

A NOTE ON CASTE DISCRIMINATION AND HUMAN RIGHTS VIOLATIONS

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Caste Discrimination is a gross violation of Human Rights. India, being the original member of the United Nations, is bound to the laws in the Universal Declaration of Human Rights. The UDHR affirms UN's belief in the freedom and equal dignity of all citizens, "without any kind of distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth status". India is failing its obligations under the UDHR by its inability to protect the Dalits from discrimination, degradation and violence.

India has also failed to meet its obligations under the International Covenant on civil and political rights. Not only does the ICCPR protect against discrimination of "any kind" including discrimination based on "social origin," but it also protects against torture, degrading treatment, arbitrary, arrest, detention, and promotes equality in the courts and equal protection of the law.

Introduction

The assertion of Human Rights in India dates back to the 19th century, with the abolition of Sati by Governor General William Bentick. This was achieved through years of campaigning by Hindu Reform Movements such as the Brahmo Samaj of Raja Ram Mohan Roy. Since then, from the time India achieved its political independence from the British Raj, it has made considerable progress in the field of Human Rights, by including the bill of Fundamental Rights as part of the constitution and providing for reservations for the disadvantageous section of the society in the field of education, employment and political representation. Free India, from time to time passed legislations and acts to prevent and safeguard the rights and privileges of those who were at a disadvantage in our society. Yet where do we stand with respect to Human Rights in this 21st century?

Our country's civil rights history, inspired freedom movements around the world but are our people really free? Are they really leading a life of dignity and worth, even with the so called development we have seen in our country? What about those 160 million "children of God", as lovingly Gandhi called them, who make up for one fifth of the population and still suffer from caste discrimination?

Caste system is a constant human rights situation, involving massive violations of civil and political, economic, social and cultural rights. It is estimated to affect more than 260 million people in all geographical regions particularly in Asia and Africa. Caste discrimination is found in varying degrees in India, Nepal, Pakistan, Bangladesh, Sri Lanka, Japan, Yemen, Senegal, Burkina Faso, Mali, Cameroon, Mauritania, Sierra Leone, Nigeria, Kenya, Ethiopia, Somalia, Yemen, and

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Micronesia and possibly more countries. It also occurs among migrant and Diaspora communities in Europe, North America, U.S and Asia. (International Dalit Solidarity Network. IDSN)

Caste Structure In India

The Indian Caste System is arrangement of people in the society into four hierarchical ranked groups called “Varnas”. They are classified according to occupation and determine access to wealth, power, position and privilege (Deshpande, 2010). The top most position in this hierarchical organization is held by the Brahmins who are usually the priests or scholars followed by the Kshatriyas, the political rulers and soldiers. After the kshatriyas are the Vaishyas consisting of the business class or merchants and then come the shudras who are the laborers, peasants, artisans and servants.

The Hindu society eventually came to include a fifth class, the lowest of all, considered to be as “Untouchables” and inferior. It included foreigners, tribes, nomads and those excommunicated from the society. These people were given tasks that were considered unclean and polluting such as manual scavenging, skinning dead animals, handling carcasses, sweeping streets or cobbling (considered degrading because of its association with feet and leather) (Hanchinamani, 2001). They were restricted from entering the streets which housed the upper castes and there were many rules and customs which kept them out of the village and never be an integral part of the village community. Since their services were still necessary for the community they became a part of the system in order to serve the upper castes.

The Indian caste system is based on strict rules which the caste member must follow in order to avoid being cut off by their fellow caste members and the society. These rules relate to marriage, occupation, social interaction, social mobility and the belief of pollution and purity. Members of a caste are required to marry only within their caste. Every caste has a predetermined occupation which its members are required to follow for life. There are restrictions on mixing of an upper caste with an inferior caste. A person is born into a caste and cannot move up or down the hierarchy. One’s caste cannot be altered by any means. And finally the belief of purity and pollution – “cleanliness is considered to be a very important value in Hinduism and caste enforces this idea. It is believed that the higher castes were more pure and less polluted while the lower castes were regarded as less pure and more polluted. Untouchability, was thus a means of exclusivism, a social device that became religious only by being drawn into the pollution –purity complex” (Deshpande, 2010). There were rigid rules by which the caste members were expected to abide. Violations of any of these rules meant excommunication from the caste or in extreme cases disproportionate and collective punishment.

