

# *Structural Mechanism, Law, and the Dalit Question in India*

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## **Abstract**

This paper argues that the Dalit situation of caste-based oppression in India could be characterized by the enduring co-existence of upward social mobility and atrocities. While being a common-sense understanding, the paper suggests that the relation between upward social mobility and enduring atrocity could be referred to as a “structural mechanism” in the Dalit situation. The concept is used to explain the Dalit problem. Moreover, this structural mechanism sheds more light on developments and discursive breaks in the legal context. A central lesson in the post-colonial period is that the problem of “untouchables” could not simply be conceptualized as a problem of civil law and untouchability. Rather, the problem of atrocities created demands and a need to make caste-based atrocities a concern for criminal law. Ambedkar’s significance as a symbol of Dalit assertion could be viewed in connection with the structural mechanism of Dalit achievements and caste-based exclusion.

**Keywords:** legal change, India’s Dalits, caste, social explanation, atrocity, equality

## 1. INTRODUCTION

India’s juridical framework has been responsive to the needs of the Dalits, but there is still a widespread problem of caste-based discrimination against them. Formerly known as “untouchables” in India’s caste system, the Dalits have challenged the egalitarian credentials of India’s democratic system. However, there is one observation that appears particularly central among them: Dalits may face resistance at times when they act in a more independent manner than what would be expected from their position as “untouchables” in India’s traditional caste system.

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Resistance against assertive or upwardly mobile Dalits happens on an everyday basis; many occurrences are subtle forms of discrimination, while some occurrences are clearly violent. The events in 1990 and 1991 in Chundur village in the south Indian state of Andhra Pradesh constitute an extreme case in this regard.<sup>1</sup> The Dalit population in this village had acquired a modern lifestyle, education, and a regular income during the 1980s. Their new and independent mode of behaviour was more obvious among the Dalit youth than the elderly among them. Dalit youths did not vacate seats in the cinema hall when members of the higher castes asked them to give them their preferred seats. In addition, the younger generation of Dalits had organized an assertive movement. In 1990, they erected a statue of the leader of the untouchables at the time of Independence, Bhimrao Ambedkar, in the middle of the village. Erecting this tall and visible statue on the main road was an act of assertion. It was at this time that the Dalit movement across India mobilized to prepare for Ambedkar's centenary celebration. However, the Dalit movement faced a brutal backlash in this village on 6 August 1991 when it was attacked by a large crowd of upper castes who were determined to teach the Dalits a lesson. Eight Dalits were brutally killed in the attack.

Although the massacre in Chundur village is a case of extreme violence, it confirms a frequently occurring pattern of how upwardly mobile and assertive Dalits may face resistance and be “taught a lesson” about caste submissiveness. The expression—“to teach the Dalits a lesson”—was clearly stated by Bojja Tharakam, a senior Dalit leader in Andhra Pradesh, when he explained why massacres had been carried out against Dalits in the state.<sup>2</sup> The statement corresponds to a general observation in the Dalit movement that assertion of equality and social justice as Dalits gained upward social mobility would result in a backlash. This observation is often brought up to explain the Dalit situation in India today. Upward social mobility (USM) and enduring atrocities (EA) constitute a pair. The two different and seemingly opposite phenomena appear to characterize the Dalit situation, so much so that it could be considered an answer to what “the Dalit question” is about.

In this paper, I suggest that the USM-EA pair is a “structural mechanism” useful in shedding light on legal changes pertaining to the Scheduled Castes provisions in the post-colonial period. “Mechanism” is a topical term in current sociology and political science. My usage connects with the observation of how there is a “frequently occurring pattern” in society that is explained with reference to opposites.<sup>3</sup> The USM-EA relation is a mechanism explaining the Dalit situation within the structure of the Indian state. It is revealed in the resistance to the advancement of Dalit equality, with instances such as that in Chundur demonstrating the extent of this opposition. I argue that this structural mechanism has been at play in the discursive shift from a conceptualization of the problem of Dalits in terms of civil law to a clearer problem of criminal law. As Anupama Rao indicates, this discursive shift occurred over time from the 1960s until the 1980s.<sup>4</sup> My analysis represents a supplement in this context. My claim is that the discursive shift from untouchability to atrocity reflects the importance of this structural mechanism, particularly the way it constitutes a central perspective capable of highlighting what the study of Dalits and law entails.

