

# JOINT STAKEHOLDERS REPORT ON CASTE BASED DISCRIMINATION IN INDIA

## **Introduction:**

This report describes the wider context of Dalit rights in India today, in which caste based discrimination and violence against Dalits and access to justice must be located. India has completed two cycles of the Universal Periodic Review (UPR), a full review of the human rights record of all governments that are members of the United Nations (UN), in 2008 and 2012. Distinct from the treaty review processes, the UPR is an opportunity to reinforce the recommendations made to the government under these reviews by providing countries with recommendations on how to improve their human rights conditions. In particular, the UPR assess how and if members are respecting, protecting and fulfilling their human rights obligations.<sup>1</sup>As such, it is an important tool for assessing progress in favour of Dalit rights in the country.

During India's 2012 review, 10 of 169 recommendations addressed 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 (USA).<sup>2&3</sup>

The present Dalit Stakeholders Report has been prepared following experiences of local, state-level and national Dalit movements, organizations and platforms under the auspices of National Campaign on Dalit human Rights and its three movements (a) All India Dalit Mahila Adhikar Manch (b) Dalit Ardhik Adhikar Andolan (c) National Dalit Movement for Justice (d) National Dalit Watch jointly with two coalitions initiated by NCDHR namely (a) National Coalition for Strengthening PoA Act and (b) National Coalition on SCP/TsP legislation. The report is endorsed by 563 organizations across India. This report is a compilation of primary and secondary sources collected from various organizations, experts working on Caste Based Discrimination and from different credible sources including the UN Treaty Bodies, UN Special Procedures, and Government Reports etc.

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<sup>1</sup> USHRN, UPR Fact Sheet and FAQ, available at [http://www.ushnetwork.org/sites/ushnetwork.org/files/upr\\_fact\\_sheet\\_and\\_faq.pdf](http://www.ushnetwork.org/sites/ushnetwork.org/files/upr_fact_sheet_and_faq.pdf)

<sup>2</sup> The Government of India, however, out of those 10 recommendations accepted only two recommendations focused on equality of treatment and instituting monitoring mechanisms to ensure that objectives of policy initiatives for vulnerable groups are met (Ghana 138.75). Canada, Chile, Denmark, Hungary, Italy, Luxembourg and Slovenia asked questions or made observations relating to caste in advance of the review or during interactive sessions. In total, 14 states made that recognized the challenges faced by Dalit communities.

<sup>3</sup> Caste-related statements at the Universal Periodic Review of India, access online on August 20, 2015: [http://www.idsn.org/fileadmin/user\\_folder/pdf/New\\_files/India/2012/IndiaUPR2012\\_CasteStatements.pdf](http://www.idsn.org/fileadmin/user_folder/pdf/New_files/India/2012/IndiaUPR2012_CasteStatements.pdf)

## **Thematic discussion of recommendations from India's 2012 UPR Process**

### **I. Dalit Human Rights Defenders**

#### ***UPR recommendations***

During India's 2012 UPR, the Czech Republic and Norway made recommendations addressing the rights of DHRDs:

- 138.43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic).
- 138.68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adivasis, and right to information activists (Norway).

***Government response to the recommendation – Both the above recommendations not accepted***

#### ***Status of government action***

India's National Human Rights Commission has established *Focal Point for Human Rights Defenders* aimed at providing 24-hour crisis support. The NHRC has also taken action on cases of atrocities perpetrated against particular DHRDs. For instance, on December 12, 2014, as a follow up to a National People's Tribunal on attacks on DHRDs, the NHRC held a roundtable conference that resulted in registration of DHRD Chandrakant Gaikwad's case by the NHRC. The Commission requested a report on the case from the Superintendent of Police of Pune District within 15 days. There remains, however, a need to take active steps to ensure police accountability for protecting all DHRDs who face retaliation.

