste atrocities as an anachronistic artefact. Legal narratives often make this category mistake—and these include judgments from the Supreme Court: "The caste system which has been put in the grave by the framers of the Constitution is trying to raise its ugly head in various forms. Caste poses a serious threat to the secularism and as a consequence to the integrity of the country. Those who do not learn from the events of history are doomed to suffer again" (*Subhash Kashinath Mahajan v. The State of Maharashtra*).

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Fuchs, instead, locates caste atrocities in the dynamic interactions of old hierarchies with the realities of a modernising India. She highlights how many of these atrocities stem from the anxieties of dominant castes, who fear the waning of an old order that protected their privileges. Perpetrators conceptualise atrocities as self-defence and the defence of an order that the perpetrators consider to be a just one.

Fuchs understands hate crimes (of which caste atrocities are a species, as per her classification) as not incidents but rather as processes that "represent the boiling point of normalised social hierarchies and biases." These processes are not adequately captured by the event-centric understanding of caste atrocities that the law has. This is emphatically expressed by Rahil's story that she narrates. Rahil was picked up by the police for injuring a dominant caste landowner and aspiring politician. (The landowner had called Rahil a 'fallen man' for being drunk. It was unclear if the intent of the insult was casteist, but Rahil felt so and threw a stone in response.) Almost three weeks into police custody without being formally arrested, Rahil filed a case under the Atrocities Act against the dominant caste man.

A 'facts of the moment' understanding of the case moves us (and the legal system) to see Rahil's complaint as a 'false case'. However, a deeper inspection of the case reveals a different picture. Given the dominant caste man's influence, Rahil could have spent a long time in prison, with the investigation going nowhere. The Atrocities Act case made the dominant caste politician agree to the release of Rahil due to fears of becoming unpopular with Dalit voters in the upcoming elections. This shows us how strategic engagement with law by survivors like Rahil is one of the many ways in which survivors utilise the Atrocities Act to "overcome local,

casteist power structures" through "strategic legal disobedience" vis-à-vis the 'presentist' world view of the law.

Redefining Success

With the rare exception of upwardly mobile and urban residents, most survivors of caste atrocities have to reckon with the fact that the life of the village is all that they know, and whatever improves it counts as success for them. The 'legal success' of the case is often at variance with this idea of success.

"What counts as a successful engagement with the law?" is one of the central questions Fuchs asks. In answering that question, she centres the hopes and fears of survivors, rather than engaging in an idealised analysis of why the survivors have certain aspirations or how the hierarchies of their context intimately shape them. *Fragile Life* acknowledges how, for many survivors of atrocities, their embedded context defines the limit of their aspirations. But it does not attempt to examine why these aspirations don't line up with ideal solutions to structural problems. For instance, the primary concerns of the parents of a minor who survived sexual abuse by dominant caste men revolved around her honour and the impact that the ongoing case had on her impending marriage.

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This calls into question the normative idea of legal engagement with the law as it relates to these locally embedded survivors. Fuchs views with equal criticality the ideas that human rights activists and the big men (*netas*) of the Dalit movement have as to what counts as a successful atrocities case. Instances of informal 'compromises' between the perpetrators and survivors present a central conflict in the varying ideas of success. While the latter look at compromises as a way to ameliorate differences and consolidate the power of the Dalit political movement, the former look at it as a betrayal of the idealised struggle for Dalit rights, which calls into question the legitimacy of the Atrocities Act.

However, what do compromises mean for the survivors? While a legalistic lens pushes us to see compromises as a failure of the law, for many survivors embedded in their local contexts, a compromise is the best way that life can be improved in their villages. These compromises are not reached despite the law, but rather because of it, Fuchs points out. She highlights how, in many cases, such compromises — often consisting of monetary compensations and public apologies— guarantee safety in the here and now, enabling the survivors to have a chance at better life prospects. This is brought out in the story of Roop Singh, who was assaulted by a dominant caste man and was being assisted by a prominent human rights group in his case, on the promise that he would not compromise. However, in the end, he sought such a compromise, much to the chagrin of his lawyers. However, the fact that a prominent human rights group was working with him scared the perpetrator into offering him a "better compromise" than he would have otherwise got. These instances highlight the survivors' ideas of justice as restitution rather than the punishment-oriented view of the Atrocities Act. It is one of the many ways in which survivors of atrocities assert their agency in their engagement with the law.

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These narratives resonate with the idea in recent access to justice literature, which argues that for a better measure of justice, it is important that we take the perspective of the 'justice user' instead of a merely institutionalist understanding of justice, which does not take into account the how justice is actually experienced by the user, especially in the plural legal worlds of the Global South (De Souza 2022). However, as critical engagement with these propositions reflects, such ways of measuring justice fail to tackle the hierarchical processes that create injustice in the first place (Maurya 2024).

This contrast comes out in the narrative of the survivors of the brutal massacres of Dangawas village, where five members of the local Meghwal Dalit community are brutally massacred by members of the dominant Jat caste. The massacres occurred in the backdrop of the failure of the Jats to secure what they thought was their rightful land privileges through the mechanisms of formal law. The massacres brought life in Dangawas to a halt. No compromise could heal the pain and suffering of the families of the survivors. In their own words, they would not be able to live in peace and without fear unless "people's thoughts (*soch*) […] change".