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1. Other major incidents have taken place from 1991 until the present, e.g. the 2006 massacre of the Bhotmange family in Khairlanji; the 2014 dispute over the building of a Buddhist shrine in Kewlewada.

2. In an interview with the author, Hyderabad, February 2008.

3. Elster (1999), p. 1.

4. Rao (2009).

Thus, one could consider this structural mechanism more central to an interpretation of the Dalit situation and recognition of their type of challenges in the legal system in India than has been acknowledged in the scholarly literature. No doubt it is often pointed out that Dalits are confronted with both upward social mobility and atrocities, but this pattern has gained little conceptual attention.<sup>5</sup> Its conceptual status could at first glance be viewed as an explanation at the level of common sense, or as a type of critical realism. My aim is to provide a conceptual point of entry to analyze the Dalit problem of caste-based oppression. This could be a critical corrective to writings on the so-called “caste question,” which is dominated by seminal writings in the anthropological tradition such as the structuralist approach to caste that Louis Dumont introduced in the 1960s, and the post-structuralist approach of Nicholas Dirks.<sup>6</sup>

In what follows, I will first clarify what I mean by a structural mechanism in the Dalit situation and how this perspective could provide a realist supplement to the seminal literature on caste. In Section 3, I discuss the legal changes related to the Scheduled Castes, particularly the shift in focus from civil to criminal law. In Section 4, I elaborate on the relation between Dalits and the law, before I return to the events in Chundur village, its structural and contingent factors. Here, I also quickly point out how Dr Bhimrao Ambedkar (1891–1956) is a symbol of Dalit assertion in India today that could be viewed as a condensed expression of the structural mechanism, while representing a dynamic approach to examine the relation between Dalits and the law.

## 2. FROM THE CASTE QUESTION TO THE DALIT QUESTION

The scholarly interpretation of caste in India has been influenced by seminal contributions, such as Louis Dumont’s structuralist discussion of India’s traditional caste system and Nicholas Dirks’s post-structuralist approach. While their theories and arguments differ—for instance, Dirks’s answer to “the caste question” clearly differs from Dumont’s account—they are both concerned with explaining the origin or source of caste consciousness. The caste question appears to be the following: How is caste produced? I think the Dalit question is different and that it could be formulated as follows: What are the characteristics of their oppression? My suggestion is that a structural mechanism could be used to explain the Dalit situation and that it needs to be clearly delineated from the contributions of Dumont and Dirks and the caste question in general.

Dumont is a classical and controversial reference in the study of India’s caste system. He made use of French structuralist thought to develop an anthropological approach to study hierarchy from a universal perspective, with its focus on how value structures a society. Dumont pointed out some initial social and political changes in the 1950s and 1960s, but he basically highlights features of the traditional caste system based on village studies and old ritual sources. He underlines the ritual distinction between purity and impurity as a central feature in the reproduction of the caste system.<sup>7</sup>

Dirks rejects Dumont’s approach and criticizes him for focusing on the significance of ritual life at the expense of political power.<sup>8</sup> Dirks argues that caste in its contemporary form

5. See, for example, Pandey (2013), p. 195.

6. Dumont (1980); Dirks (2001).

7. Dumont, *supra* note 6, p. 44.

8. Dirks (1993), p. 4; Dirks (2001).

is largely a result of the colonial power's rule on the subcontinent. He suggests that "it was under the British that 'caste' became a single term capable of expressing, organizing and above all 'systemizing' India's diverse forms of social identity, community, and organization."<sup>9</sup> Dirks develops his argument with reference to the theories of Edward Said and Michel Foucault. He thus seeks to amend the idea (represented by Dumont) that caste is a product of the religious domain, arguing that the modern form of caste is a product of colonial governmentality. Indeed, Dirks's central claim is that caste was reified by the colonial administration through the Western preoccupation with caste as the central feature of India's society. His interpretation is expressed as a critique of Dumont. However, the problem is that Dirks's perspective is concerned with an object of study that largely precedes the actors in question. It does not deny that caste is oppressive, but its concerns are primarily elsewhere, arguing that caste figured prominently in Orientalist research and that colonial governmentality increased its centrality in India's social and political life. In short, the central theme in Dirks's approach to the "caste question" is the production of caste.

