
Discrimination Based on the Caste and Lineage: With Special Focus on Dalit Women in India

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Abstract

Discrimination based on the caste and descent forces social marginalisation on people belonging to lower castes (Dalits)¹ in India. Although government of India has taken number of steps for the upliftment of Dalit people. However, due to some flaws in the law of the state itself, fruitful results are not coming yet. In this situation Dalit woman is the uppermost victim of the discrimination as she is a women, she is a Dalit and she is a poor. Our paper will focus on the systemic flaw in the law of state itself which according to our view is the main cause of this apathy towards Dalit discrimination particularly women, which results in Human rights violation. In our view, to eradicate this discrimination form the bud, a relevant and stringent law with full political will is the need of the hour.

¹ Word Dalit in the Marathi language of western India, means “broken up,” “ground to pieces,” or “oppressed.”

“If you are not considered to be human, human rights do not apply to you.”²

Chewing trotters in the badlands
My grandpa,
The permanent resident of my body,
The household of tradition heaped on his back,
Hollers at me,
'You whore-son, talk like we do.
Talk, I tell you!'
Picking through the Vedas
His top-knot well-oiled with ghee,
My Brahmin teacher tells me,
'You idiot, use the language correctly!'
Now I ask you,
Which language should I speak?³

Introduction

Dalits in India are at the lowest of cast system. Physical separation of Dalits from the dominant casts in, strict enforcement of the prohibition of inter dining at public places, housing patterns, seating arrangements in educational institutions, particularly primary schools and forces the performance of degrading occupation like carrying of night soil by women and manual scavenging. Discrimination based on caste and descent results in the sexual control and violent appropriation over Dalit women by men of the dominant caste, apparent in systematic performance of forced prostitution in the name of religion through Devadasi system and rape of Dalit women. Despite the preamble of the constitution which resolves to usher in a society where there is justice, political, social and economic to we people of India, the law of the state lacks in providing for a active programme of positive action to raise the

² Said by Moni Rani, Director, Dalit Women's Forum, Bangladesh.

³ Arun Kamble, 'Which Language should I Speak?', in Arjun Dangle (ed.), *Poisoned Bread: Translations from Modern Marathi Dalit Literature* (Bombay, Orient Longman, 1993:54).

level of Dalit's to rest of the we people of India, without which discrimination based on descent and cast is ever possible i.e. the control of human rights violation of Dalit women (Shinde 2005).

The caste system in India has left the lowest castes (Dalits) at the lowest of the social, political and economic set up. The constitution of India calls them Scheduled Castes (SCs) and has tried to end their discrimination and marginalization through legal measures. The practice of untouchability is banned and laws have been passed to stop embarrassing practices enforced upon Dalits in India. Positive action in the form of a reservation policy was adopted, giving schedule casts (SCs) provisions for acquiring government jobs to ensure their social and economic development. At the same time, to bring them into the political decision making process, quotas were also reserved in representative institutions (legislative assemblies, parliament and local governments). Apart from these legal and constitutional measures, a number of policy initiatives have been started in the last six decades at different governance levels to improve the socio-political and economic conditions of the SC community (PRIA 2013).

For particularly the Dalit women lack of law implementation force makes them incapable to approach the legal system to seek redress. As Dalit women are often illiterate and unaware of law, their unawareness is exploited by their appoints, by the police, and by the judiciary, even when the cases are registered with police, the lack of proper and appropriate investigation or the judge's own gender and caste biases can lead to acquittal of the criminal, regardless of the availability of the witnesses or evidence. The government of India's two-pronged policy to improve the socio-economic status of Dalits and to provide them with a political and legal protection in the form of social welfare legislation has been diluted by a lack of political will to ensure its proper implementation. Although the employment of the manual scavenging was stopped by the statue in 1993, 7.9 lakh Dalits

are still forced to continue as manual scavengers in India. Most state governments of India do not seem to know of even the presence of the Act and many other states are not aware of provisions of the Act. Manual scavenging is the worst form of the negating dignity and human rights of the Dalit people. The fundamental gaps in effectively executing such laws like PCRA, SC/ST (prevention of atrocities) Act explain the lack of political will of the government of India. It is found that in some cases police do not deliberately register the offences promptly, and invariably they do not register the case under the said act. This is being done intentionally to connive at law. Social exclusion, lack of active legal protection and socio, economic and sexual exploitation have kept the Dalit people at the sub human living conditions for centuries. The state's complicity and its organs such as judiciary, police and government servants' caste bias the constitutional and other statutes are followed in contravention. The civil servants (upper caste) act with impunity violating domestic and international human rights (Shinde 2005).