#### ***Situation of Dalit Human Rights Defenders***

DHRDs remain at risk of life threats for defending the rights of marginalized communities. National Dalit Movement for Justice (NDMJ) have documented targeting of DHRDs on the basis of their caste, including assaults in public places, torture, illegal detention, harassment, forced disappearances, extra-judicial killings, illegal imprisonment, surveillance, targeting of family members, branding as Naxalites and anti-nationals and implication in false cases.<sup>4</sup> In response to an appeal by DHRDs following the murder of fellow DHRD, Chandrakant Gaikwad, UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekagggya, explicitly addressed the position of DHRDs in India: "Dalit rights activists strive for the promotion and realization of Dalits' civil, political, economic,

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<sup>4</sup> Report on Dalit Human Rights Defenders by NCDHR-National Dalit Movement of Justice (NDMJ), Submitted to the Special Rapporteur on Situation of Human Rights Defenders, 15 January 2011. See <http://www.ncdhr.org.in/latestinterventions/Report%20UN%20SR%20HRD.doc>

social and cultural rights. The range of human rights violation they suffer is appalling.”

### ***Recommendations***

- Enact a law protecting Dalit and other human rights defenders, in full and meaningful consultation with civil society and in conformity with India’s human rights obligations.
- Strengthen the power of Commissions to protect DHRDs, through measures including but not limited to facilitating fast-track access to protection, access to justice and rehabilitative support for DHRDs and their families.
- Ratify UN Declaration on human rights defenders and ensure protection of human rights defenders who are working to address Dalit human rights abuses and as per the Recommendation given by the Special Rapporteur Ms. Margret Sekkagya during her visit in India, the Human Rights Commissions must ensure a safe and conducive environment for Dalit Human Rights Defenders throughout India and state must promote appropriate Legal Protection Mechanisms in line with the declaration.

## **II. Implementation of protective laws and access to justice**

### ***UPR Recommendations***

During India’s 2012 UPR, Germany, the Holy See, Ireland, Thailand and the United States of America made recommendations addressing implementation of protective laws and access to justice for Dalit communities:

- 138.53. Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress (Ireland).
- 138.47. Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany).
- 138.72. Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens (USA);
- 138.118. Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes (Holy See).
- 138.122. Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention (Thailand).
- 138.71. Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing

sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training (Thailand).

- 138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan).
- 138.7. Ratify promptly the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and relevant Protocol

***Government response to the recommendations – All the above recommendations not accepted except recommendation No 122 which is accepted in its revised form.***

### ***Status of government action***

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. This year India has also brought out SCs and STs (PoA) Act amendments 2015 to strengthen it further. India has taken action to establish Special Courts aimed at streamlining access to justice for Dalit and Adivasi victims of atrocities in each state. At the time of writing, India had established such Special Courts in more than 40% of districts. There is no disaggregated information available regarding state-wise appointment of Special Public Prosecutors or as to the number of cases in which SC victims of atrocities were allowed to engage an advocate of their own choice as stipulated by the PoA Act.

India has signed the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A Bill introduced in the Parliament was passed in the Lok Sabha in 2010. In Rajya Sabha, it was referred to a Parliamentary Select Committee which has made certain recommendations. These are under examination by the Government. Although India has so far not yet ratified the Convention.

### ***Status of implementation of protective laws and access to justice***

Despite these protections, atrocities against Dalit communities persist. In 2013, there were 46,114 cases registered under the POA Act. The number increased to 47,064 in 2014, according to the National Crime Records Bureau (NCRB).

A study in Andhra Pradesh, Jharkhand, Rajasthan, Tamil Nadu and Uttar Pradesh found that Dalit and Adivasi victims of atrocities face significant challenges at each stage of the process of accessing justice, including: barriers to registering complaints, delayed investigations, failure to arrest the accused, lack of understanding of rights and court processes, threats from the accused, pressure to compromise or adjourn cases prior to conclusion and humiliation during trial proceedings. According to India's National Legal Services Authority, in 2011, between April 1 and September 30, only 4% of recipients of legal aid services were from SC communities.<sup>5</sup> Although the Legal Services Authority Act, 1987 directs Legal Services Authorities (LSAs) to work closely with government agencies and non-governmental organizations to promote legal services to the poor, LSAs are not currently coordinating action with SC Commissions.<sup>6</sup> According to NCRB data, the percentage of pending cases has increased from 79.9 % in 2011 to 85.3% in 2014.

A study report<sup>7</sup> conducted by the Committee formed by the National Commission for Scheduled Castes based on the rising number of complaints by the Kuruvan<sup>8</sup> Community on Police atrocities found that even after 6 decades of political independence in India, the community is subjected to physical torture by the Tamil Nadu police in the name of convicting the "habitual offenders".