It is in adhering to Dirks's approach and the critique of Dumont that Anupama Rao labels her important book on the Dalits *The Caste Question*. Rao has a detailed account of the Dalit movement and caste-based violence. She also shows how there were frequent debates in the Indian parliament about untouchability and caste-based atrocities from the 1960s until the 1980s. One result of these debates is that caste violence was criminalized. However, Rao's alignment with Dirks and the caste question creates a conceptual framework that is not consistent with what I suggest is a realist perspective on caste. There is no doubt that the Foucauldian perspective has its merits in highlighting how a population is governed and how subject-positions are constructed. Nor is there any doubt that Rao's discussion of the articulation of Dalit selfhood is a seminal study. Nonetheless, it is with reference to her discussion of the "criminalization of atrocities" that I would suggest one finds a different point of entry to deal with "the Dalit question." It would be a question that goes beyond Foucault's analytics and interrogates, more specifically, the type of discourses that are produced in different areas of law by engaging with the USM-EA structural mechanism. Thus, while the caste question is concerned with the origin of caste practices, the Dalit question concerns characterizing the problem of oppression and investigating ways to solve it. This involves both a social and political dimension. Analyzing this question through the structural mechanism I propose necessarily highlights the social dimension of Dalit reality and brings us closer to identifying the central characteristics of the Dalit situation.

This paper largely follows the philosopher Daniel Little's claim that a "social mechanism" is an explanation of a heterogeneous social reality that involves both structural and contingent factors.<sup>10</sup> Similarly, the mechanism in the Dalit situation involves several dimensions. On the one hand, caste-based discrimination against Dalits tends to reflect a structural social system. It is not simply fluid (and it is more structured than the society that Little has in mind). In fact, it appears to be a persistent historical pattern of oppression. On the other hand, it makes sense, first, to emphasize contingencies, because not all Dalits are massacred all the time. This mechanism does not represent a universal law by which one may deduce and predict an outcome.<sup>11</sup> Second, the

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9. Dirks, *supra* note 6, p. 5.

10. Little (2009).

11. Glynos & Howarth (2007); Elster, *supra* note 3.

USM-EA structural mechanism has a somewhat different emphasis than the binary oppositions advanced by structural anthropologists like Claude Lévi-Strauss and Louis Dumont. Although structuralist anthropology analyzes human practices, they focus primarily on the level of value, and thus operate at a level that structures people's behaviour. Hence, Dumont's interpretation of the caste system was streamlined to account for how this system was produced. He emphasizes, among other things, that the distinction between purity and impurity was central to the constitution of the caste system.<sup>12</sup> The opposition of USM and EA does not operate at the level of ideology or ritual life, as does Dumont's distinction between purity and impurity. This does not rule out the ritual distinction between purity and impurity in Dumont's interpretation of caste, as this distinction points to structural features that could very well be implicit in the persistent caste-based oppression in India's modernity. Rather, this structural mechanism is comparable to Dumont's structuralism, with its emphasis on opposites and recognition of structures, but it does not define the structures beyond characterizing how they come to view in the relationship between the Dalits and the law in post-colonial India.

The structural mechanism of USM and EA functions not only as a concept to analyze an enduring problem of oppression, but also to distinguish my explanation from one that the philosopher Jon Elster advances.<sup>13</sup> Elster has been among the champions for mechanism as an alternative approach to explanations in the social sciences, which should be less dependent on deductions from general laws or variables in a statistical explanation. Elster has defined mechanism as a "frequently occurring pattern and easy recognizable causal patterns that are triggered under generally unknown conditions" in a society.<sup>14</sup> The mechanism, he argues, may often appear in opposites (e.g. hastes makes waste vs. the one who hesitates is lost).<sup>15</sup> My definition differs from Elster's by being based on observations in the context of a persistent problem of caste-based oppression. It also has a distinct history and a greater emphasis on structure, while being related to the legal framework in India.

In other words, the structural mechanism is relevant to characterizing the Dalit situation in India, while being specifically evident in the legal changes that have occurred in its post-colonial history. One could argue that legal changes indicate an adaptation to the structural problems of Dalits, while reinforcing its relevance. The history of atrocity legislation is crucial in this regard.