Cast and the Constitution

Today, Dalits in India make about 16.2% of the total population, but their control over the resources of the country is negligible – less than 5%. Close to half of the Dalit population lives under the extreme poverty line, and even more (62%) are illiterate. Among the Dalits, most of those engaged in agricultural work don't have land. It is estimated that the average household income for Dalits was 17,465 rupees in 1998, just 68% of the total national average. Less than 10% of Dalit households can afford electricity and toilets, safe drinking water, which is indicative of their terrible social condition. Moreover, Dalits are daily victims of the worst atrocities and crimes, far outnumbering other sections of society in that respect as well. The vast majority of these crimes against Dalits remain unreported due to omnipresent fear, and those that are

reported are often ignored by police. Between 1992 and 2000, a total of 334,459 cases were registered nationwide with the police as cognizable crimes against SCs (Saiki 2014)

It was until the late 1990s, that the daily violence, exclusion, and humiliation suffered by low caste groups were not treated as human rights issues by United Nations (UN) organs or nongovernmental organizations (NGOs). Despite decades of overseas engagement by Dalit organizations, recognition of the Untouchables' plight remained negligible. No international conventions specifically covered problems of discrimination and Untouchability, human rights treaty bodies did not distinguish caste-based discrimination as a human rights violation or abuse, and major human rights organisations had not taken up the issue (Bob 2007).

Caste status in Hinduism is decided by the birth and is therefore irreversible. The caste status of Dalits as untouchable or outcaste is trusted upon them and it is involuntary. There is intimate relationship between occupation, caste status and discrimination. The Dalit women face triple discrimination because she is women, she is poor and she is an untouchable. The discrimination imposed on her because she is born as an outcaste. She cannot raise her voice. She is considered as immoral and loose. Her humanity and her body can be violated by upper caste man. Instead of dispersed inequalities, we find in "caste system" an accumulative inequality where political and social power is concentrated into the hands of the same group. The best proof of descent-based discrimination is that only low cast (Dalits) are untouchables (Shinde 2005).

This situation exists in India today despite constitutional guarantees of non-discrimination on the basis of caste and gender (Article 15(1)), the right to life and security of life (Article 21) and the constitutional ruling to specially protect Dalits from social injustice and all forms of exploitation (Article 46). Moreover, the Indian State has enacted number of laws protecting the rights of Dalits and women, admitting the prevalence of discrimination and violence against these sections

of society. An important law in this regard is the Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act 1989. The presence of laws, however, without corresponding implementation to defend personal security to Dalit women, and without intensive efforts to emancipate the Dalit community and eradicate deep-rooted caste -and- gender biased notions of injustice and inequality, is not enough. The Indian government has itself admitted that the institutional forces – class, caste, community and family – arraigned against women’s equal rights are influential and shape people’s mind-sets to accept prevailing gender inequality. If human rights are the legitimation of human needs, then the needs of Dalit women for, socio-economic development, personal security and social justice are priority areas for intervention (National Campaign on Dalit Human Rights 2006)

Law Implementing Agencies

India’s failure to safeguard that all public authorities and public institutions do not engage in caste and creed-based discrimination is common. Two examples demonstrate this failure: treatment of Dalit people specially the women by the police and discrimination in the provision of disaster relief. India’s National Human Rights Commission (NHRC)—a statutory government body that the government of India describes as the top national institution to guard human rights and redress grievances—has mentioned that the law implementation machinery is the greatest violator of Dalits’ human rights. According to the NHRC, widespread sexual assault and rape of Dalit women and custodial torture, brutal killing of Dalits, and looting of property of Dalit’s by the police “are condoned, or at best ignored.” This problem is very old. In 1979 India constituted the National Police Commission to examine problems in police performance. However the report’s recommendations, which include recommendations particular to police abuse of Dalits, have still not been effected. While, the

