

Caste Based Discrimination in the enjoyment of Fundamental Rights: A Critical Review of the present status of Dalit's in India

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Abstract

Under-educated, severely impoverished, and brutally exploited, Dalits struggle to provide for even their most basic daily needs. Dalits must also endure daily threats to their physical security from both state and private actors. The violence by upper-caste groups against Dalits have two major causes: the “untouchability” and discrimination upper-caste community members practice on a daily basis and the desire of upper-caste community members to protect their own entrenched status by preventing Dalit development and the fulfillment of Dalits’ rights. A review of the political, social, economic, and cultural status of Dalits in India shows the State Party to be in violation of its obligation to respect, protect, and ensure Convention rights to all individuals in its jurisdiction. India routinely denies Dalits the rights and privileges that many of its other citizens take for granted. An attempt has been made in this paper to high light the issues and problems of India as a country that has failed in its duty to eliminate caste discrimination and ensure the full enjoyment of the fundamental rights and equality before the law of Dalits guaranteed by Article 5. A review of the political, social, economic, and cultural status of Dalits in India shows the State Party to be in violation of its obligation to respect, protect, and ensure Convention rights to all individuals in its jurisdiction.

Keywords: Untouchability; discrimination; right to equal treatment; Inequality

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“The sun of self-respect has burst into flame let it burn up caste.....”¹

Introduction:

Caste discrimination is a chronic human rights condition, which involves massive violations of civil, political, economic, social and cultural rights. Several UN human rights bodies have expressed serious concern about the human rights situation of Dalits and other persons affected by similar forms of discrimination based on work and descent.

Caste discrimination has been defined as “discrimination based on work and descent” by the UN Sub-Commission on the Promotion and Protection of Human Rights, which has undertaken a comprehensive study on the issue. Discrimination based on work and descent is defined as “any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent

that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.”²

In 2012, Dalit human rights campaigners were on the march all over India. They marched to claim their community’s rightful share of the government budget. They marched to make politicians amend legislation that is supposed to protect Dalits from atrocities, but fails to do so. They marched to protest against a series of horrifying rapes against Dalit women and girls in Haryana. And they marched to eradicate the illegal and inhuman practice of manual scavenging that particularly affects Dalits. An increasingly assertive Dalit movement combined such mass manifestations with high level political lobbying to achieve some impressive results. And yet, while the struggle against caste discrimination and caste-related atrocities

¹ GAIL OMVEDT, DALIT AND THE DEMOCRATIC REVOLUTION 9 (7th ed. 2007).

² Draft principles and guidelines on the effective elimination of discrimination based on work and descent, para. 2 (A/HRC/11/CRP.3)

progressed, events on the ground also served as a sad reminder, not only of the immense significance of this struggle, but of how far India has to go before human rights in general, and Dalit rights in particular, are respected.

The Asian Human Rights Commission phrased its concerns as follows in a report, 'The State of Human Rights in India 2012': "India is still ruled by the caste system; we all know this truth. It is plagued with discrimination, gender inequality, untouchability and feudalism, which is the reason why there is little hope for the society or for its social institutions to make any real effort in creating a system that is based on equality and social justice."³

Who are the Dalits?

Those who are beneath the entire caste system – and are therefore literally 'outcaste' as well as 'untouchable' – call themselves 'Dalits'. The word "Dalit", meaning "broken" or "ground down", is used by 'outcaste' people themselves to describe at the same time their oppression, their identity and their collective power for

emancipation. They are the non-people, the ones that all belonging to the 'varnas' (Brahmins, Kshatriyas, Vysyas and Shudras) can content themselves with being above. The caste system has nevertheless been applied to Dalits to divide them into many sub-castes. The use of the word 'Dalit', encouraged by great Dalit leader Dr. Ambedkar, has enabled the development of a collective identity among all the 'outcaste' people, whatever their sub-caste, ethnicity or religion. The government nevertheless use the term 'Scheduled Castes' for Dalits. Does caste discrimination still exist in India?

- To this day, those from higher castes will not marry Dalits
- To this day, Dalits are the only ones who do the occupations considered degrading in Indian society, such as cleaning human waste, giving news of death and working with leather.
- To this day, most caste Hindus refuse to eat or drink with Dalits.
- To this day, Dalits showing signs of economic or social mobility or emancipation are cut down to size by the dominant castes via shocking acts

³ AHRC - The State of Human Rights in India 2012:
<http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-005-2012.pdf/view>

of violence and humiliation known officially in India as ‘atrocities’. The vast majority of perpetrators of these acts enjoy impunity.