In 1955, the Indian Parliament reiterated basic constitutional commitments and outlawed untouchability practices in the Untouchability (Offences) Act. This Act of 1955 was a criminal law.<sup>16</sup> Denying persons access to temples and public places was classified as a crime.<sup>17</sup> The Act also shifted the burden of proof to the accused, to strengthen the legislation for the victims of untouchability.<sup>18</sup> The development towards a more stringent legal response to caste-based discrimination is related to India's Constitution of 1950. Article 17 declares that "'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance

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12. Dumont, *supra* note 6, p. 44.

13. Elster, *supra* note 3, p. 1.

14. *Ibid.*; see also Hedström & Ylikoski (2010).

15. Elster (2007), p. 38.

16. Rao, *supra* note 4, p. 174.

17. Galanter (1997), p. 157.

18. Rao, *supra* note 4, p. 175.

with law.”<sup>19</sup> Article 17 has been central to the official discourse on untouchability in the post-colonial period. Rao characterizes the legal thinking from 1947 to 1955 as a period of “equalization.” Although policies of affirmative action have been an enduring source of “equalization” and equality between caste groups, there is a recurring reference to civil rights and untouchability. This is no doubt accurate and reflects persistent concerns with civil rights legislation.<sup>20</sup>

My suggestion, however, is that the Dalit question could be put more clearly into focus by relying less on Foucault in the manner that Rao does in her analysis of law. The suggestion is twofold. First, it is important to supplement the post-structuralist approach with common-sense observations of the Dalit situation. My suggestion with regard to the latter is that the social mechanism of USM and EA is an observation in its own right. Frequently invoked among Dalit activists and observers, this is a type of common sense that could not be analyzed in the framework of Foucault’s analytics. Foucault’s concern with subject-positions produced in a regime of truth differs from the mechanism in the Dalit situation.<sup>21</sup> While this suggestion could, at first glance, be understood as a type of everyday realism, the frequently invoked USM-EA opposition is often told as a story to explain the overall situation of Dalits.

Second, one needs to distinguish more clearly between the different areas of law (which is the goal of Section 3). This could provide a basis to discuss the extent to which this social mechanism reflects a structural or contingent dimension in the Dalit situation. It could be understood as a contingent dimension when viewed in the context of law which, in its crafting and particular framing, could produce particular types of discourses that could subsequently be changed or lead to societal changes. However, this social mechanism could also constitute a structural feature embedded in Indian society when the Dalit problem is viewed from a historical perspective and in relation to the Dalit movement. In this regard, legal development could provide background.

### 3. ATROCITY, DISCOURSE, AND LEGAL DOMAINS

There have been learning processes, debates, and reconceptualizations within the domain of law throughout the post-colonial period. At the centre of this history is a serious trend relating to atrocities against Dalits.<sup>22</sup> It is clear that there is a long history of debates in Parliament on how to curb problems of untouchability and atrocities.<sup>23</sup> There have been penal Acts in the various states to prohibit discrimination against untouchables, which includes legislation enacted in Madras in 1938.<sup>24</sup> At the state level, during the three decades since Independence, two major pieces of legislation have been crafted by Parliament as a response to the problem of untouchability and caste-based violence: the aforementioned Untouchability (Offences) Act 1955, and the Protection of Civil Rights Act 1976, which seek to close legal loopholes and, in so doing, articulate a clearer civil rights approach.<sup>25</sup> The many brutalities against Dalits during the 1970s and 1980s, however, became a recurring concern in Parliament and

19. Basu (2001), p. 163.

20. See also Galanter, *supra* note 17, chapter 9.

21. Cf. Foucault (1983), p. 208.

22. Teltumbde (2010).

23. See, for instance, Rao, *supra* note 4, pp. 163–81.

24. Galanter, *supra* note 17, p. 208 fn.

25. *Ibid.*, p. 218.

constituted a background for further response by the government. At that time, there were several massacres in the state of Bihar as well as other parts of the country. On 15 August 1987, in an Independence speech delivered at Red Fort, Prime Minister Rajiv Gandhi suggested that a new law should be created to prevent and to prosecute future attacks on Dalits. Two years later, the historic Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act 1989 (hereafter referred to as the PoA Act), was enacted.<sup>26</sup>