Spinning mill owners invented Sumangali system<sup>9</sup> primarily to secure a steady labour supply of submissive adolescent female labourers. About two decades ago, with the help of contractors they started targeting young Dalit girls who had completed their

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<sup>5</sup> India Current Affairs National Legal Services Authority: Performance cum achievements, 17 February 2012, accessed online on 15 July 2015: <http://indiacurrentaffairs.org/national-legal-services-authority-performance-%E2%80%93-cum-achievements/>

<sup>6</sup> Multiple Action Research Group, 2012 Needs assessment study of selected legal services authorities, New Delhi, commissioned by the Government of India Department of Justice and United Nations Development Program.

<sup>7</sup> A Study Report on Alleged cases of Police Atrocities against Kuruvan Community in the state of Tamil Nadu – 15 December 2014 to 13 January 2015.

<sup>8</sup> The members of the Kuruvan community, including women, men, and children, are subjected to systematic ruthless treatment at the hands of the police. It has become convenient for the police to catch hold of the "Kuravans" and foist false cases against them; Kuravans are kept under illegal detention, and are subjected to brutal forms of torture to extract "false confessional statements" regarding crimes which they had not committed. For these reasons the entire community lives in fear of detention and arrest. The police in most of the cases compile the pending cases at the end of the year and use them as unsolved theft cases by charging the innocent people from the community to benefit themselves for rewards and promotions; and the worst part is the police protect and defend certain other anti-social elements in order to keep the racket going. The "Kuravan" men are more than regularly taken from their houses and illegally kept for long time in police custody and are subjected to third degree tortures and are forced to confess statements for various criminal cases. With respect to the "Kuravan" women, they are verbally, physically and sexually abused at anytime at the discretion of the police. The Kuravans in the following districts like Thanjavur, Ariyalur, Thiruvannamalai, Salem, Trichy and Villupuram experience high levels of false criminal charges, illegal detention torture in custody, sexual abuse and custodial deaths.

<sup>9</sup> Spinning mill owners invented sumangali, primarily to secure a steady labour supply. About two decades ago they started targeting, with the help of contractors, young girls which had completed their basic education at the age of 14 years, and school drop-outs. Most of the young women workers, 60 to 70%, are Dalits. These workers may join the mills due to their poor standing in the community, landlessness and lack of other assets, or discrimination of Dalit children in local schools limiting other livelihood options. Under sumangali, the young women are offered a labour contract of 3 to 5 years. Upon completion of the contract period they receive a lump-sum payment which varies from rs. 35,000 to 70,000. This money saved, it is being portrayed by spinning mill owners, can ultimately be used to pay for the girl's future dowry expenses. After all, sumangali is a Tamil word which refers to the state of happiness a woman attains once she is married and cared for by her husband, with good fortune and no worries in the world. During the contract period regular wages are not being paid because sumangali is presented as a training programme. Instead pocket money is being provided. At the same time, about half of the young women are being housed in dormitories or hostels which are being managed by the spinning mills.

basic education at the age of 14 years, and school drop-outs. 60 to 70% of the young women workers are Dalit. Research carried out by SAVE between 2013 -15,<sup>10</sup> shows that 23% of all Sumangali workers were younger than 14 years of age and 26.85% of workers were between 12 and 14 years of age at the moment they were recruited, implying that a quarter of all workers are child labourers, in violation of, not only labour laws but also the right to free and compulsory education. During inspections, they are hidden in closets or closed rooms or doctors are brought in to certify that they are older than 14<sup>11</sup>.

### ***Recommendations***

- Take immediate action to ensure establishment of police stations and Special Courts equipped to respond to crimes under the POA Act in every district in India.
- Direct states to set up sub-division level committees for review of implementation of the POA Act, including relief and rehabilitation of victims, which includes representatives from civil society organizations and Dalit communities.
- Encourage collaboration between Legal Service Authorities and SC Commissions at the state and national level to promote access to legal services for Dalit communities.
- Sensitize the police force as per the D.K.Basu guidelines<sup>12</sup> on the arrest of persons in order to avoid custodial death, torture etc as well as giving them necessary training and counseling on the subject and those public servants found guilty shall be punished under appropriate legislations.
- Design and enact special mechanisms or guidelines to prevent and protect the violence against Dalits. This includes data and research on the scope, prevalence and incidence of all forms of violence against Dalits, on the causes and consequences of such violence, and on lessons learned and good practices from other countries in preventing and addressing violence.