The Situation of Dalits in India

Historically, the caste system classified people by their occupation and status. ‘Each caste had a specific place in the hierarchy of social status’ (Shah, 2006, p. 19). Although in ‘scriptural terms’ social and economic status were supposed to be separate, the economic and social status of the various castes tended to coincide (Shah, 2006). However, since the 19th century, the link between caste and occupation has become less rigid as it became easier for people to change occupations. This change has accelerated with the economic boom which has taken place in India since the early 1990s. There has not, however, been a corresponding fluidity in caste, as intermarriage is very rare. Privileged sections of society tend to be from ‘upper castes’ while the disadvantaged sections come from the so-called ‘lower castes’. Caste ‘can be

seen as the institution that has been structuring and maintaining for centuries relations of power among different communities, and seeks to legitimize these power relations through systematically dispensing mixes of economic and cultural assets/opportunities and deprivations to different communities.’⁴ Many have commented on the robustness of the caste system, ‘which has survived in the South Asian societies in one form or the other, despite the fundamental ideological and structural changes that have occurred through the spread of religions like Islam and Christianity as well as of model secular and egalitarian ideologues, all opposed to the very idea of hierarchy based on inherited statuses.’⁵

For Dalits (the term meaning down-trodden or oppressed), at the bottom of this hierarchical system, it is their status as ‘untouchables’ which puts them at the heart of an insidious form of discrimination. This particular phenomenon results in the social unacceptability amongst people of other castes to touch the same food and utensils,

⁴ Sheth, D.L. (2004). ‘Caste, Ethnicity and Exclusion in South Asia: The Role of Affirmative Action Policies in Building Inclusive Societies’, UN/HRD 2004 Regional Paper, Islamabad. p. 3.

⁵ *Ibid.* p. 5.

draw water from the same source, or enter the same temples.

The specific structure and hierarchy related to castes is specific to various states and regions in India, with only the highest caste, the Brahmins, consistently faring better throughout the country. Not only are there differences in the names of the various castes, but the hierarchy between them may also be different between regions. However, castes who traditionally suffered discrimination based on untouchability, which was an element of the caste system throughout

India, have been identified, enumerated and incorporated in the 'schedule' of the Constitution. 'The implicit criterion for inclusion in the Schedule Caste list is the social and religious disability suffered by a caste on account of untouchability, i.e. being at the pollution end of the social hierarchy.'⁶ In defining who would be included in the Schedules, the government originally used the 1931 census report, and to a large extent duplicated a list created in 1936.⁷ Currently, the National Commissions for Scheduled Caste (SC) and Scheduled Tribe (ST) are vested with the

responsibility of considering castes for inclusion or exclusion from the Schedule, which then needs to be ratified in Parliament. The discriminated communities are then officially designated as Scheduled Castes (SCs). Included in the SC category are communities from three different religions, Hinduism, Sikhism and Buddhism, all having within them communities traditionally suffering from untouchability. The term Dalit is the generally accepted term for the 'untouchables', which corresponds to Scheduled Castes, which as mentioned above denotes the legal status as coined in the Constitution.

Mehrotra (2006) recognized that there has been political and social mobilization of SCs in India, particularly in certain poor states such as Uttar Pradesh (UP), which is one of the poorest states in India. However, this mobilization has failed to translate into positive change in the social sector for this excluded population. As Mehrotra wrote, 'while UP's mobilizers of the Dalits (SCs) have focused exclusively on capturing power, the gains to the lowest

⁶ Sheth, *op. cit.*, p.40.

⁷ De Haan and Arjun (2005). 'Social Policy: Towards Inclusive Institutions', University of Guelph and Department for

International Development, UK, Paper at the World Bank Conference 'New Frontiers of Social Policy; Development in a Globalizing World': December 12–15, 2005.

castes have been entirely of a symbolic nature.’⁸

Although Article 17 of the Indian Constitution banned untouchability in 1950, Dalits still suffer widespread discrimination and mistreatment, particularly in villages and rural communities. Local law enforcement personnel often refuse to document, investigate, and respond adequately to Dalit complaints. Upper caste members often threaten and assault Dalits who dare protest against the atrocities. The Indian Constitution has outlawed caste-based discrimination, in keeping with the secular, democratic principles that founded the nation. Nevertheless, the caste system, in various forms, continues to survive in modern India because of a combination of political factors and social beliefs and behaviour.