Discussions prior to the establishment of the PoA Act provide some insight into the types of problems, concepts, and discourses circulating in this context. During my fieldwork in Hyderabad in 2008, I met with P.S. Krishnan, who had participated in the process of drafting the Act. According to Krishnan, the discussions were initially aimed at defining untouchability to develop a more adequate legal response to curb violence against Dalits. Krishnan's suggestion, however, was to avoid the concept of untouchability altogether, and to define the exploitation and violent occurrences as "atrocities." This concept corresponds with the aim of addressing caste-based violence as criminal acts. But Krishnan's story also illustrates the way the selection of a concept—atrocity rather than untouchability—was decisive for the discursive shift which enabled this piece of criminal law to gain its form as a strict approach to prevent oppression. In other words, by conceptualizing this piece of legislation in terms of atrocity, and hence framing it as part of criminal law, caste-based violence was no longer a matter of civil law.<sup>27</sup>

The PoA Act can be viewed as part of a move that completed the discursive break from untouchability to atrocity. Recall that it was a punishable offence to practise untouchability under the civil-law approach that broadly characterized the Untouchability (Offences) Act 1955 and the Protection of Civil Rights Act 1976.<sup>28</sup> The element of punishment was already a part of the prohibition of untouchability in Article 17 of India's Constitution. As such, there are three different discourses and types of law at play in this Article. One may define discourse, following Foucault, as a domain of statements that appear as one approach, or as a "regulated practice that accounts for a certain number of statements."<sup>29</sup> The different types of law could, generally speaking, be viewed as constituting one discourse, accounting for a domain of statements. The abolition and prohibition of untouchability in Article 17 involves several discourses in one sentence. Here, the civil-law approach is integrated into constitutional law. It is also suggested that there should be punishments, and hence matters of concern for criminal law. However, the overlapping of notions from civil, constitutional, and criminal law in one Article might make it harder to discern the ruling logic at stake in Article 17. In addition, the key concept of untouchability appears to be open-ended. Indeed, the vagueness in this Article was also addressed during discussions in the Constituent Assembly on 27 April 1947. At that time, there were several questions concerning the concept of untouchability, without any consensus regarding a proper definition. The debates also went so far as to question whether it would be more appropriate to abolish the caste system rather than simply untouchability.<sup>30</sup>

26. P.S. Krishnan, retired secretary to the government of India and advisor to the Ministry of Human Resource Development, in an interview with the author, Hyderabad, March 2008 and Delhi, May 2010.

27. P.S. Krishnan in an interview with the author, Hyderabad, 5 March 2008.

28. Galanter, *supra* note 17, chapter 9.

29. Foucault (1989), p. 90.

30. Constituent Assembly Debates (1947), Constituent Assembly of India. Tuesday, 29 April, 1947, Vol. III, online: <<http://parliamentofindia.nic.in/ls/debates/vol3p2.htm>> (last accessed 7 May 2014).

Article 17 does, in any case, correspond with the concept of civil law and is structured by principles such as individual rights and liberties. It was this civil rights mentality that characterized the dominating approach to untouchability in the Independence movement. For instance, Gandhi's temple access movement largely corresponded to the civil rights approach and was concerned with recognition of the individual's freedom to access a public place of worship. However, it was precisely this civil-law framework that was inadequate in dealing with the enduring trend of violence and caste-based discrimination against members of the Scheduled Castes in the post-colonial period. In short, the civil-law approach was abandoned when there should be a more adequate legislation crafted to curb the determination by oppressors "to teach Dalits a lesson" by committing attacks against them. The creation of the PoA Act represents a more complete shift from civil to criminal law. This shift was enabled, discursively, by using the term "atrocities" to conceptualize the new, stricter approach to prevent caste-based violence and discrimination against the Scheduled Castes.

It should be added that there are different trajectories concerning civil law and rights discourse in India and the US. Although it may be useful to note that the meaning of the US Civil Rights Act 1964 could be indeterminate and open to interpretations, it is clear that it outlawed racial discrimination in most public places.<sup>31</sup> That Act was also the basis for developing the policies of equal opportunity in the US.<sup>32</sup> India's Constitution was crafted somewhat differently. Affirmative action is a firm part of constitutional law and the Articles on equality, while civil law that outlaws untouchability operates within a distinct domain that is *also* part of constitutional law.