### **III. Affirmative action, enjoyment of economic and social rights and monitoring measures**

#### ***UPR Recommendations***

During India's 2012 UPR, Japan and Vietnam made recommendations pertaining to affirmative action and allocation of resources for the enjoyment of economic, social and cultural rights for Dalit communities and by in general on right to housing :

- 138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil

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<sup>10</sup> Findings based on interviews conducted in two rounds with a sample of approximately 500 workers. See SAVE (2014), 'Sumangali Trend Analysis January 2013–June 2014'; SAVE (2015) 'Sumangali Trend January 2015'.

<sup>11</sup> Harsh Mander, 'Child 'camp coolies' in Tamil Nadu ' 12 January 2016, Times of India. Available at: <http://www.livemint.com/Opinion/ZpH9hN76b27t74BBgFPc7K/Child-camp-coolies-in-Tamil-Nadu.html>

<sup>12</sup> D.K.Basu, Ashok K Johri vs State of West Bengal , State of U.P on 18 December , 1996

Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan).

- 138.130. Provide more resources for the enjoyment of economic and social rights, especially in favor of vulnerable groups like women, children, poor people and minorities (Vietnam).
- 138.75. Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana).
- 138.141. Continue consolidating its programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost wellbeing of its people [Venezuela (Bolivarian Republic of)].

***Government response to the recommendations – Recommendation No 73 not accepted. Recommendation No 130, 75, 141 accepted.***

### ***Status of government action***

The Indian Constitution prohibits discrimination in employment and commits to promoting the economic interests of SCs.<sup>13</sup> In particular, Article 16(2) allows for 15% reservation for SCs to enable their participation in government services, educational institutions and political bodies. From this mandate, derives India's elaborate quota system for public jobs, places in publicly funded colleges and elected assemblies for communities marginalized on the basis of caste or tribal status.<sup>14</sup> In addition, section 3(1) (v) PoA Act punishes discrimination in access to employment on the basis of caste, such as wrongfully dispossessing an SC person from their land. Section 4(I), (IV) and (viii) of the PCR Act prohibits interference with the right to access water and other public services on the basis of untouchability. India also has numerous state and national-level social welfare schemes in place, including programmes to provide financial assistance and access to housing, water and sanitation, livelihood development training, legal aid and scholarships. In addition the government has passed Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013.

### ***Status of implementation***

#### ***Employment***

India's elaborate quota system has had some measurable impact upon employment of Dalit communities in civil servant positions. While in 1965, Dalits held just 1.6% of senior civil servant positions, this number rose to 11.5% since 2011—far closer to the

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<sup>13</sup> Article 16(2), 46

<sup>14</sup>Ashwini Deshpande and Thomas E. Weisskopf, "Does Affirmative Action Reduce Productivity? A Case Study of the Indian Railways," *World Development*, Vol. 64, pp. 169-180 (2014), 169.

16% or so of India's general population represented by Dalit communities.<sup>15</sup> Despite the presence of social welfare schemes aimed at alleviating poverty and facilitating access to resources, however, due to low literacy levels and systematic caste-based discrimination, Dalits face difficulties in accessing these schemes.

For instance, a 2013 survey of 480 women from Dalit communities who practice manual scavenging<sup>16</sup> in the Indian states of Bihar, Uttar Pradesh, and Madhya Pradesh, undertaken by Jan Sahas Social Development Society, found: 75% of respondents did not have access to health services and only 4% of respondents were assisted to construct houses under the *Indira Awaas Yojana Scheme*. Despite provisions protecting the right to education for all children in India, in Uttar Pradesh and Bihar, children of 62% of respondents, and in Madhya Pradesh children of 51% of respondents did not go to school.

Of the total rural SC workers, more than 60% are wage labourers and there is significant discrimination of SCs in hiring and wage payments<sup>17</sup>

There were 25,037 'backlog' posts for SCs lying vacant in 73 government departments and bodies. These are positions reserved for SC members that have not been filled over the years and thus have accumulated. They include both direct recruitment and promotion-based positions. Out of these, 4,518 positions were vacant because no candidate was available for promotion<sup>18</sup>

There is a lack of a comprehensive employment anti-discrimination framework that adequately addresses the myriad ways in which discrimination operates. The existing legal protections against such discrimination include constitutional provisions mandating equality and a handful of criminal statutes. There is no umbrella anti-discrimination employment statute to regulate the private sector in India<sup>19</sup>

### ***Manual Scavenging***

Continuation of manual scavenging in India is violation of Constitutional rights and measures to address are piecemeal.<sup>20 &21.</sup>

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<sup>15</sup> The Economist, Affirmative Action: Indian Reservations, June 29, 2013.

