

PART IV

What the Untouchables have to face

CHAPTER 12

ANTAGONISM OF THE ADMINISTRATION

Section 2 of the Indian Penal Code reads as follows:

“ Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within British India.”

The Law Commissioners who prepared the draft Penal Code in their address to the Secretary of State thought it necessary to draw pointed attention to the words ‘Every Person’. In the course of their observation, they said:

“Your Lordship in Council will see that we have not proposed to except from the operation of this Code any of the ancient sovereign houses of India residing within the Company’s territories. Whether any such exception ought to be made is a question which, without a more accurate knowledge that we possess of existing treaties, of the sense in which those treaties have been understood, of the history of negotiations, of the temper and of the power of particular families, and of the feeling of the body of the people towards those families, we could not venture to decide. We will only beg permission most respectfully to observe that every such exception is an evil; that is an evil that any man should be above the law; that it is still greater evil that the public should be taught to regard as a high and enviable distinction the privilege of being above the law; that the longer such privileges are suffered to last, the more difficult it is to take them away; that there can scarcely even be a fairer opportunity for taking them away than at the time when the Government promulgates a new Code binding alike on persons of different races and religions; and that we greatly doubt whether any consideration, except that of public faith solemnly pledged, deserves to be weighed against the advantages of equal justice.”

It might have been thought that this principle of equal justice would strike a death blow to the Established Order. As a matter of fact, far from suffering any damage the Established Order has continued to

operate in spite of it. It might be asked why the principle of equal justice has failed to have its effect. The answer to this is simple. To enunciate the principle of justice is one thing. To make it effective is another thing. Whether the principle of equal justice is effective or not must necessarily depend upon the nature and character of the civil services who must be left to administer the principle. If the civil service is by reason of its class bias the friend of the Established Order and the enemy of the new Order, the new Order can never come into being. That a civil service in tune with the new order was essential for the success of the new order was recognized by Karl Marx in 1871 in the formation of the Paris Commune and adopted by Lenin in the constitution of Soviet Communism. Unfortunately, the British Government never cared about the personnel of the Civil Service. Indeed it opened the gates of the administration to those classes who believed in the old Established Order of the Hindus in which the principle of equality had no place. As a result of this fact, India has been ruled by the British but administered by the Hindus. A few statistics of the composition of the Civil Service will fully demonstrate this fact.

From the capital of India down to the village the whole administration is rigged by the Hindus. The Hindus are like the omnipotent almighty pervading all over the administration in all its branches having its authority in all its nooks and corners. There is no loophole for anyone opposed to the old order to escape. No matter what the Department, whether it is Revenue, Police or Justice it is manned by the Hindu. If the Established Order has continued to exist, it is because of the unfailing support it received from the Hindu officials of the State. The Hindu officials are not merely administering the affairs on their merit. They are administering them with an eye to the parties. Their principle is not equal justice to all. Their motto is justice consistent with the Established Order. This is inevitable. For they carry over into administration the attitude towards different classes in society under the Established Order. This is well illustrated by the attitude of the State officials towards the Untouchables in the field of administration.

As every Untouchable will be able to testify, if an Untouchable goes to a police officer with a complaint against the caste Hindu, instead of receiving any protection he will receive plenty of abuses. Either he will be driven away without his complaint being recorded or if it is recorded, it would be recorded quite falsely to provide a way of escape to the Touchable aggressors. If he prosecutes his offenders before a Magistrate the fate of his proceedings could be foretold. The

Untouchables will never be able to get Hindus as witnesses because of the conspiracy of the villagers not to support the case of the Untouchables, however just it may be. If he brings witnesses from the Untouchables, the Magistrate will not accept their testimony because he can easily say that they are interested and not independent witnesses, or, if they are independent witnesses the Magistrate has an easy way of acquitting the accused by simply saying that the Untouchables compliment did not strike him as a truthful witness. He can do this fearlessly knowing full well that the higher tribunal will not reverse his finding because of the well-established rule which says that an appellate court should not disturb the finding of the trial Magistrate based upon the testimony of witness whose demeanour he had no opportunity to observe:

That such a discrimination is practised has now been admitted even by Congressmen. The annual Report of the Tamil Nad Harijan Sevak Sangh for the year ending September 30, 1937 says¹:

“The political consciousness of the Harijans having been roused by the rights in the remotest villages where it is only the policeman that reign, it is not always possible for the Harijan to do this, for the assertion of his rights means a clash between him and the castemen, in which it is always the latter that have the upper hand. The natural consequences of this scuffle is a complaint either to the police or the Magistrate. The latter course is beyond the means of a Harijan while the former resort is worse than useless. The complaints are in many cases not inquired into at all, while in others a verdict favourable to the castemen is entered. Our complaints to the Police also meet with similar fate. The trouble seems to us to be that there is no change in the mentality of the lower policeman. Either he is unaware of the rights of the Harijans of which he is supposed to be the guardian or he is influenced by caste men. Or, it may also be that he is absolutely indifferent. In other cases, corruption is responsible for his taking the side of the richer caste men.”

This shows how the Hindu official is anti-Untouchable and pro-Hindu. Whenever he has any authority or discretion, it is always exercised to the prejudice of the Untouchables.

The police and the Magistrate are sometimes corrupt. If they were only corrupt, things would not perhaps be so bad because an officer who is corrupt is open to purchase by either party. But the misfortune is that the Police and Magistrates are often more partial than corrupt. It is this partiality to the Hindus and his antipathy to the Untouchables

¹ See 'Hindu' of March 7. 1938.

which results in the denial of protection and justice to the Untouchables. There is no cure for this partiality to the one and antipathy to the other, because it is founded in the social and religious repugnance which is inborn in every Hindu. The Police and the Magistrates by reason of their motives, interest and their breeding, do not sympathise with the living force operating among the Untouchables. They are not charged with the wants, the pains, the cravings and the desires which actuate the Untouchables. Consequently, they are openly hostile and inimical to their aspirations, do not help them to advance, disfavour their cause and snap at everything that smacks of pride and self respect. On the other hand, they share the feelings of the Hindus, sympathise with them in the attempt to maintain their power, authority, prestige and their dignity over the Untouchables. In any conflict between the two, they act as the agents of the Hindus in suppressing this revolt of the Untouchables and participate quite openly and shamefacedly in the nefarious attempt of all Hindus to do everything possible by all means, fair or foul, to teach the Untouchables a lesson and hold them down in their own places.

The worst of it is that all this injustice and persecution can be perpetrated within the limits of the law. A Hindu may well say that he will not employ an Untouchable, that he will not sell him anything, that he will evict him from his land, that he will not allow him to take his cattle across his field without offending the law in the slightest degree. In doing so, he is only expressing his right. The law does not care with what motive he does it. The law does not see what injury it causes to the Untouchable. The police may misuse his power and his authority. He may deliberately falsify the record by taking down something which has not been stated or by taking down some thing which is quite different from what has been stated. He may disclose evidence to the side in which he is interested. He may refuse to arrest. He may do a hundred and one things to spoil the case. All this he can do without the slightest fear of being caught. The loopholes of law are many, and he knows them well. The Magistrate has vested in him an enormous amount of discretion. He is free to use it. The decision of a case depends upon the witnesses who can give evidence. But the decision of the case depends upon whether the witnesses are reliable or not. It is open to the Magistrate to believe one side and disbelieve the other side. He may be quite arbitrary in believing one side, but it is his discretion, and no one can interfere with it. There are innumerable cases in which this discretion has been exercised by the Magistrates to the prejudice of the Untouchables. However truthful the witnesses of

the Untouchables the Magistrates take a common line by saying 'I disbelieve the witnesses', and nobody has questioned that discretion. What sentence to inflict is also a matter of discretion with the Magistrate. There are sentences which are non-appealable. An appeal is a way of getting redress. But this way may be blocked by a Magistrate by refusing to give an appealable sentence.

If the Hindu society plays its part in maintaining the Established Order, so does the Hindu officials of the State. The two have made the Established Order impregnable.

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