The legal responses, deliberations, and resulting changes show the ways in which law is crafted in relation to particular discourses. No doubt concepts matter for the resulting discourses. It is evident that the concept of atrocities made the criminalization of caste-based attacks more powerful and compelling. Law may result in more powerful discourses, which may have an impact on the public discourse beyond the immediate context of Dalit life. The PoA Act has now become well known and is used in political debates. For example, the controversy in January 2013 over Professor Ashis Nandy's casual and seemingly witty remarks at the Jaipur Literature Festival about how corruption emerged with the rise of lower castes in public office is a case that gained national attention. Ashis Nandy was later booked under the PoA Act for his statement.<sup>33</sup> The yoga guru Ramdev's remarks during the 2014 general elections about how Rahul Gandhi had spent his "honeymoon" with Dalit families was also booked under the PoA. These cases show how a piece of legislation—which becomes reinforced by a concept of atrocities—could thus have an impact on the public discourse, as if the Act and its resulting discourses have lives of their own.

Overall, law is a system that can adopt and respond to societal demands, while the contingent nature of law must be viewed in connection with larger societal developments. Even though Dalits are mostly oppressed and impoverished, there is also upward social mobility among the Scheduled Castes. This mobility has been an effect of affirmative action policies in education and government employment, to which Scheduled Castes have been entitled according to the principle of equal opportunity written into the legal codes.

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31. See Crenshaw (1988).

32. Weisskopf (2004), p. 7.

33. *Zee News*, "Rajasthan Police File FIR, Summon Ashis Nandy," 29 January 2013, online: <[http://zeenews.india.com/entertainment/and-more/rajasthan-police-file-fir-summon-ashis-nandy\\_127053.html](http://zeenews.india.com/entertainment/and-more/rajasthan-police-file-fir-summon-ashis-nandy_127053.html)> (last accessed 6 May 2014).



#### 4. DALITS AND LAW

Constitutional law basically deals with fundamental principles such as equality before the law, equality of opportunity, and a right to life, whereas criminal law is developed to address transgressions and punish violations of the law. As such, these are two obviously distinct legal domains, but our concern with the USM-EA relation pertains to the reality that relates to the Dalits. As such, the social dimension is significant if one would contextualize the creation of a special Act under the Indian Criminal Code in connection with other areas of law. In the case of the PoA Act, it would be in relation to existing affirmative-action policies and the Articles concerning equality under constitutional law. Article 16 of the Constitution of India begins by declaring: "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State." In subclause 4, it becomes clear that "reservation" is the Indian term for affirmative action. Reservation policies have been decisive for upward social mobility among Dalits in the post-colonial period. The PoA Act, then, has been designed as a response to enduring violence against Dalits and is a piece of criminal law.

While upward social mobility and atrocities could be addressed by different areas of law, the two phenomena are closely related in social and political practices. This is often the case when independent and even assertive Dalits face resistance or retaliation, such as the fatal response in Chundur village described at the beginning of this paper. Chundur village is located in the prosperous rice deltas in coastal Andhra Pradesh, more precisely, the state of Seemandhra, following the state bifurcation of Andhra Pradesh in February 2014. The massacre in Chundur occurred after a period of social transformation, when the Dalits in this village had gained upward social mobility, reliable income, and a new and more modern lifestyle during the 1980s. Dalit children received higher education and had started taking it for granted that they could gather socially in prominent places, such as having tea and snacks in the middle of the village. On 6 August 1991, the dominant castes in the village carried out a major attack on the Dalit hamlet to teach them a lesson; this organized massacre resulted in the deaths of eight Dalits with five others sustaining serious injuries.<sup>34</sup> This was one month after a confident young Dalit man, a postgraduate student, had been beaten up by a group composed of members from the upper castes.