<sup>16</sup> Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable. Their caste-designated occupation reinforces the social stigma that they are unclean or "untouchable" and perpetuates widespread discrimination. Women usually clean dry toilets, men and women clean excrement from open defecation sites, gutters, and drains, and men clean sewers and septic tanks.

<sup>17</sup> Chandrapal. Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc>>, para. 27).

<sup>18</sup> 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).

<sup>19</sup> Sinoy, D. 'Courting Substantive Equality: Employment Discrimination Law in India'. Retrieved Nov. 2013 from <<www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/).

<sup>20</sup> Indian Railways is an institution where dry latrines exist 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 (Rashtriya Garima Abhiyan. (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).



### ***Child Labour***

SC children face multiple forms of discrimination, violence and social exclusion. When it comes to employment of Child Labour, It is reported that out of the estimated 60 million-child labourers, 40 % come from Dalit families<sup>22</sup>.

### ***Disaster Risk Management***

SCs and STs are vulnerable to the natural and human-made disasters because of their marginal social standing and discrimination and their habitation in marginal spaces segregated from mainstream<sup>23</sup>.

### ***Economic rights- Budget Allocation***

In order to bridge the gap between the Dalits/Adivasis and other castes, the government of India crafted a policy called the Scheduled Caste Sub Plan (SCSP) and Tribal Sub Plan (TSP). This year, 2016-17, the allocations for SC under the Union Budget 2016 is only 7.6% when the due amount under SCSP budget should be 16.8% which should amount to Rs.91,301 and 8.6% under TSP which should amount to Rs.47,300 Crs. Thus denying a total of Rs 75,764 crore<sup>24</sup>

Funds are often not allocated under the SCSP in proportion to the population of SCs in the state/country. Moreover, a large amount of funds under SCSP are being allocated for general programmes and schemes, which are not specifically designed for SCs with fixed, realistic targets<sup>25</sup>.

The bulk of SCSP funds are more for social services (e.g. education, health) that are 'survival in nature'. Large funds are not being allocated for economic sectors that are 'developmental in nature' (e.g. entrepreneurship, employment, land) and would ensure that Dalits obtain access to productive resources for their long-term development and empowerment<sup>26</sup>

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<sup>21</sup> 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. It is still not clear who will formulate the schemes and how they will be implemented- Wilson, B., Safai Karamchari Andolan, quoted in Jitendra. (2013, 10 Sep). 'Manual Scavenging Prohibition Bill: How Effective', Down to Earth

<sup>22</sup> It is estimated that 80 % of child labour engaged in hazardous occupations like carpet weaving, matchstick and firecracker industries apart from tanning, colouring and leather processing, lifting dead animals, clearing human excreta, cleaning soiled clothes, collection of waste in slaughter houses and sale of toddy come from Dalit backgrounds.

<sup>23</sup> 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 – Tamil Nadu report reveals The Dalits are still waiting for the justice in response; 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 shows how children, women, elderly, especially those who have lost their houses, are struggling without basic facilities and living in depression.

<sup>24</sup> (Source- Union Budget 2016-17-The Dalit Adivasi Perspective;  
[http://www.ncdhr.org.in/Dalitsinnews/Final\\_Budget\\_Watch\\_2016-17\\_Union.pdf](http://www.ncdhr.org.in/Dalitsinnews/Final_Budget_Watch_2016-17_Union.pdf))

<sup>25</sup> Dalit Arthik Adhikar Andolan-NCDHR. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: DAAA

<sup>26</sup> Dalit Arthik Adhikar Andolan. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: DAAA

### ***Right to Adequate Housing***

53 % of all households nationally do not have a latrine within the premises, the figure rises to 66 and 77 % for SCs and STs, respectively, and within them, to 78 and 88 % for female-headed SC and ST households, respectively<sup>27</sup>.

