

DALIT/MASSACRES - SYLLABUS TEMPLATES AND TEACHING GUIDES

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Cartographies of Courage: Fictional Threads, Real Lives



01

Proposal of a Legal and Theoretical Framework for Dalit Massacres

- Expands upon the theoretical framework
- Proposes Legal Framework
- Ethical Considerations/Limitations

Section I: Theoretical Framework:

- Theoretical frameworks in Chapter 1 - **Definition** - ‘an organized process of caste-based destruction that leads to the intentional killing of one or more Dalit(s) by one or more people (or the state), the latter especially upper caste, which adversely impact both the lives and properties of Dalits’.
- Reasons, ways used, perpetrators (Semelin, 2002&2005; Dwyer and Ryan, 2012)
- Feminist geocriticism and digital cartography
- **Classifications** - initiated ‘by the state directly’ and ‘by individuals outside the state (with the implicit support of the state)’ (Dwyer & Ryan, 2013) - fractal massacre (Dwyer and Ryan, 2013), structural and functional massacres (Semelin, 2003), administrative massacre (Osiel, 1995), political and genocidal massacres, local and long-range massacres, bilateral and unilateral massacres, mass massacres and small-scale mass massacres, close-up massacre (Dwyer, 2012), hot-blooded killing, and cold-blooded killing (Inga Jones as cited in, Dwyer & Ryan, 2012).
- Dalit massacres - state directly or by the upper caste, with or without the support of the state, and are often genocidal in nature

- State-initiated or state-supported Dalit massacres difficult to address legally
- ‘The destruction of the “them” would be the constitutive “proof” of the “we”. So, to kill is not only to purify, it is also to be purified. It is from this that the language of purification or of cleansing stems, which in turn is borrowed from religion (ritual purification), war (clearing the ground), and medicine (eliminating the germs)’ (Semelin, 2003).

Legal Framework:

- the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities, POA) Act, 1989 (India: Act No. 33 of 1989).
- The Chapter IV, Section 14, Special Court and Exclusive Special Court; Chapter IV A, Section 15A, Rights of Victims and Witnesses and Section 18 A, No enquiry or approval required, Section 21, Duty of Government to Ensure Effective Implementation of the Act are some of the sections that are feasible for Dalit massacre laws.

- The instances of threat to the life and property of Dalits that are mentioned in the law are points (iii) and (iv) of sub-section 2 in Section 3 of Chapter II:

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine; (iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine. 'the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities, POA) Act, 1989 (India: Act No. 33 of 1989).

- Massacre – causalities, definition and casualties – new framework - absence of an international legal framework for convicting the perpetrators of massacre - existing model 'Convention on the Prevention and Punishment of the Crime of Genocide' by the United Nations Human Rights ('Convention', 1951).
- Insights from both the convention and the POA Act 1989 (with all its amendments)

- The incidents preceding (that led to the massacre), during and succeeding the massacre that have an adverse effect on the **mental and physical well-being of the Dalit survivors** should be punished and compensated by law. Special emphasis and consideration should be given to the **vulnerable sections within the Dalit communities** such as women, children and those belonging to sub-castes while criminalizing Dalit massacres. Often in massacres, the sole focus shifts to the number of deaths, thereby ignoring other **casualties of the massacre such as rape and other sexual violence**. Therefore, it is important to consider and compensate for such victims or survivors as well, by binding the state to approach and converse with them and **encourage them to report the crimes** that were committed against them.
- Initial issue of conflict that led to the massacre is resolved by the state as part of ensuring legal justice.
- Identifying the **silent parties** in compliance with the perpetrators.

- 'Victim' has the **same meaning** as in the POA Act (India: Act No. 33 of 1989), 'any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under' clause (24) and clause (25) of article 366 of the Constitution of India, 'and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his (or her) property as a result of the commission of any offence under this Act and includes his (or her) relatives, legal guardian and legal heirs'.
- the SC and ST categories in which 'Scheduled Castes' shall have the **meaning assigned to it in clause (24)** of Article 366 of the Constitution of India and 'Scheduled Tribes' shall have the meaning assigned to it in clause (25) of Article 366 of the Constitution of India
- The following acts are condemned and are punishable by law which extends to the whole of India,
 1. **Killing** members belonging to the Dalit community
 2. Causing **mental or physical harm** to the members of the Dalit community
 3. Being **silent accomplice** to the massacre
 4. Imposing measures intended to **prevent births** within the group
 5. **Incite, conspire, or attempt** to commit Dalit massacres

The following measures should be taken and enforced in case of the occurrence of Dalit massacre:

1. The state should constitute a **committee** of five or more members, including at least one Dalit member and a **woman**, to understand the scenario before, during and after the massacre.
2. The **vulnerable sections** of the survivors like women, children and the sub-castes should be identified, and their narratives should be considered while compiling a report on the massacre.
3. Survivors should be encouraged to **report rape** or any other instances of sexual and physical assault that were committed as part of the massacre.
4. Survivors belonging to **both the perpetrator and the victim side** should be consulted to understand the underlying reasons that led to the massacre and the report should include possible ways to address the same.
5. The committee report should effectively outline the measures for the **relief and rehabilitation of all the victims and the 'dependents'** (India: Act No. 33 of 1989) of the victims, of the Dalit massacre and its allied cases.
6. The report by the committee will serve as a **legal record of the massacre**. Therefore, all attempts to create a comprehensive record including the number of deaths and other allied cases should be undertaken.

In accordance with the genocide convention's law - **additional articles** -

- 'Persons committing Dalit massacres or any of the other acts enumerated above shall be punished, whether they are **constitutionally responsible rulers, public officials or private individuals**'.
- The persons accused as perpetrators of Dalit massacres should be **tried by a special court and exclusive special courts**, constituted by the State Government with the concurrence of the Chief Justice of the High Court (India: Act No. 33 of 1989), comprising experienced judges not less than District or Additional-District level, for speedy trial and delivery of justice to the victims.
- The **cases allied to the massacre**, including sexual assault and rape should be tried in the **same court**. 'It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible' (India: Act No. 33 of 1989).

Conclusions:

- The proposal and definitions are a work in progress and aims to initiate dialogues towards drafting an effective legal framework.
- We also reiterate the need to **maintain legal and/or administrative records and documentation of Dalit massacres** - Critical analysis trace the patterns in Dalit massacres helping to amend the law - culprits have been acquitted for lack of evidence, absence of records of rape, victims – **Denial of Justice**: compensation, prevention and protection
- Develop and establish a vocabulary of Dalit massacres to facilitate proper justice.

Semelin (2003) refers to understanding massacres and its elements as a ‘**dark hole**’ and that ‘the social sciences could provide a better analysis of the nature of this black hole and could surely even estimate its elementary structure. But an unknown dimension shall always remain: an implacable zone of darkness’. It is **time that we begin to address this dark hole pertaining to Dalit massacres and to understand at least some parts of it, if not completely.**