The case of Dangawas is similar to the case of Roop Singh in that both represent people who are embedded in the local context of their village lives. The tool of compromise as a here-and-now solution worked for Roop Singh and was deemed more important than

the abstract concern for the Dalit rights movement championed by the activists. However, as the case of Dangawas survivors highlights, we cannot eschew the abstract goals of the Dalit rights movement either, as the achievement of that goal presented the possibility of an elimination of the structural causes of their suffering. However, the tragedy of legalism is that the formal processes of the law under the Atrocities Act help neither Roop Singh nor the Dangawas survivors. "Of course, we want justice under the law", the Dangawas survivors said, "but the law does not live in the village".

A Special Kind of Special Law?

Fragile Life is not sparing in its criticism of how lawyers and legal scholars engage with the Atrocities Act. Fuchs highlights how the paternalistic attitudes of human rights activists often create new modes of silencing that ignore the concerns and desires of injured individuals and silencing.

Yet, her characterisation of the legal community's critique of special laws is overstated. The legal profession, she claims, is the source of some of the harshest critiques of special criminal laws. She cites the work of Kunal Ambasta (2020), who interrogates the necessity and efficacy of special criminal laws in the context of the Indian criminal justice system. He argues that there exists little legal or penological justification in not treating many special laws under the scheme of general criminal law, whose generality underpins the potential for fairness and justice. Fuchs suggests that many of the claims that Ambasta makes are tempered by ethnographic studies, like that of Mayur Suresh, which highlight how trials under these 'special' laws concerning terrorism are 'discouragingly ordinary', characterised by the same prosaic technicalities as documentary regimes of general criminal law.

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However, it is worthwhile to note that neither Ambasta's nor Suresh's work gives us any insights specific to the Atrocities Act. Ambasta's work is cited by Fuchs as the poster-child of legal scholarship's critique of special laws. Yet, while his article speaks to a wide range of special laws concerning terrorism, money laundering, narcotics, and sexual abuse of children, the Atrocities Act is conspicuous by its absence.

This absence is not accidental. I would go so far as to say that there is a silent acknowledgement within legal scholarship that the Atrocities Act is a special kind of special law. But the context in which the critique of special laws arises sits uncomfortably with the inclusion of the Atrocities Act in the discourse. These critiques are mostly a reaction to the many ways in which Indian Courts have expanded state power by not actively pushing back against these special laws (for instance, see *Noor Aga v State of Punjab* (2008) and *Vijay Madanlal Choudhary v Union of India* (2022)). On the contrary, the Atrocities Act is one special law where courts have actively tried to weaken the law under the pretence of misuse and false cases (*Subhash Kashinath Mahajan*), a narrative that the author deftly deconstructs in a chapter titled '(Re)writing Law's Allegiance?'.

As Fuchs herself notes, the Atrocities Act is a rare criminal legislation that is not only against something, but rather is engaged in the active task of creating a new normative imaginary. It is a law that engenders hope through its symbolism and its prestige of law-as-text. The 'special' provisions of this law target precisely the structures that make general law out of the grasp of the survivors of caste atrocities.

Therefore, the allegation that legal scholarship's criticism of special laws extends to the Atrocities Act is incorrect. However, legal scholars, in ignoring the Atrocities Act, do not put forward a very principled critique of special laws either. There is a need to consider and articulate what exactly the legal and penological justifications of the existence of special laws in India are, and which laws meet them and which laws fall foul of them. This requires legal scholarship to theorise in the non-ideal context of empirical realities of the subject matter of these special laws. Ethnographies like Fuchs' and Suresh's are an indispensable part of this project.

Making New Demands from the Law

Fragile Life provides many calls to action for legal scholarship. First, it requires us to rethink the ways in which legal truth regimes must be radically rethought to include within their fold the stories of persons like Rahil, where the here-and-now view of the law obscured the historical nature of injury. Given the entrenched ways in which legal knowledge operates, this sounds like a huge task. However, there is some hope in that there already exist ways in which criminal law takes into account context. But as of now, the context is brought in only at the stage of sentencing, in the bifurcated trial of contemporary criminal proceedings in India, where mitigating circumstances are considered, which include facts beyond the 'presentist' lens. However, legal scholarship must grapple with

how this would translate when we bring in context at the stage of determination of guilt itself.

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Second, it asks us to question the normative ideal of legal engagement with the law. It asks legal aid professionals what their priority is and where their first loyalty lies. Is it loyalty to the law? The rights movement? Or is it to the survivors? How can legal aid officials give space to the agency of survivors amidst the ethical conundrums that such a setup brings with it? At an institutional level, it asks us to consider how survivor-centric this law—and more broadly, our justice system—really is. How can the law give more space to the agency of the survivors while still meeting its broad objectives?

Third, it prods us to think about how legal practice should engage with legal meliorism, that is, the idea that the law can comparatively improve society. The Atrocities Acts, amongst many things, is an instrument that engenders hope in a better future. However, legal practitioners are often reluctant to inspire hope in their clients as a way to manage professional expectations. However, in many cases, what Fuchs terms a “meliorist hope complex” is what keeps the survivors’ engagement with the Atrocities Act alive. This forces the practitioners to confront the question of the effect of the law. It pulls legal practice down from the abstract world of doctrine to the real life of the survivors of atrocities, whose varied experiences and choices end up shaping the fate of individual cases under the Atrocities Act.

Above all, *Fragile Life* asks us to reckon with the many ‘intended’ and ‘unintended’ ways in which the Atrocities Act shapes the experiences of the survivors of caste atrocities. It pushes us to understand the social life of the Atrocities Act beyond the story of frustration and failure that an institutionalist understanding of the law’s purpose gives us. It forces us to see the law through the eyes of the people whose future it intends to secure.

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