### ***Recommendations***

- Conduct a complete assessment and audit of all current schemes relevant to supporting access to social and economic rights with attention to overcoming existing barriers to access for Dalit communities.
- Ensure that all training programmes are gender sensitive and based upon up-to-date market analysis so that training results in sustainable livelihoods, imparts marketable skills, and includes ongoing support to participants until they have secured jobs or established a functioning business.
- Coordinate action to advance social and economic rights for Dalit communities between all concerned ministries and government stakeholders, including but not limited to the Ministries of Social Justice and Empowerment, Drinking Water and Sanitation, Rural Development, Housing and Urban Poverty Alleviation, Urban Development, Women and Child Development and Labor.
- Serious human rights violations like manual scavenging bonded labour, child labour to be eliminated with time bound national action plan including stringent implementation of the existing legal mechanisms, relief & rehabilitation and development measures.
- Ensure Central legislation on SCSP and TSP be brought in clearly spelling out the duties and responsibilities of the Union and State governments.
- The existing affirmative policies related to employment shall be extended to private sector, with a special emphasis in those private spheres so far left out of the ambit of reservation policy.

## **IV. Women's Rights**

### ***UPR Recommendations***

During India's 2012 UPR, Chile and the Holy See addressed issues impacting Dalit women's rights in the following recommendations:

- 138.87. Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See).
- 138.85. Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honor killings (Chile).

***Government response to the recommendations – Recommendation No 87 is not accepted both the above recommendations not accepted***

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<sup>27</sup> India Exclusion Report 2013-2014, Centre for Equity Studies, New Delhi, 2014, pg no 10

### ***Status of government action***

The SC/ST Prevention of Atrocities Act criminalizes two gender-specific caste-based atrocities: assault or use of force with intent to dishonour or outrage her modesty and sexual exploitation of SC women. The National Policy for the Empowerment of Women, 2001 recognizes that the underlying causes of gender inequality are related to social and economic structure and acknowledges that for vulnerable women, including SCs, access to education, health and productive resources remains inadequate. Despite these acknowledgements, however, the 2001 National policy only outlines a targeted strategy for SC women with regard to equal access to education. Similarly, while the SC Sub Plan and Gender Budget have special budgeting provisions for SCs and women, planning for SC women is not mandatory.

### ***Status of implementation***

Facing intersecting discrimination on the basis of gender, caste and class, Dalit women are particularly vulnerable to human rights violations and social, economic and political exclusion. According to the 2005-2006 National Family Health Survey, 41.7% of scheduled caste women reported having faced physical violence since the age of 15 years from someone other than their current or last husband, as compared 26.8% of other women. Regarding sexual violence, 11.0% of scheduled caste women reported facing sexual violence as compared to 7.8% of other women.<sup>28</sup>

In 2014, the NCRB reported 2233 registered rapes of SC women—an average of 6 rapes per day.<sup>29</sup> 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<sup>30</sup>.

SC women are also vulnerable to specific forms of violence. Studies revealed that over 90% of *Devadasi/Jogini* women forced into ritualized prostitution are scheduled caste women.<sup>31</sup> Official statistics also show that over 2,500 women have been killed of the suspicion of practicing witchcraft in the past 15 years. The former UN High Commissioner for Human Rights, Navi Pillay, has noted that, “An estimated 90% of manual scavengers are Dalit women who face multiple vulnerabilities and

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<sup>28</sup>International Institute for Population Sciences and Macro International. 2007. National Family Health Survey (NFHS-3), 2005-06: India: Volume I. Mumbai: IIPS.

<sup>29</sup>National Crimes Records Bureau 2014, *Crimes in India 2013*. Delhi: NCRB accessed online: <http://ncrb.gov.in/CD-CII2013/home.asp>.

<sup>30</sup>One study of 500 Dalit women and girls who had experienced violence revealed that less than 1% of incidents of violence ended in convictions of the accused. Irudayam, A., Mangubhai, J.P. and Lee, J.G., 2011. Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan, available at: [http://idsn.org/uploads/media/Violence\\_against\\_Dalit\\_Woment.pdf](http://idsn.org/uploads/media/Violence_against_Dalit_Woment.pdf)

<sup>31</sup> Black, Maggie, 2007. *Women in Ritual Slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International: [http://www.antislavery.org/includes/documents/cm\\_docs/2009/w/women\\_in\\_ritual\\_slavery2007.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/w/women_in_ritual_slavery2007.pdf).

discrimination based on their caste and gender, and who are often exposed to violence and exploitation.”<sup>32</sup> &<sup>33</sup>