Discrimination and human rights violations for Dalits in India:

Today, Dalits make up 16.2% of the total Indian population, but their control over the resources of the country is marginal – less than 5%. Close to half of the Dalit population lives under the poverty line, and even more

(62%) are illiterate. Among the Dalits, most of those engaged in agricultural work are landless or nearly landless agricultural labourers. The average household income for Dalits was 17,465 rupees in 1998, just 68% of the national average. Less than 10% of Dalit households can afford safe drinking water, electricity and toilets, which is indicative of their deplorable social condition. Moreover, Dalits are daily victims of the worst crimes and atrocities, far outnumbering other sections of society in that respect as well. The vast majority of these crimes remain unreported due to omnipresent fear, and those that are reported are often ignored by police or end up languishing in the backlogged court system. Between 1992 and 2000, a total of 334,459 cases were registered nationwide with the police as cognizable crimes against Scheduled Castes. More than 60 years after gaining independence, India is still very much afflicted by the cancer of the caste system. Dalits remain the most vulnerable, marginalized and brutalized community in the country.

Village Survey Results (Human Rights Watch 2007)

Provision and Household Cost. Sage Publications India Pvt. Ltd., New Delhi. p. 1.

⁸ Mehrotra, Santosh (2006). The Economics of Elementary Education in India: The Challenge of Public Finance, Private

- 37.8% of village schools force Dalit children to sit separately
- 27% of Dalits not able to go to the police
- 33% of public health workers refuse to go to Dalit homes
- 12% of villages reported preventing Dalits from voting
- 48% of villages stopped Dalits from drinking from water sources
- 64% villages prevented Dalits from entering temples
- 70% of villages do not allow Dalits to eat with non-Dalits

The practice of caste based discrimination is one based on descent; and falls clearly under the (Convention on the Elimination of All Forms of Racial Discrimination) CERD's definition of racial discrimination. India's continued exclusionary stand regarding its millions of lower caste citizens is a violation of their rights and its own responsibility to them. Even after Prime Minister Manmohan Singh acknowledged the abysmal status of the country's Dalits in December 2006--the first leader to do so--the country continues to lag behind in improving the lot of Dalits.

The most acute manifestations of caste discrimination are the systematic denial of the rights to food, health, education, and freedom from bonded labor and ultimately, the denial of the right to justice. This denial includes the refusal to provide redress, which is an international obligation under the common article 2 of both the ICCPR and ICESCR.

➤ **Impunity and non-implementation of laws for the protection of Dalits:**

As noted by the UN Special Rapporteur on Human Rights Defenders in her 2012 mission report, impunity for atrocities against Dalits is a chronic problem in India. Though there are series of laws in place, the conviction rates of the SC/ST (Prevention of Atrocities) Act 1989, which aim to eliminate atrocities against SCs, are shockingly low. Moreover, special provisions are not implemented properly by the state machinery. For example, while the Special Component Plan did bring in benefits to SCs, the overall record based on factual findings found that many states had failed to allocate funds as per the normative SC population percentage.vi There is an urgent need to check whether these laws ensure the

protection and promotive aspects of Dalits, and to amend it where necessary.

➤ **Exclusion in access to basic services and extreme poverty:**

Exclusion, segregation, and discrimination against Dalits in the education and health sector remain a widespread problem in India (e.g. access to adequate housing, water and sanitation, and land). Out of India's 37.2 % poor population (323 mio people), the majority of them are Dalits (47.2% in rural areas and 39.9% in urban centers).

➤ **Diversion of economic benefits allocated for Dalits:**

Allocations for Special Component Plan for SCs has been inadequate at national level and that many states have failed to allocate as per the normative SC population percentage. The amount denied to SCs from 2005 to 2009 amounts to US \$ 20.8 billion. This means that annually around US \$ 5.2 billion have been denied through non-implementation as per the policy requirements of the Special Component Plan for SCs.

➤ **Lack of political participation:**

Dalits are often limited from equal and meaningful political participation. While legal mechanisms to protect Dalits are in place, implementation remains very weak.

➤ **Dalit women, trafficking and forced prostitution:**

A significant proportion of India's Dalit women suffer multiple forms of discrimination, incl. verbal abuse, physical assault, sexual harassment and assault, domestic violence, naked parading, and rape. Some young Dalit girls are even exposed to a form of forced prostitution in temples, serving as sex workers for men from dominant castes.