There are different theories to the origin of Indian caste system-some are biological and other religious. The Indian class division was first expounded in the Vedas. Hinduism is based on this ancient spiritual text. The class division was made more concrete in the Manusmriti. The social system in the Vedas evolved into a more rigid Indian caste system. It is not clear how the social order in the Vedas evolved into a more severe Indian caste system. Some scholars believe that Brahmins manipulated the Vedic text to gain power, while some others state that Aryans institutionalized the caste system to subdue the indigenous population of India. In either instances, the notion of untouchability emerged at some point in the development of caste system (Hanchinamani, 2001).

Thus if we examine the nature of caste system we realize that the “ caste systems fundamental characteristics of fixed civil, cultural, religious and economic rights for each caste by birth, with restrictions for change implies forced exclusion of one caste from the rights of castes in general.” (Ingole)

Human Rights Status of Dalits in 21st Century India

People of the outcastes, who are commonly referred to as Dalits (meaning the “broken” or the “ground down”), from ancient times, have endured a life of degradation. In order to overcome and eliminate the inequalities and injustices associated with the caste system, there were many movements and governmental actions, prior to and post independence periods. However in rural India, in our villages and even in urban India, Dalits continue to suffer widespread discrimination and mistreatment.

Examples of ongoing discrimination against Dalits include the continued practices of traditional segregation between upper castes and Dalits (Hanchinamani, 2001). According to a report of the International Dalit Solidarity Network, entitled ‘Cast an eye on the Dalits of India’, out of 565 villages studied in 11 states, in

- 37.8% of the villages, Dalit children are made to sit separately in government schools
- 27.6% of the villages Dalits are prevented from entering police stations
- 25.7% of the villages Dalits are prevented from entering ration shops
- 33 % of the villages, public health workers refuse to visit Dalit homes
- 23.5% of the Dalit villages don’t get mail delivered to their homes
- 14.4 % of the Dalit villages, Dalits are not permitted to enter the ‘panchayat’ Local Government building.
- 12% of the Dalit villages: Dalits denied access to or forced to form separate lines at polling booths
- 48.4% of the Dalit villages are denied access to water sources

- 35% of villages surveyed: Dalits barred from selling produce in local markets
- 47% of villages with milk cooperatives prevent Dalits from selling milk and 25% prevent Dalits from buying milk
- 25% of villages: Dalits paid lower wages than non-Dalits, work long hours, have more delayed wage and suffer more verbal and physical abuse
- 37% of villages Dalit workers paid wages from a distance to avoid physical contact
- 64 % of Dalits restricted from entering Hindu temples
- Almost 50% of villages Dalits prevented from accessing cremation grounds
- 73% of villages Dalits not permitted to enter non-Dalit homes
- 70% of villages Dalits and non-Dalits cannot eat together
- 35.8% of Dalits denied entry into Village shops.
(International Dalit Solidarity Network)

Dalits are also often the victim of hate crimes and violence. The report further gave the following data regarding crimes against Dalits, averaged over a period of 5 years from 2001-2005.

- 27 atrocities committed against Dalits everyday
- 13 Dalits murdered every week
- 5 Dalit homes or possessions burnt every week
- 6 Dalits kidnapped or abducted every week
- 3 Dalit women raped every day
- 11 Dalits beaten every day
- A crime committed against a Dalit every 18 minutes
(International Dalit Solidarity Network)

The report also states that if you are a Dalit in India then

- you can expect to have 4 years less to live than others.
- you can expect more than half of your children to suffer from under-nutrition.
- one third of the women in your community will be anemic.
- for every 100 Dalit children born in your community, 12 would already be dead before they reached their fifth birthday.
- only 1 out of every 5 children in your community would not drop out of school, and only about half would even become literate despite that fact that around 2/3 of Indians are literate. You would have less than 1 in 600 chance of gaining a postgraduate diploma (if you are a women, make that 1 in 1,200).

- you have an unemployment rate of 5% compared to 3.5% for others, you are half as likely to have fixed capital assets and four times as likely to become a bonded labourer, joining the estimated 24.4 million other Dalit bonded labourers.
- one in every three in your community will be poor while the 'touchable' communities will have a 4 in 5 chance of escaping poverty.
(International Dalit Solidarity Network)

Consequence of caste based discrimination includes social and economic exclusions besides segregation in housing, denial and restrictions of access to public and private services and employment and enforcement of certain types of jobs on Dalits like manual scavenging, temple prostitution, leather work etc resulting in a system of modern day slavery or bonded labour.

From analysis of above data one can see violations of a cross section of basic Human Rights including civil, political, economic, cultural and social rights.