A study undertaken in Vizianagaram district of Andhra Pradesh revealed that around 77.2% of respondents had no information regarding the structure and functioning of the Village Health and Sanitation Committees (VHSCs). A majority (75%) of the Dalit respondents said that the VHSCs do not give any importance to Dalit issues. While 55% of men interviewed said that VHSC members did come and inquire about the health-related issues of Dalits, only 4.3% of women said that this was true. Moreover, 74.4% of respondents said that there was hardly any participation by the Dalit community in the VHSCs<sup>34</sup>

### ***Recommendations:***

- Serious human rights violations like devdasi system, violence against Dalit women, bonded labour, to be eliminated through legal and development measures.
- Facilitate engagement between the Ministries of Social Justice and Empowerment and Women and Child Development, at both central and state levels, to promote policies and implementation practices that address the specific needs of Dalit women.
- Take proactive measures to improve Dalit women’s legal literacy and ability to access justice, including through monitoring effective enforcement of the POA Act and providing quality free legal services to Dalit women.
- Increase annual budgetary allocation for the protection of Dalit women and children from abuse, neglect, exploitation and violence and in accessing various schemes. Undertake planning from a gender lens that includes the intersectional vulnerability faced by Dalit women.

## **V. Education, Human Rights Education and Training**

### ***UPR Recommendations***

During India’s 2012 UPR, Ecuador, Japan and Mexico addressed education, human rights education and training in the following recommendations:

- 138.162. Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all the girls and boys in its country (Ecuador).

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<sup>32</sup> 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](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E)

<sup>33</sup> A national study on health services found that caste identity was important in accessing resources such as anganwadi services both as health service provider and recipient. Caste discrimination was reported in these services from almost all the study villages. In some instances, separate anganwadis in the ‘upper’ and ‘lower’ caste localities was a practical solution without, however, resolving the issue (Source- C. Sathyamala et al. (2012). ‘Public Report on Health Some Key Findings and Policy Recommendations’, Economic and Political Weekly 47(21), pp.43-54)

<sup>34</sup> Sesharatnam, P. and P. Chittibabu. (2012). ‘Still some way to go: Communitisation of Health Services among Dalit Community’. Andhra Pradesh: People’s Action for Rural Awakening)

- 138.163. Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far (Japan).
- 138.164. Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities (Mexico).

***Government response to the recommendations – Recommendation No 162 accepted and 163 and 164 not accepted***

***Status of government action***

Consistent with Article 46 and 15 of constitution, the Right of Children to Free and Compulsory Education Act, 2009, protects the rights of all children aged 6-14 years old to free and compulsory elementary education. The Act also directs the government to take action to ensure that children from disadvantaged social groups are not discriminated against and prevented from pursuing and completing elementary education<sup>35</sup>

The *Sarva Shiksha Abhiyan* (SSA) Implementation Framework, based on the Right to Education Act, suggests interventions for inclusion of Dalit children, including establishing norms of behaviour for teachers and students; and timely detection of forms of discrimination practiced by either teachers or students. The Ministry of Human Resource Development has issued Guidelines against Discrimination in Elementary Education in 2012<sup>36</sup>. India's 12th Five-Year Plan 2012-2017 acknowledges that Dalit children's dropout from education is higher than the national average recognizes exclusion as "the single most important challenge in universalizing elementary education"<sup>37</sup>. The government also has in place pre-matric and post-matric scholarships for SC children, and government run hostels for SC children, all aimed at promoting their access to education.

***Status of implementation***

These measures have had some impact. Programmes to build schools and provide free midday meals for all students, irrespective of caste, have contributed to increasing attendance among Dalit students.<sup>38</sup> Enrolment ratios, however, drop significantly at the secondary and senior secondary levels and do not necessarily translate into attending school at any level.<sup>39</sup>

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<sup>35</sup> Section 8(c)

<sup>36</sup> These guidelines specify that all schools should not discriminate against a child belonging to a socially disadvantaged group in terms of admissions and shall prohibit all discrimination, harassment, victimization and segregation of such students.

<sup>37</sup> Accordingly, the Plan thus calls for a rights-based approach, sharper focus on disadvantaged social groups and emphasis on increasing access and enrolment and improving learning outcomes.

<sup>38</sup> Affirmative Action: Indian Reservations, *The Economist*, June 29, 2013.

