

CASTE DISCRIMINATION AND HUMAN RIGHTS

By

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Introduction:

Caste is determined by one's birth into a particular social group. It is based on descent and is hereditary in nature. In much of Asia and parts of Africa, caste is the basis of discrimination and exclusion of distinct groups. Over 250 million people worldwide suffer from this form of discrimination which is an obstacle to the fulfilment of civil, political, economic, social and cultural rights.

Communities affected by caste include the Dalits in India, Nepal, Bangladesh, Sri Lanka and Pakistan, as well as the Buraku people of Japan, the Osu of Nigeria's Igbo people, and certain groups in Senegal and Mauritania.¹

Caste Discrimination in India:

India's caste system is perhaps the world's longest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complex ordering of social groups on the basis of ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over-time. Differences in status are traditionally justified by the religious doctrine of karma, a belief that one's place in life is determined by one's deeds in previous lifetimes.

Traditional scholarship has described this more than 2,000 year-old system within the context of the four principal varnas, or large caste categories. In order of precedence these are the *Brahmins* (priests and teachers), the

Kshatriyas (rulers and soldiers), the *Vaisyas* (merchants and traders), and the *Shudras* (labourers and artisans). A fifth category falls outside the varna system and consists of those known as "untouchables" or Dalits; they are often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.²

The caste system in India has ensured that a large population has been segregated from the mainstream and deemed to carry out the jobs that are dirty and demeaning. Dalits in India have no access to land, live under deplorable conditions segregated from other caste Hindus, and are forced to carry out jobs that are supposed to be ritually polluting for the caste Hindus. This is happening in spite of many measures by the Government to improve their situation. Dalits continue to be caught up in the vicious circle whereby they are perceived to be 'polluted' or 'dirty' people by virtue of their birth and are excluded from mainstream social, religious, and economic life.

The term 'scheduled castes', which are also called Dalits, refers to a list of socially deprived ('untouchable') castes drawn up by

1. BBC World Service, from: bbc.co.uk/worldservice/people/features/ihavearightto/four_b/casestudyart01.html

2. See generally, *Ainslie Embree*, ed., *Sources of Indian Tradition: From the Beginnings to 1800* (New York: Columbia University Press, 1988); *Pauline Kolenda*, *Caste in Contemporary India: Beyond Organic Solidarity* (Menlo Park: Benjamin/Cumming Publishing Co., 1978); *M.N. Srinivas*, ed., *Caste: Its Twentieth Century Avatar* (New Delhi: Viking, 1996). Cited in *Caste Discrimination: A Global Concern, A Report by Human Rights Watch for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*. Durban, South Africa, September 2001. Human Rights Watch, Publications, IV. Background, Untouchability and Segregation, from hrw.org/reports/2001/globalcaste/caste0801-03.htm

the British Colonial Government in 1935. The schedule of castes was intended to increase representation of scheduled-caste members in the Legislature, in Government employment, and in University placement. The term is also used in the Constitution and various laws. The term 'scheduled tribes' refers to a list of indigenous tribal populations who are entitled to much of the same compensatory treatment as scheduled castes. The word 'Dalit' is a Sanskrit word that means 'broken, discriminated or shattered people'. Dalits are also further divided into more than 70 sub-castes.

Untouchability was abolished in India in 1950 under Article 16 of the Constitution. Interestingly, Dr B.R. Ambedkar, himself a Dalit, played a major role in drafting the Constitution. He is also known as the father of the present Dalit movement, which is questioning the whole caste structure. Even though 50 years have passed since the abolition of untouchability, the practice continues in many forms throughout the country. In many places Dalits are not permitted to draw water from common wells and hand pumps, separate utensils are used to serve them in many tea and food stalls, they are not allowed entry to the temples and Dalit children are made to sit at the back of the classroom. The situation is even worse in rural areas where the majority of the population as well as Dalits reside. In its book, 'Broken People: Caste Violence Against India's "Untouchables"', the Human Rights Watch Reports that most Dalits in rural areas live in segregated colonies away from the caste Hindus. In a specific case from the Villupuram District in the State of Tamil Nadu, villages have segregated Dalit colonies; basic supplies like water are also set apart and medical facilities and the better thatched houses exist exclusively in the caste Hindu colonies. Untouchability is also observed at the highest Judiciary level. In July 1998 a Judge from the Allahabad High Court in Uttar Pradesh had his chambers cleaned with

the 'sacred waters of the river Ganges' as it had been earlier occupied by a Dalit Judge.³

In a written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization, to the Human Rights Commission the ALRC comprehensively described the plight of the Dalits in India and offered its recommendations to the Commission.