India's Internal Fight against Caste Discrimination: (*Legislation against Caste Discrimination*)

- (a) **The Indian Constitution:** India has not failed to see that caste discrimination is one of the corroding factors of its national fabric. Much has been done to end caste discrimination and the efforts started way back under the British government. In 1935, the British government identified 400 groups, as well as many tribes considered as "untouchables", who later on in free India came to be known as the Scheduled castes and scheduled tribes. These groups were identified so that they could be given special privileges and government protection in order to overcome their state of deprivation and discrimination.

At the time of independence, the Indian constitution considered the Fundamental Rights and included articles that make the practice of untouchability a punishable offence along with granting equal protection of the laws to any person within the territory of India, prohibiting discrimination based on caste and providing states with powers to reserve government employment placements for members of castes that are not adequately represented in particular fields.

- (b) **Domestic Laws:** To realize the Constitutional promise of the prevention of untouchability, the Protection of Civil Right Act 1955 was enacted, which criminalized any acts preaching or practicing untouchability. Section 4-7 of this act particularly dealt with punishment to be given to those persons who practiced untouchability.

The problem with this law was that it did not specify any investigation or prosecution mechanisms which seriously affected its implementation. Further people responsible for the implementation of the law believed in a contrary

social practice strengthened by religion and custom. So without having a built-in mechanisms to prevent non-registration of complaints and mandatory provisions for the investigation and prosecution of crimes that fall under it, the law failed.

To overcome these problems the Scheduled Castes and Scheduled Tribes Act was passed in the year 1989. "Atrocities" are an official category of crime defined by this Act. The Act defines 'atrocities' as crimes such as

- forcing Dalits to eat obnoxious substances
- dumping excreta or carcasses in Dalit premises
- assaulting a Dalit women with intent to dishonour or outrage her modesty
- using a position of dominance to sexually exploit a Dalit woman
- parading Dalits naked or with painted face or body
- forcing Dalits to do forced or bonded labour
- dispossessing Dalits of their land and forcing Dalits from their homes
- preventing Dalits from voting
- corrupting or fouling a Dalit water source
- publicly humiliating Dalits
- using fire or explosives to damage Dalit property
- fabricating evidence in order to convict innocent Dalits (International Dalit Solidarity Network)

The 1989 Act requires states to set up special courts to judge Scheduled caste offences and also provides for punishment for public servants who fail to implement the protections stated in the Act. The Scheduled Castes and Scheduled Tribes (prevention of atrocities) rules of 1995 further describes in detail procedures that the state government should follow with regard to investigation , prosecution and punishment in accordance to the 1989 Act.

This law also has its share of disadvantages-the biases existent in the society makes it difficult to implement the law. For e.g.- an Allahabad High Court Judge had his chambers purified with water from Ganga because a Dalit judge had previously sat in that chamber. Besides this the weak legal system, lack of provisions for rehabilitation, lack of awareness about the law and the fact that some atrocities such as social and economic boycott , blackmail are not covered under this act, makes it just another legislation on the paper.

There are other acts for instance the "Employment of Manual Scavengers and Construction of Dry latrines (prohibition) act" of 1993, which interdicts the employment of manual scavengers - an occupation where close to a million Dalits are employed.

Sections 153 a & b of the Indian Penal code 1891, can also be applied on cases related to caste discrimination.

There are compicuous legislations available for the prevention of atrocities and protection of Dalits but none of these addresses the root cause –THE CASTE SYSTEM.

India's Stand on Caste Discrimination at International Level

Before we talk about India's stand on Caste Discrimination as a form of human rights violation at international level, let us understand the concept of Human Rights and the history behind its inception.

The first half of the 20th century witnessed two devastating wars, which involved almost the entire world for the first time in the world history. During the First World War (1914-1918), modern weapons of warfare caused immense destruction and suffering. To prevent such wars in future, there was felt necessity for an international organization. The League of Nations was, therefore, formed for this purpose. The league however failed to function effectively leading to the Second World War. The Second World War (1939-1945) brought about much more destruction to life and property. Millions lost their lives and precious resources were ruined on an unimaginable scale. Nuclear energy was used as a weapon of mass destruction and the use of atom bombs brought an end to the war.

On October 24 1945, the United Nations was formed as a result of a deep felt need and strong desire of the people to co-exist peacefully. The United Nations is an international organization of states. Fifty peace loving nations which included India, signed the UN charter and pledged to save future generations from the scourge of war, to maintain international peace and security, promote social progress and better standards of life, develop friendly relationship among the people of the world and achieve international cooperation.