There are a number of facts and allegations surrounding the events in Chundur. I have come to learn about some of these during my field visits to Chundur and Andhra Pradesh. I also happened to meet the postgraduate student who recounted to me the attack on him. At the time I met him, he lived in a neighbouring town where he organized a school for local children. He also confirmed the widespread understanding that many Dalit youths are serious in their education and well mannered. This was one of the facts reflecting the new mode of behaviour among Chundur Dalits. Traditionally, the Dalits were agricultural labourers and subservient to the caste Hindu landlords. During the 1980s, the same agricultural labourers behaved independently, with greater elegance and style than before. The complaint among the caste Hindus of Chundur was that the Dalit boys flirted with their daughters. When I asked the Dalit student if this was the case, he said there was no flirting or teasing of caste Hindu girls. No doubt, the case of Chundur involves many allegations.

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34. See Balagopal (1991); Sub-Divisional Police Officer, Tenali Vs. Modugula Sami Reddy & Others (Special Sessions Court, Guntur, 2007) (on file with author).

In terms of caste structures, however, it is noteworthy how the massacre in Chundur connects with two central topics in the reproduction of caste as a system of oppression and divisions. First of all, land and agricultural cultivation was central to the class divisions and established social norms. Second, marriage is decisive in the reproduction of the caste system, and relations between boys and girls from different castes could, therefore, be a problem for the caste as a collective and moral whole. The attack in Chundur was, in any case, carefully organized in close collaboration with caste Hindus in neighbouring villages. It was the whole Dalit community in Chundur that was targeted, and not simply the socially and politically assertive among them. Among the deceased Dalits were individuals who were modest and not politically assertive. No doubt the logic of collective action involves a number of “causal chains” and contingencies in this event. A central lesson is, nonetheless, that the attack on the entire Dalit community is intimately connected with structural dimensions related to caste-based discrimination. Indeed, it would be problematic to rule out the preservation of caste hierarchy as a tacit dimension in the motivations leading to the attack.

The events in Chundur have since been disputed in court. The trial was eventually held in Chundur village in 2007, resulting in a number of convictions. The judgment was considered a success among Dalits and human rights defenders in the state. In April 2014, however, the High Court of Andhra Pradesh acquitted all the accused. Thus, in a sudden and unexpected turn, the High Court removed 21 life imprisonments, declaring that there was insufficient evidence to convict the accused and argued that the accused had already spent enough time in jail.<sup>35</sup> Evidence is difficult to trace in a massacre case such as in Chundur, since the First Information Reports (FIRs) providing evidence for a later trial could have been registered with conflicting and inadequate data. This was precisely what the Special Public Prosecutor in the 2007 Chundur trial emphasized in interviews during my fieldwork.<sup>36</sup> Many FIRs had been (“deliberately”) fabricated by the police in Chundur, who colluded with the attackers. According to him, the number of life imprisonments and convictions could have been higher.

No doubt the obvious problems with implementing a strict Act such as the PoA Act make the Dalits more vulnerable, and yet this Act has major relevance for public controversies and discourses in contemporary India. The concept of a structural mechanism, then, is not meant to explain every development at every level. It basically seeks to provide a macro-level explanation for Dalit oppression; it emphasizes how there are both structural and contingent features in the Dalit situation and that the legal responses in crafting a more adequate law ultimately correspond to an enduring problem of caste-based oppression.

The term “structural mechanism” is certainly not used in everyday conversations, however. In practice, it is the symbol of Dalits, Dr Ambedkar and his career and contribution, that may provide the possibility to reflect on the relationship between Dalits and the legal domain. The story of Ambedkar adds an important intentionality to the contemporary Dalit movement across India, involving a consistent, political concern with options of addressing the problem of caste-based exclusion in the context of law. When the Dalit youth movement in Chundur decided to erect a large statue of Ambedkar along the main road of the village, it was clear

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35. *Odisha Sun Times*, “Andhra HC Strikes Down All Sentences in Dalit Massacre Case,” 22 April 2014, online: <<http://odishasuntimes.com/48534/andhra-hc-strikes-sentences-dalit-massacre-case/>> (last accessed 6 May 2014).

36. Advocate B. Chandrasekhar, in interview with the author, Guntur city, February 2008.

that India's first Law Minister had become a symbol of liberation for the socially mobile and more independent Dalits in the village.