The statement apart from other issues noted,

The tsunami that hit countries around the Indian Ocean on 26 December 2004 brought misery to all living along their coasts. India was no exception. However, in India, the suffering of Dalit - so called 'untouchable' - communities affected by the disaster has been exacerbated due to caste-based discrimination in the provision of relief supplies and other assistance. The world is unaware and the Government of India has not acknowledged that relief operations are being carried out with caste as a determining factor.

Caste-based discrimination has also been evident in relief operations elsewhere. When burying the dead, Dalits have been brought in to handle the bodies, as 'traditionally' they have been obligated to do. Community kitchens, established to distribute food to victims, were divided into two: one for caste Indians and one for Dalits, as upper castes would not consume food prepared by Dalits. It is a sad reality that even in times of extreme necessity caste prejudices dominates social exchanges.

The tsunami relief operations in South India are indicative of persistent caste discrimination throughout the country. In the State of Maharashtra massive evictions from tribal lands in Nasik District have been witnessed in the recent past. If the claim for

3. Sanjiv Pandita, Caste Based Discrimination in India - Hidden Apartheid for Dalits, ALU Issue No.53, October- December 2004. From: amrc.org.hk/5304.htm

land by the Maharashtra State Farming Co-operation deprived the basic right of the tribal community in Maharashtra, in West Bengal, the eviction from Bellilious Park was because of the apprehension that the presence of Dalits would pollute the shrine atmosphere of the upper caste in the locality. In West Bengal even the High Court affixed its seal of approval for the eviction ignoring the basic legal virtue of fair hearing of *audi alteram partem*. However evictions do not remain as the one and only form of discrimination. The forced labour of manual scavenging and carrying of night soil, slave practices in granite quarries in Karnataka and Tamil Nadu, denial of education in Orissa, starvation deaths in Maharashtra, Bihar and Kerala are all shocking realities for the Dalits in India, and their position in the caste societal structure.

The caste system is a powerful tool for social segregation. It runs deep in the minds of Indians and has implications in everyday life. It weakens the human urge to excel and liberate since there is little chance of rising above one's status at birth. Despite caste being a violation of international human rights standards and domestic law prohibiting caste-based discrimination it continues to exercise a debilitating influence on the lives of millions in India daily.

The Constitution of India provides certain safeguards against caste discrimination. However, the constitutional remedy is often inaccessible to Dalits and lower castes, therefore literally taking away the equality quotient of human rights in terms of implementation. Considering India's vastness and its limited resources and poverty, the possibility of a victim, who is otherwise deprived of basic standards of living, approaching a Constitutional Court is most unlikely. Compounded by the burden of expenses in litigation and the immense time it takes for reaching a final verdict, such legal attempts are rarely taken by victims.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 criminalizes atrocities committed against members of the Dalit community and other lower castes. The rules formulated in accordance with the legislation also provide for protection to the lower castes and are more preventive in nature. However, the law and rules are limited. They do not address the root cause: the caste system itself. In cases where compensation is awarded, the amount of damages is far below international standards.

Section 153A of the Indian Penal Code, which provides for punishment for instigating acts of enmity between groups based on religion, race, place of birth, residence and language all but unenforceable since the burden of proof in criminal trials is so high. The chances of a probable conviction are low.

The National and State-level Human Rights Commissions do not have any authority to take affirmative action when receiving a complaint, be it of caste-based discrimination or otherwise. The powers of these institutions are not legally enforceable. Sections 12 and 13 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act limit the authority of the Rights Commissions to receipt of complaints, inquiries and inspection. They can then choose to either refer the matter to the appropriate authority for further action or provide advice to the Government. This limitation makes the institutions incapable of protecting human rights. Their orders are limited to recommending the Government collect a fine from a perpetrator and disburse an amount to the victim. If the perpetrator is not an employee of the Government, the possibility that the order will be implemented is low. Even when the perpetrator is a Government employee the order is often not executed. This makes a mockery of the system and discourages victims from approaching these institutions.

India has limited its ratification of international covenant to the key instruments. It has opted out of protocols giving authority to independent committees to receive individual complaints. Hence, victims of human rights violations in India must find redress within the country, where the remedies are inadequate or unachievable.