With the establishment of the UN, the concept of multilateralism and international understanding was given a broad base (The United Nations Today, 2008). It provides a common platform for all nations to discuss their problems peacefully and ensure justice for all.

One of the greatest achievements of the United Nations, is the, comprehensive set of human rights law- a universal and internationally protected code to which all nations can subscribe and all people can aspire, which it published on the 10th of December 1948, three years after United Nations was created. After much deliberation and debate, two more international covenants, one on economic, social and cultural rights and the other on civil and political rights were introduced, taking the provisions of the Universal Declaration one step further by converting these rights into legally binding commitments for the members of the UN. The organization has thus defined a broad range of internationally accepted rights.

The Universal Declaration, together with the two International covenants on Human Rights and the optional protocols to the ICCPR, constitutes the International Bill Of Human Rights. It has also established mechanisms to promote and protect these rights and to assist governments in carrying out their responsibilities.

The United Nations has gradually expanded human rights law to encompass specific standards for women, children, persons with disabilities, minorities, migrant workers and other vulnerable groups, who now possess rights that protect them from discriminatory practices that had long been common in many societies. (The United Nations Today, 2008).

The Universal Declaration of Human Rights has served as an inspiration for 80 other conventions and declarations. There are 9 core international human rights treaties, monitored for compliance by state parties. When states become parties to these conventions, they agree to have their human rights legislation and practices reviewed by independent expert bodies. Each of the convention has established a monitoring body - a committee which sees to the implementation of articles set in the convention and considers reports from state parties or individuals, if the state parties have accepted this optional procedure of the respective conventions.

Human Rights can be defined as fundamental rights or moral claims that a person is inherently entitled to simply because he or she is born a human being. These rights are applicable everywhere in the whole world and same for everyone.³

Caste, UDHR, International Treaties and Conventions

The United Nations Declaration Of Human Rights 1948 does not refer to caste as a basis or source of discrimination. But as a member of the UN, India is bound to the provisions set forth in the Universal Declaration of Human Rights. The first two articles of the UDHR state that “all human beings are born free and equal in dignity and rights” and that the human rights protected in the UDHR belong to everyone “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Hanchinamani, 2001). Article 7 & 8 of the declaration gives an individual the right to equality before law and the right to effective remedy for the violation of fundamental rights. Article 3 & 10 accords an individual the right to be free from torture or cruel, inhuman, or degrading treatment or punishment and the right to fair and public hearings. Because India has failed to protect Dalits from discrimination, degradation, and violence, India is violating its obligations under the UDHR (Hanchinamani, 2001).

India ratified the International Covenant on Civil and Political Rights on April 10, 1979. The ICCPR protects against discrimination of “any kind”, including discrimination based on “Social Origin”. It also protects against torture, degrading treatment, arbitrary arrest, detention, and promotes equality in the courts and equal

protection of the law. Article 2(1) states that “state parties to ICCPR pledged to respect and ensure to all individuals within its territory and subject to its jurisdiction rights recognized in the present covenant. Article 2(2) requires that the state must adopt legislative or other measures to give effects to the rights. India has introduced many domestic laws addressing the rights mentioned in the ICCPR, but has failed to enforce them in the case of the Dalits. ICCPR established the Human Rights committee to monitor the state compliance. Since India did not sign the optional protocol, the HRC has no jurisdiction to review individual complaints by Dalits, but has the power to comment on India’s ICCPR obligation on the whole (Hanchinamani, 2001). In 1997, the HRC found that India was violating its obligations under the ICCPR through its treatment of Dalits because, despite the existence of legislation to protect them, Dalits still “endure severe social discrimination” and face “inter-caste violence, bonded labour, and discrimination of all kinds.” (Hanchinamani, 2001)

Having also ratified the International Covenant on Economic, Social and cultural rights (ICESCR) which strives to protect the right to self-determination (Article 1), the right to work (6), the right to just and favorable conditions of work (7), the right to form and join trade unions (8), the right to social security and social insurance (9), the right to an adequate standard of living (11), and the right to education (13 and 14), India has failed to meet these obligations too.

And finally after Caste being excluded from any direct reference in UN bodies and international covenants, conventions such as ICCPR, ICESCR, CEDAW and ILO, the committee on elimination of all forms of Racial Discrimination(CERD) , for the first time made an explicit reference to caste discrimination, untouchability and the scheduled castes in 1996.