➤ **Manual Scavenging and Bonded Labour:**

An estimated 1.3 million Dalits in India make their living through the inhuman and outlawed practice of manual scavenging (the job of cleaning human excrement from dry toilets with bare hands). The use and abuse of Dalit bonded labourers remains endemic within a range of occupations. In this aspect, Dalit children are particularly vulnerable.

➤ **Disaster Risk Reduction and Dalits:**

During disasters, Dalits are systematically excluded in rehabilitation measures. The existing laws, policies and guidelines of the national and state governments are not comprehensive enough to capture the sensitive issue of caste-based discrimination in emergencies.

➤ **Discrimination in Education:**

50% of all SC children, and 64% of girl students drop out due to discrimination being practiced against them in school. The difference in dropout rates between SC youth and all Indian youth has actually grown from 4.39 % in 1989 to 16.21 % in 2008.

➤ **Crime Against Dalits**

Statistics compiled by India's National Crime Records Bureau indicate that in the year 2000, the last year for which figures are available, 25,455 crimes were committed against Dalits. Every hour two Dalits are assaulted; every day three Dalit women are raped, two Dalits are murdered, and two Dalit homes are torched.

No one believes these numbers are anywhere close to the reality of crimes committed against Dalits. Because the police, village councils, and government officials often support the caste system, which is

based on the religious teachings of Hinduism, many crimes go unreported due to fear of reprisal, intimidation by police, inability to pay bribes demanded by police, or simply the knowledge that the police will do nothing. That same year, 68,160 complaints were filed against the police for activities ranging from murder, torture, and collusion in acts of atrocity, to refusal to file a complaint. Sixty two percent of the cases were dismissed as unsubstantiated; 26 police officers were convicted in court.

Despite the fact that untouchability was officially banned when India adopted its constitution in 1950, discrimination against Dalits remained so pervasive that in 1989 the government passed legislation known as The Prevention of Atrocities Act. The act specifically made it illegal to parade people naked through the streets, force them to eat feces, take away their land, foul their water, interfere with their right to vote, and burn down their homes.

➤ **Lack of Enforcement, Not Laws**

Enforcement of laws designed to protect Dalits is lax if not non-existent in many regions of India. The practice of untouchability is strongest in rural areas,

where 80 percent of the country's population resides. There, the underlying religious principles of Hinduism dominate.

Untouchables are literally outcasts; a fifth group that is so unworthy it doesn't fall within the caste system. Although based on religious principles practiced for some 1,500 years, the system persists today for economic as much as religious reasons. Because they are considered impure from birth, Untouchables perform jobs that are traditionally considered "unclean" or exceedingly menial, and for very little pay. One million Dalits work as manual scavengers, cleaning latrines and sewers by hand and clearing away dead animals. Millions more are agricultural workers trapped in an inescapable cycle of extreme poverty, illiteracy, and oppression.

Although illegal, 40 million people in India, most of them Dalits, are bonded workers, many working to pay off debts that were incurred generations ago, according to a report by Human Rights Watch published in 1999. These people, 15 million of whom are children, work under slave-like conditions hauling rocks, or working in fields or factories for less than U.S. \$1 day.

Crimes against Women

Dalit women are particularly hard hit. They are frequently raped or beaten as a means of reprisal against male relatives who are thought to have committed some act worthy of upper-caste vengeance. They are also subject to arrest if they have male relatives hiding from the authorities.

A case reported in 1999 illustrates the toxic mix of gender and caste.

A 42-year-old Dalit woman was gang-raped and then burnt alive after she, her husband, and two sons had been held in captivity and tortured for eight days. Her crime? Another son had eloped with the daughter of the higher-caste family doing the torturing. The local police knew the Dalit family was being held, but did nothing because of the higher-caste family's local influence.

There is very little recourse available to victims.

A report released by Amnesty International in 2001 found an "extremely high" number of sexual assaults on Dalit women, frequently perpetrated by landlords, upper-caste villagers, and police officers. The

study estimates that only about 5 percent of attacks are registered, and that police officers dismissed at least 30 percent of rape complaints as false.

The study also found that the police routinely demand bribes, intimidate witnesses, cover up evidence, and beat up the women's husbands. Little or nothing is done to prevent attacks on rape victims by gangs of upper-caste villagers seeking to prevent a case from being pursued. Sometimes the policemen even join in, the study suggests. Rape victims have also been murdered. Such crimes often go unpunished.