Ambedkar was an untouchable who gained an Ivy League education in spite of the odds and rose to key government positions at the time of India's Independence, such as the leader of the drafting committee of India's Constitution and as a Law Minister in Nehru's first government.<sup>37</sup> And yet he embodies the fundamental USM and humiliating experiences, making him a central case-study of this structural mechanism. For example, he faced humiliations as a child as well as after receiving his overseas degree, such as when he was thrown out of his boarding house in Baroda state after the house owner realized that he was not simply a government officer, but, in fact, a person from an untouchable caste.<sup>38</sup>

## 5. CONCLUDING REMARKS

This paper has introduced the concept of a structural mechanism in order to shed more light on the realism that caste has among Dalits. My claim is that this is a concept that could focus on the "Dalit question" in India in its own right, and offer a better approach for analyzing the relationship between the complex social problems of Dalits and the various discourses of law. Legal changes in relation to the Scheduled Castes could be viewed as an adaptation to the structural dimension of the Dalit problem. I have shown that the adoption of a strict Prevention of Atrocity Act not only represents a discursive shift from untouchability to atrocity, but that this shift could also be viewed as an adaptation to the structural dimension of the Dalit situation.

Theoretically, I have made an attempt to focus more clearly on ways of characterizing the Dalit question without mixing it with the so-called "caste question." I have thus advanced a concept that primarily seeks to characterize the Dalit problem of caste-based oppression rather than analyzing how caste is produced. In this regard, I have rejected the structuralist and post-structuralist approaches to the caste question in India, precisely because they are concerned with the production of caste either as a traditional system or a mentality in modern India. Both Dumont's structuralism and Dirks's post-structuralism have their merits. For example, I think that Dirks's application of post-structuralism is useful in highlighting how category-making in the colonial administration changes and reifies caste as an identity. However, the main problem is that the constructivist approach of Foucault and Dirks does not address the persistence of caste-based discrimination against Dalits. Foucault's concern was subject-positions, and his analytics is not primarily designed to engage with the facts and logics of oppression that operate among the Dalits of India. Dirks was primarily concerned with the construction of identity, but his discussion of the caste question is not organized around the central dilemma of Dalits or how the different types of discourse reflect a social structure confronting the Dalits in contemporary India. Where Dirks has relied on Foucault's concepts, I have claimed that the relation between upward social mobility and enduring atrocity represents an opposition that reflects a social structure.

The idea of a dichotomous relation resembles structural anthropology. But my concept differs from Louis Dumont's approach to caste. He focuses on the production of caste,

37. Jaffrelot (2005); Zelliott (2001).

38. Omvedt (2004), p. 10.

arguing that the society of caste was constituted as a result of value, and that the distinction between purity and impurity was “central” in the organization of caste relations. The relation between upward social mobility and enduring atrocity among Dalits, in contrast, is primarily an empirical observation that seeks to characterize a social structure and related discourses in the legal context. While notions of hierarchy and ritual pollution may be at play implicitly, the concept of structural mechanism does not require the ritual distinction.

The distinctive legal discourses are decisive in characterizing the Dalit dilemma in contemporary India. The reservation policies that have been crafted in the context of the constitutional principle of equality of opportunity have been important for upward social mobility among Dalits. The creation of the PoA Act could also be viewed as a result of the backlash that occurs in a context of upward social mobility and Dalit assertion. However, the fact that the PoA Act has become a powerful point of reference for Dalit activists and in public debates indicates how the law can produce new and powerful discourses adjoining the Dalit question. The case of Chundur, moreover, illustrates the extremity of caste dynamics, when a large crowd of caste Hindus wanted to teach the Chundur Dalits a lesson about their position in society. The subsequent developments in the Chundur trial also indicate how the legal system could be both strict and open-ended, as it has both convicted (in 2007) and freed (in 2014) the accused attackers. Atrocity legislation has clearly expanded the scope of critical approaches among Dalits and their condemnation of oppression. But the idea of the structural mechanism is to underline how caste is a complex reality and that one needs to balance various legal discourses in order to attain an adequate grasp of the Dalit question as a whole. The story of Ambedkar represents an additional and dynamic approach in this context, being a momentous symbol that represents the relation between Dalits and law. Yet, Ambedkar’s struggle to address the Dalit problem by crafting legal provisions also brings an explicitly political dimension into the contemporary Dalit movement, including struggles to amend laws and create possibilities for Dalits to achieve justice through legal provisions.

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