The CERD is an UN treaty body that monitors the implementation of core Human Rights treaties by state parties on a regular basis. The committee was established by the International Convention on Elimination of all forms of Racial Discrimination. ICERD, adopted in 1965 by the UN general assembly, was the third in the 9 core treaties enforced by the United Nations. ICERD is the principal international treaty for the elimination of racism, racial discrimination and other forms of intolerance. It sets out a complete system for ensuring that civil, political, cultural, economic and social rights are enjoyed by all. By signing ICERD, state parties show their commitment to make the rights contained in the convention a reality in their country. The convention established the Committee on Elimination of all Forms of Racial Discrimination (CERD), consisting of 18 independent experts, appointed every 4 years with expertise in the field of Human rights and racial discrimination, selected from countries who have ratified the convention. The committee is empowered to consider complaints from other countries about violations of the ICERD and in certain circumstances individuals or group complaints. Its role is also to monitor the progress towards the full implementation

of the convention in the countries that have ratified the convention. Article 1 of ICERD defines discrimination as “any distinction, exclusion, restriction, preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights and fundamental freedoms in the political, cultural or any other field of public life.”

India & ICERD

India was actively engaged in the formulation of ICERD in 1965 as it was in the lead in the international campaign against apartheid in South Africa. The Term “Descent” was introduced in the draft ICERD in 1965, by an Indian Delegate K. C. Pant, through an historic amendment, quoting its own struggle with caste, stating that “certain groups *though* of the same racial stock and ethnic origin as their fellow citizens, had for centuries been degraded by the caste system to a miserable and downtrodden condition”.

India ratified the convention in 1969, thus making it legally bound by its requirements and obligated to protect and promote equality and non discrimination in the enjoyment of human rights including in the areas of education, housing, criminal justice, health, voting, labour, access to justice and more. However in 1996, India while submitting its periodic report did a u-turn by claiming that caste though preserved through descent, was not based on race and therefore did not come within the confines of the conventions. It freed itself of any reporting obligation on the situations of dalits/scheduled castes, but was ready to provide information to the CERD as a “matter of courtesy”. In the year 96-97, UN investigators on Racism and Racial Discrimination requested a visit to the India to appraise the situation of untouchables in co-operation with the government and the community concerned. The Indian government, to this day has refused the request for the visit. In 2001 Durban World conference against Racism, Racial Discrimination, xenophobia and related intolerance, when the matter of descent was raised and discussed, India continued to stand its ground. Again in its 15th – 19th report submitted on January 26 2006, India restated its position on the applicability of article 1 of the convention to caste, arguing that the Indian Constitution addresses the issue of caste and race separately and are two different concepts. They should not be combined or confused as one and hence caste does not come under the guidelines of CERD.

CERD’s Response

CERD rejected the argument outright in 1996, stating that the term ‘descent ‘ in article 1 of the convention does not solely refer to race. In August 2000, the 52nd U.N sub commission on the Promotion and Protection of Human rights unanimously passed a resolution reiterating that caste discrimination is prohibited under the International Human Rights Law. It commissioned expert member Rajender. K.

Goonesekar to prepare a working paper on “Discrimination based on descent” with the objective of identifying communities experiencing discrimination based on occupation and descent, examining constitutional, legislative measures in place for abolition of such discrimination and finally to make recommendations for the elimination of such discrimination. India opposed all these resolutions.

The submission of report by sub-commission expert R. K. W. Goonesekere in Durban Conference August 2001 sparked off for the first time a major discussion by a UN Human Rights Body on caste discrimination as a significant source of Human Rights violations. While scrutinizing India’s 10th -14th periodic reports under the ICERD at the end of the conference, the committee affirmed that the situation of the SC’s fell under the scope of the convention. It reaffirmed that discrimination based on ‘descent’ includes “discrimination against members of communities based on forms of social stratification such as caste and analogous system of inherited status, which nullify or impair their equal enjoyment of human rights.”

Conclusion

Is caste discrimination a genuine problem? If yes, is it a violation of basic human rights? If yes, it is, why is the Government of India ashamed to acknowledge this serious problem at international level? Is it avoiding the issue for its vested interest? Will legislative measures alone at national level be enough to curb this problem? Is international intervention necessary to solve this social problem? Is it justified to have international intervention or is it just as India has been stating all this while “it’s our internal matter”!

It has been established that Caste Discrimination is a deep rooted social problem. A change can be brought about not through quotas or mobilization of Dalits but through a change in the mindset of people beginning with those whom we elect to represent us as a nation. We need to bring forward the likeminded who belong to no castes and fight for those who are deprived and marginalized. We need to fight for equality and social justice for every citizen of India which can be achieved through a socially sensitive education system along with other factors such as legislations.

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