

Discrimination based on work and descent (Rights of Dalits)

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). In UPR I India received 2 recommendations. In the second UPR review in 2012, India received 10 recommendations out of 169 addressed to Dalit rights and/or caste-based rights violations. These recommendations were made by a cross-regional group of states: the Czech Republic, Germany, Ghana, the Holy See, Japan, Norway, Thailand and the United States of America. The Government of India, however, accepted only two recommendations focused on equality of treatment independent of caste and instituting monitoring mechanisms to ensure that objectives of policy initiatives for vulnerable groups are met (Ghana 75 and Holy See 67). In total, 14 states made observations relating to caste in advance of the review that recognized the challenges faced by Dalit communities.

NATIONAL LEGAL FRAMEWORK

The 2011 census recorded nearly 20.14 crore people belonging to various scheduled castes in the country. The total number of Dalits is probably much higher as Muslim and Christian Dalits are not included in these figures. In India, caste-based discrimination and the practice of "untouchability" is prohibited by the Constitution. Article 17 of India's Constitution abolishes untouchability and the Protection of Civil Rights Act, 1976 (PCR Act) and Rules, 1977 make the practice of untouchability a cognizable and non-compoundable offense warranting enhanced terms of imprisonment, prescribes appointment of prosecutors for these offenses and establishes Special Courts and Committees to assist state governments in implementing anti-untouchability measures.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 defines criminal, economic, political and property-related

offenses committed against Scheduled Castes (SCs) and Scheduled Tribes (STs) as atrocities and designates a system to bring atrocity cases under the jurisdiction of Special Courts. In December 2015, the SC and ST (Prevention of Atrocities) Amendment Bill, passed by Parliament, made several critical changes. New activities were added to the list of offences to strengthen it further.

Despite constitutional provision and formal protection by law, for millions of Dalits, or 'untouchables', discriminatory treatment remains endemic and continues to be reinforced by the state and private entities. Reservation policies for "Scheduled Caste/Scheduled Tribes" in education, employment in the public sector and political representation are in force, but effectiveness in implementation is yet to be fully ensured.

CHALLENGES

Non-implementation of protective laws and access to justice for Dalit communities.

Discrimination and Challenges in Employment

Continuation of Manual Scavenging in India is violation of Constitutional rights.

Right to discrimination free Education

ISSUES AND IMPACTS

In 2013, there were 46,114 cases registered under the POA Act. The number increased to 47,064 in 2014. As per National Crime Records Bureau (NCRB) data, a total of 1,88,991 crimes against SCs were registered under different laws from 2011 to 2014. Overall, the year 2014 witnessed an increase of 19.4% in total crimes committed against SCs over the previous year, while the year 2013 witnessed an increase of 17.1% in total crimes committed against SCs over the previous year. In 2014, the NCRB reported 2233 registered rapes of SC women—an average of 6 rapes per day. Moreover, the number of registered rapes of SC women has risen steadily over the years, from 1089 in 2003 to 2073 in 2013, marking a 47.5% increase over the past decade. For 2014, the conviction rate for rapes of SC women stood at 34.9%, though this has to be understood against the backdrop of the high pendency rate of 81.6% for rape cases.

Majority of Dalits are working as casual wage labourers—51.2% in the case of Dalits and 42.5 per cent in the case of Adivasis during the year 2009–10, with abysmally low and irregular incomes. Of the total rural SC workers, more than 60% are wage labourers and there is significant discrimination in hiring and wage payments. In the most sought after civil services, IAS, IPS and IFS, the proportion of SC officers was below the mandated quotas. Out of 3,251 directly recruited IAS officers, SC officers made up only 13.9%. As a part of affirmative action policy enshrined in the Indian Constitution, 15% and 7.5% of central government posts are reserved for Dalits and Adivasis respectively. In context of Dalits, only 10.15% posts were filled in group A, in Group B it was 12.67%, in Group C it was 16.15% and in Group D it was 21.26%. The figures for Adivasis were even lower at 2.89%, 2.68%, 5.69% and 6.48% for the four groups respectively.

Indian Railways is an institution that uses dry latrines in great numbers and a large number of Dalit individuals are engaged in manual scavenging. Despite 11 million passengers travelling by trains every day, at present there are only nine trains with 436 coaches fitted with bio-toilets, while 4,000 coaches are produced annually which could be fitted with new bio-toilets. The recently passed Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 does not have concrete measures for rehabilitation and a clear plan for implementation.

In 2012, 41 independent monitoring institutions submitted reports to the Ministry of Human Resource Development detailing instances of discrimination and untouchability during the midday meals in 186 schools across the states of Rajasthan, Madhya Pradesh, Orissa, Uttar Pradesh and Gujarat. SC children were routinely segregated from other children while eating. Additionally many children or their parents often refuse food cooked by SC cooks. There are also cases where Dalit students are served from a distance, and several students bought their own plates for fear of utensils being touched by Dalit classmates.

