



FUNDAMENTAL RIGHTS AND EQUALITY BEFORE THE LAW OF DALITS IN INDIA: ISSUES AND PROBLEMS

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Abstract-- 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 highlight 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 15 of Constitution of India.

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

INTRODUCTION

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.”¹

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.”²

Does caste discrimination still exist in india?

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. 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.

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 of violence

¹ Draft principles and guidelines on the effective elimination of discrimination based on work and descent, para. 2 (A/HRC/11/CRP.3)

² AHRC - The State of Human Rights in India 2012: <http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-005-2012.pdf/view>



and humiliation known officially in India as ‘atrocities’. The vast majority of perpetrators of these acts enjoy great impunity. 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.’³

CONSTITUTIONAL SAFEGUARDS TO DALITS AND OTHERS

Article 14: Equality before law and equal protection of the law

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 16: Equality of opportunity in matters of public employment

Article 17: Abolition of Untouchability

Article 19: Six freedoms are available under this provision such as :

1. Freedom of speech and expression
2. Freedom of assembly
3. Freedom of association
4. Freedom of movement
5. Freedom of residence and settlement
6. Freedom of profession, occupation, trade and business

Article 20: Protection in respect of conviction for offences

Article 25-28: Freedom of conscience and free profession, practice and propagation of religion Article

29: Preservation of culture and religious interests of the minority

Article 32: Constitutional remedies for enforcement of fundamental rights

DIRECTIVE PRINCIPLES OF STATE POLICY

Articles 38 & 39: Social, economical welfare of the weaker sections in particular and the Indian society in general

Article 46: Socio – Economic advancement of the Backward Communities.

SPECIAL PROVISIONS FOR SC’S OR DALITS

Article 15 (4): Reservations in education and employment

Articles 330 and 332: Reservations to sc’s in the House of the People and in the Legislative Assembly respectively

Article 338: National commission for scheduled castes⁴

³ 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.

⁴ Durga Das Basu (1999) An Introduction to the Indian constitution, 18th edn (New Delhi, Law Publishers) pp78-148



POSITION OF DALITS IN INDIA

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.'⁵ 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 1936.⁶

The constitution of India in its preamble ensures justice, liberty, equality and fraternity to all its citizens. Every democratic country and civilized society recognizes and guarantees the value of dignity and equality to all its members. Unfortunately, in India human life and human dignity have been disregarded today. For centuries in India social gradation based on castes is a permanent uncrossable set up. Ironically, the Hindu religion has sanctioned some castes the "natural superiority". This has compelled the oppressed castes to fight for their rights and their right place in the society. The knowledge of their oppression and the conspiracy of their "lower place" in the gradation have come to Dalits through the education system introduced by the British during their rule. The Scheduled Castes (untouchable castes) adopted the nomenclature Dalit as a symbol that denotes revolution and change. Dalits believe in humanism. But the fundamental Hindu social system has determined to destroy Dalit as a human being Dalit rights are human rights. Dalits demand their share in all systems of their country, whether they are social, economic or political. Dalits have lost their dignity, life and livelihood in the caste system - and all Dalit movements should strive to regain the lost human personality by working strongly to eliminate this obnoxious system.

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. 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

⁵ Sheth, op. cit., p.40

⁶ De Haan and Arjun (2005). 'Social Policy: Towards Inclusive Institutions', University of Guelph and Department for International Development, UK



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.

IMPUNITY FOR ATROCITIES AGAINST 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. There is an urgent need to check whether these laws ensure the protection and promotive aspects of Dalits, and to amend it where necessary.

Allocations for Special Component Plan for SCs have been inadequate at national level and that many states have failed to allocate as per the normative SC population percentage. Dalits are often limited from equal and meaningful political participation. While legal mechanisms to protect Dalits are in place, implementation remains very weak. 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. . The use and abuse of Dalit bonded labourers remains endemic within a range of occupations. In this aspect, Dalit children are particularly vulnerable. 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 is also being practiced at school level. 50% of all SC children and 64% of girl students drop out due to discrimination being practiced against them in school. 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. 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.

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. 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.

Is it discrimination on the basis of work and descent?

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 India’s 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.



SUGGESTIONS

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. All the vulnerable groups, particularly Dalits should have an urge for human dignity and development, besides the ability to resist abuses of their human rights by fellow beings through peaceful means. These hundreds of millions of people including women, children (especially the girl child) religious minorities, Dalits, adivasis and others better free from the stigma of inferiority and unprivileged. Moreover these groups better take initiative in indigenous leadership for defense purpose as well as upgradation.