Thousands of pre-teen Dalit girls are forced into prostitution under cover of a religious practice known as *devadasis*, which means "female servant of god." The girls are dedicated or "married" to a deity or a temple. Once dedicated, they are unable to marry, forced to have sex with upper-caste community members, and eventually sold to an urban brothel.

Resistance and Progress

Within India, grassroots efforts to change are emerging, despite retaliation and intimidation by local officials and upper-caste villagers. In some states, caste conflict

has escalated to caste warfare, and militia-like vigilante groups have conducted raids on villages, burning homes, raping, and massacring the people. These raids are sometimes conducted with the tacit approval of the police.

In the province Bihar, local Dalits are retaliating, committing atrocities also. Non-aligned Dalits are frequently caught in the middle, victims of both groups. "There is a growing grassroots movement of activists, trade unions, and other NGOs that are organizing to democratically and peacefully demand their rights, higher wages, and more equitable land distribution," said Narula. "There has been progress in terms of building a human rights movement within India, and in drawing international attention to the issue."

What is caste-based discrimination?

The UN defines this kind of problem as 'discrimination on the basis of work and descent'. It is an ancient form of oppressive, hierarchical social organization that ordered people according to their family of birth. It has remained in place despite its legal abolition because of its religious sanction, the social and economic persecution of those

who broke caste 'rules' defining the work done and the segregation between castes.

The Brahminical system stated that those born into families not recognized within the major caste categories would be 'untouchable' and could never come into contact with the caste Hindus, lest the dominant groups be physically and spiritually defiled. Far from being a remnant of the past, caste discrimination continues in both its traditional, rural forms of physical and occupational segregation and economic exploitation, in access to land and to criminal justice, in modern Indian schools and universities, in marriage and dining, and in access to the new employment opportunities provided by India's information technology boom.

Conclusion

The caste system as a social organization of Hindu Society is based on highly unequal entitlements to economic and social rights. This inequality involves the historic exclusion and discrimination, in terms of denial of rights, of certain groups and castes, particularly the SCs in multiple societal relations economic, social, political and cultural.

Scheduled Castes (SCs) Constitutes about 16.2 per cent of Indian population. In spite of sustained and consistent efforts on the part of government to ameliorate the conditions of SCs, this social group continues to be categorized amongst the poorest and most subordinate in Indian society by any measure of human development. More than half the SC population is concentrated in five states of Uttar Pradesh, West Bengal, Bihar, Tamil Nadu and Andhra Pradesh.

Dalits are subjected to violence, especially in rural areas, their women raped, and their land stolen. Dalits perform the most dangerous and odious forms of labour in Indian society including that of manual scavenging (removing human or animal waste) or performing low-end 'dirty' wage labour in tanneries. Dalits are poorly represented in the professions, business, media, and the higher levels of the government including the police, the army, and the judiciary. Recent studies based on available data indicate, for example, that 47 per cent of the Chief Justices of India have been Brahmins (who constitute 6.4 per cent of the population) as have been 40 per cent of all the other judges. There is also rampant social discrimination against Dalits,

How to end caste discrimination against Dalits is a profound issue because its roots go to the structural importance of caste for the operation of Indian society and the economy itself. While the Indian Constitution outlawed untouchability and caste discrimination, it did not abolish caste itself. This was realised by Dr. B.R. Ambedkar, the father of the Indian Constitution, who called for the 'annihilation of caste' itself.

A study done by National Dalit Movement for Justice (NDMJ), part of the National Campaign for Dalit Human Rights (NCDHR), showed that between 1992 and 2007 only 33 per cent of the atrocity cases were registered under the S.C. /S.T. Act. The majority of the cases were registered under IPC sections and 1 per cent under the PCRA. It also showed that the conviction rate of cases under the S.C. /S.T. Act was just 3.3 per cent for the Country as a whole.

Although India has made measurable progress in terms of the protections afforded to Dalits since independence, Dalits still suffer invidious discrimination and mistreatment at the hands of upper caste members and law enforcement officials. Such mistreatment is inexcusable under both India's domestic laws and its obligations under international law. Although the Indian government denies the problem of mistreatment of Dalits and points to extensive legal protections evidencing compliance with international standards, the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people." Until the atrocities against Dalits end, the international community ought to continue to publicize the conditions of India's disenfranchised population and encourage India to live up to the standards established in its domestic laws and international obligations.

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