CHALLENGES

Public Policy and Budget

In 2016-17, the allocations for SC under the Union Budget 2016 is only 7.6% when the due amount under SCST budget should be 16.8% which should amount to Rs.91,301 crore and 8.6% under TSP which should amount to Rs.47,300 Crore. Thus denying a total of Rs. 75,764 crore.

Right to Freedom of Opinion and Expression

Between 2011 and 2013, Maharashtra authorities arrested six members of Kabir Kala Manch, a Pune-based cultural group of singers, poets, and artists, under the Unlawful Activities (Prevention) Act, (UAPA) claiming they were secretly members of the banned Communist Party of India (Maoist), also known as Naxalites. The six were largely consisting of Dalit youth, uses music, poetry, and street plays to raise awareness about issues such as the oppression of Dalits and tribal groups, social inequality, corruption, and Hindu-Muslim relations.

Dalits are vulnerable to the natural and human-made disasters.

A Report from Tamil Nadu on disasters reveals that Dalits are still waiting for the justice in response. The report also reveals how Dalits have been treated during the floods and process of Rescue, Relief and Post Disaster Care. The narratives of villagers also show how children, women, elderly, especially those who have lost their houses, are struggling without basic facilities and living in depression.

ISSUES AND IMPACTS

RECOMMENDATIONS

The Indian government should take appropriate measures to Annihilate Caste system and Untouchability Practices to uphold the constitutional values through special campaigns and awareness to the citizens of India and in particular issue orders to remove caste identity from schools, institutions, trade unions and associations, which are named after the castes.

A dialogue with the national and state governments, relevant UN bodies, the private sector, local authorities, human rights institutions, CSOs and academic institutions needs to be promoted and sustained with a view to identify, promote and exchange views on best practices related to access to safe drinking water, health & sanitation, employment and adequate housing and inclusion of Dalits in disaster response and rehabilitation processes.

Adequate measures to enact 'Anti-Discrimination' and equal opportunity legislations covering governance, social processes, service delivery and budgetary allocations which prohibit discrimination in capital market, labour hiring, work place, private enterprises, etc.

Reservation measures must be extended to Dalits of all faiths, especially to Dalit Christians and Muslims, who are presently excluded from the reservation benefits owing to religion-based discrimination. Constitution (Scheduled Castes) Order 1950, Paragraph 3's religious ban ought to be removed/ deleted or amended by Union of India for the extension of Scheduled Castes privileges to Christians and Muslims of Scheduled Castes Origin.

The unorganized Workers Social Security Bill should be adopted without any further delay. Equal attention should be given to Dalit women domestic workers. The recent ILO Convention on domestic workers and rules, 2011 should be given due consideration for subsequent ratification.

Effective and serious implementation of recommendations given by the Treaty Bodies and Special Rapporteurs with regard to Caste Based Discrimination with proper and active co-ordination of line ministries and National and State institutions, involving NGOs / CSOs.

On a priority basis, design, develop and implement a National Action Plan to eliminate all forms of discrimination, applying where necessary the Durban Review Conference Outcome (2009). This Plan should integrate Human Rights Education and Training at all levels.

REFERENCES

National Crimes Records Bureau 2014, Crimes in India 2014.Delhi:
<http://ncrb.gov.in/CD-CII2013/home.asp>.

planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc

Revised Guidelines for Implementation of Scheduled Castes Sub-Plan (SCSP) by the States/UTs No.M-11012/03/2013-SJ&SW, Planning Commission
http://planningcommission.gov.in/sectors/guide_state1208.pdf

Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012).

(2012). Analysis and Recommendations in the Context of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill. Bhopal: Rashtriya Garima Abhiyan, pp. 10-11).

UN High Commissioner for Human Rights Navi Pillay, 2013 (31 Jan.). 'Pillay applauds Indian movement to eradicate 'manual scavenging'', OHCHR News, available online:
www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E (Source- Paul, S., 2012. Witches of India: Women without Defence, available at: <https://worldpulse.com/node/50282>.

Special Rapporteur on Contemporary Forms of Racism. (2013). Report to Human Rights Council on Racism and Implementation of the Durban Declaration and Programme of Action. UN Doc. A/HRC/23/56, para. 46)

Union Budget 2016-17- The Dalit Adivasi Perspective;
http://www.ncdhr.org.in/Dalitsinnews/Final_Budget_Watch_2016-17_Union.pdf

India Exclusion Report, 2015, a comprehensive, annually updated analysis on the exclusion of disadvantaged groups in India, supported by UNICEF, UNFPA, and UN Women.

Tsunami to 2015 Floods - "No respite for Dalits in disaster response, Tamil Nadu" - "Report of Initial Findings from Immediate Needs Assessment and Monitoring Responses towards Affected Dalit Communities" - National Dalit Watch - National Campaign on Dalit Human Rights, New Delhi and Social Awareness Society for Youth.

Fact-Sheet prepared by HAQ: Centre for Child Rights, member, Working Group on Human Rights in India and the UN (WGHR).