Supreme Court rules set out in the D.K. Basu case and the Prevention of Atrocities Act, 1989 are available legal tools to prevent torture, or improper interrogation of Dalits illegal detention, human rights activists, jurists and civil rights groups claim that a lack of political will and immunity laws that defend those responsible for human rights abuses from prosecution, allows the problem of custodial cruelty and torture to continue unchecked. Dalit people are mainly vulnerable to arrest under draconian security laws. Additionally, under the collective punishment theory, the police often target whole Dalit communities in search of one criminal and subject the community to violent search and seizure operations. Dalit women are mostly vulnerable to sexual violence by the upper castes and police, which is used as a method to punish Dalit communities. Police also aggressively permit private actors to commit violence against Dalits with protection, and at times, get together with private actors in committing such atrocities. Police systematically fail to appropriately register these crimes under the Scheduled Tribes and Scheduled Castes (Prevention of Atrocities) Act, 1989, and the Protection of Civil Rights Act, 1995. According to separate investigations by the National Campaign on Dalit Human Rights and Human Rights Watch, India failed to protect Dalits from discrimination in the distribution of relief and aid in the wake of two of India's largest natural calamities in recent years: Gujarat earthquake in January 2001 and the Indian Ocean tsunami in December 2004. India has also unsuccessful to eliminate barriers and encourage integrationist movements between castes. It has allowed segregation in schools, housing and has failed to faithfully implement legislative and constitutional abolitions of "untouchability" practices. Additionally, as Dalits increasingly form to protest their biased treatment and claim their rights, the government has regularly failed to defend Dalits against retaliatory attacks by upper-caste Hindus, including the rape of Dalit women, and has failed to address social and economic

boycotts against Dalits, thereby further unfavourable integrationist movements (Human Rights Watch 2007).

Role of Police

Even if the cases are registered in police stations, there is no court of law to try them. No cases have gone to trial, so there are no sentences. Aside from insignificant amounts from the prime minister's relief fund, no compensation is given in the cases registered, as is required by the rules of 1995.⁴ The police consider Dalits to be their rivals. They don't register cases against upper casts. They just say, "Don't fight anymore. After all, they [upper casts] are taking care of you; they are giving you employment. They made an error, let it go." And in so doing, the Dalit people are usually persuaded to let the case go. In rare cases where they make an FIR, they will turn it around in the charge sheet and say that after appropriate investigation, they found that the FIR was incorrect. This is all to try and help the alleged discharge.⁵

Violence and discrimination against Dalits particularly women reinforces caste norms wherein they are seen as open for all kinds of violence and torture, especially sexual abuse and forced labour. According to India's "National Commission for Women, "In the commission of offences against... [Dalit] women the [dominant caste] criminals try to establish their authority and humiliate the community by exposing their women to inhuman treatment and indecent" (National Commission for Women 1996).

Policy Measures

The Committee on the Elimination of Racial Discrimination (CERD) should clearly restate that discrimination according to

⁴ Human Rights Watch interview with Bharathan, programme coordinator for Navjeevan Trust, Madurai district, Tamil Nadu, February 17, 1998

⁵ Human Rights Watch interview with Mr Martin, Village Community Development Society, Madras, February 13, 1998

caste is included in definition of descent-based discrimination and therefore fall under the purview of racial discrimination as stated in Article 1 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Affirmative action should be taken in Africa and Asia particularly India to end caste based discrimination. The committee should take note of the statement made by the National Commission on Human Rights (NCHR), India at the World Conference against Racism (WCAR), Durban. “(The NCHR) is committed that discrimination on any grounds enclosed in the constitution of India, and these include caste, race and descent, constitute intolerable assault on worth and dignity of human person as an egregious human rights violation. It is also said that gender perspective should be incorporated in all aspects of the convention, and intersectionality of caste/race, and gender must be addressed. The state must recognize Dalit women as separate and distinct social group and make special provision for Dalit women in allocation of finances and planning programmes etc. (Shinde 2005).

Conclusion

There is urgent need that law of the state first should corrected as per the need of the hour. It is true that India has made measurable improvement in terms of the protections afforded to Dalits since 1947, Dalits still suffer undesirable discrimination and mistreatment at the hands of law enforcement officials and upper caste members. Such ill-treatment is intolerable under both India’s domestic laws and its responsibilities under international law. Although the government of India denies the problem of maltreatment of Dalits and points to broad legal protections showing compliance with international rules and standards, the several reports of discrimination and violence indicate that Dalit’s remain India’s “broken people.” Until the violence against Dalits end, the international media ought to

continue to publicize the circumstances of India's marginalised population and boost India to live up to the criteria established in its domestic laws and international responsibilities (Hanchinamani 2001). The first step for that will be a stringent law will full political will.

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