The Asian Legal Resource Centre therefore recommends the Commission to pressure the Government of India to:

- (a) Acknowledge that caste-based discrimination is deeply institutionalized in India and must be stopped.
- (b) Make appropriate amendments to existing domestic laws so as to incorporate and implement the spirit of international conventions, particularly the Convention against Racial Discrimination.
- (c) Provide effective remedies and adequate compensation for cases of caste discrimination under domestic legal mechanisms.
- (d) Stop forthwith any illegal actions through its agencies directed against lower castes and Dalits in India.
- (e) Withdraw forthwith its reservations made to international conventions so that anyone can approach international bodies for redress of grievances on failures of domestic law-enforcing agencies to uphold their rights.
- (f) Take immediate steps through committed actions to educate the public and judicial bodies on caste-based discrimination and attendant rights violations.⁴

4. Commission on Human Rights, Sixty-first Session, Item 6 of the provisional agenda, written statement submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status. From: alrc.net/doc/mainfile.php/61written/268/.

The International Dalit Solidarity Network (ICSN):

The International Dalit Solidarity Network is concerned with the issue of descent-based discrimination throughout the world; although the term dalit is used specifically in the context of South Asia notably in caste (or tribe) based distinctions.

Among the communities severely affected are the dalits or the “untouchables” of South Asia, in Nepal, Bangladesh, India, Sri Lanka and Pakistan, an estimated three million Burakumin in Japan, ‘caste people’ in West Africa and various communities in other African countries. Caste discrimination can also be found among the widespread Indian diaspora. All these communities, diverse in geographical and historical origin, share some key characteristics. Among these are:

- ✓ The concept of ‘purity-pollution’, with certain social groups being regarded as ‘dirty’ and contact with them as being ritually or actually polluting.
- ✓ An inherited occupational role, typically the most menial and hazardous roles within the society;
- ✓ Inability or restricted ability to alter inherited status;
- ✓ Socially enforced restrictions on inter-marriage;
- ✓ Segregation in location of living areas, and in access to and use of public places;
- ✓ Subjection to debt bondage;
- ✓ Generalized lack of respect for their human dignity and equality.⁵

IDSN and the United Nations:

Lobby work towards the UN Human Rights Bodies has been directed at the Human

5. International Dalit Solidarity Network, from: idsn.org

Rights Commission, the Sub-Commission for Civil and Political Rights and the UN Committee on the Elimination of Racial Discrimination (CERD) among others.

In a resolution adopted at its 52nd Session, the Sub-Commission on the Promotion and Protection of Human Rights (SC) explicitly recognised the global dimensions of the problem and declared that caste discrimination was prohibited by International Human Rights Law. CERD has repeatedly affirmed that caste, as a form of descent-based discrimination, falls within the definition of racial discrimination under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

In August 2002, CERD adopted an historic document focusing on discrimination based on 'caste and analogous systems of inherited status'. The document - called a General Recommendation - addresses discrimination based on caste and other forms of inherited status in the areas of employment, education, housing and the administration of justice, as well as from the perspectives of women and children and in the use of the media.

On April 19, 2005 the United Nation's Commission on Human Rights adopted a resolution mandating two Sub-Commission Members, Prof. Y. Yokota and Prof. C. Chung, to conduct a comprehensive study on discrimination based on work and descent and to prepare a draft set of principles and guidelines for the effective elimination of this form of discrimination. This process involves a request for contributions from Governments, National Human Rights Institutions, UN Bodies and Specialized Agencies, UN Special Procedures, and NGOs...⁶

Conclusion:

In its observations in the Report on Global Castes, the Human Rights Watch states: "Discrimination based on occupation and descent affects some 250 million people worldwide. The elimination of caste-based discrimination and related human rights abuses, too long neglected, must become a global priority. Despite the existence of significant Constitutional protections and progressive legislation, in many countries the reality for many millions remains unchanged. The solution lies in concerted international attention to assist National Governments in this important and long overdue work. The spirit of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance demands no less than a concerted pledge of international action." Further, the Report in its recommendations asserts, "Nationally, concerned Governments must act to uphold their own Constitutional principles and international treaty obligations and work toward the full enjoyment of rights by all citizens, regardless of caste or descent"⁷

Thus, a persistent effort is required from the people in general and the specialized organizations in particular to overcome caste based discrimination around the world paving the way for equal rights to every human being. Here it would be right to mention Article 1 of the Universal Declaration of Human Rights, 1948 which says, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

6. Ibid.

7. Caste Discrimination: A Global Concern, A Report by Human Rights Watch for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Durban, South Africa, September 2001. Human Rights Watch, Publications, V. Conclusion, hrw.org/reports/2001/globalcaste/caste0801-04.htm & III. Recommendations, from hrw.org/reports/2001/globalcaste/caste0801-02.htm