<sup>39</sup> Government of India Ministry of Human Resource Development, *Selected Educational Statistics 2010-11* (New Delhi: Government of India, 2012)

While quotas and special scholarships for Dalit and tribal groups in India were first established in the 1920s, designation of State funds to these programs have encouraged more Dalit and tribal students to pursue secondary schooling. According to a 2009 study on the impact of such quotas, one-in-15 graduates and one-in-10 secondary school students were Dalits—well up from previous decades.<sup>40</sup>

Despite the government focus on SC education<sup>41</sup>, however, discrimination in schools remains a significant barrier to accessing education for Dalit children in India. A 2012 study from the Indian Government Ministry of Human Resource Development, capturing various forms of caste-based discrimination in schools found that SC children face discrimination in access to drinking water and midday meals<sup>42</sup>, are made to do cleaning and other menial tasks and also face verbal abuse on the basis of their caste.<sup>43&44</sup>

In January 2012, 25 Dalit children from Karandipatana village in Kendrapada district, Orissa were forced to obtain school leaving certificates and get admitted into another school after facing abuse and threats from dominant caste villagers, as part of a continuing land dispute in the village<sup>45</sup>

### ***Recommendations***

- Take immediate action to make school environments free from discrimination, including by requiring schools to display their commitment to “Discrimination-Free Schools” in prominent places and immediately rename schools with caste names.
- Develop legal mechanisms to address caste based discrimination in higher education at all levels and implement the guidelines issued by the University Grants Commission in 2013 on discrimination free environment in higher institutions.

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<sup>40</sup> Affirmative Action: Indian Reservations, The Economist, June 29, 2013.

<sup>41</sup> The India-level literacy rate for SC children, moreover, continues to be lower than that of other castes: overall 66.1% for SCs compared to 73% generally.

<sup>42</sup> 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 (Source- Vishnoi, A. (2012, 26 Nov). ‘Report says caste, gender discrimination rampant’, Indian Express)

<sup>43</sup> Government of India Ministry of Human Resource Development, Inclusion and Exclusion of Students in the School and in the Classroom in Primary and Upper Primary Schools (New Delhi: Ministry of Human Resource Development, 2012).

<sup>44</sup> Prejudice against and harassment of Dalits are equally prevalent in institutions of higher education. Reportedly, as a grave consequence of this harassment, a disproportionate number of Dalit students have committed suicide in some countries. (Source- 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)

<sup>45</sup> Times of India. (2012, 19 Jan). ‘Dalit children ‘ousted’ from school in Kendrapada’

- Develop and require rights-base curriculum to raise awareness among all students about human rights and non-discrimination.
- Increase at least five-fold the annual budgetary allocation for the Integrated Child Protection Scheme (ICPS) for protection of children from abuse, neglect, exploitation and violence and separate budgetary allocation for the quality education including quality residential schools and hostels etc.

## **VI. Right to Freedom of Expression**

### ***UPR Recommendations***

138. Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard (Sweden);

### ***Government response to the recommendations – Recommendation not accepted***

#### ***Status of government action***

In 1979, India ratified the International Covenant on Civil and Political Rights, which sets forth internationally recognized standards for the protection of freedom of expression. Yet, a series of Indian legal provisions, continue to restrict speech in ways inconsistent with that covenant<sup>46</sup>.

#### ***Status of implementation***

Between 2011 and 2013, Maharashtra authorities arrested six members of Kabir Kala Manch<sup>47</sup>, a Pune-based cultural group of singers, poets, and artists, under the Unlawful Activities (Prevention) Act<sup>48</sup>, (UAPA) claiming they were secretly members of the banned Communist Party of India (Maoist), also known as Naxalites<sup>49</sup>. 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.

### ***Recommendations***

- Ensure Dalits the right to freedom of speech and expression including peaceful assembly and association during peaceful protests or assembly which are often met with police violence or arbitrary arrest and detention. Ensure Dalit activists are not detained and charged under draconian national security and anti-terrorism laws.

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<sup>46</sup> UN Special Rapporteur on freedom of expression Frank La Rue has stated, freedom of expression is not only a fundamental right but also an “enabler” of other rights, “including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly.... [A]rbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a ‘chilling effect,’ but also leads to other human rights violations.”

<sup>47</sup> After the Gujarat riots in 2002, a group of students came together and formed Kabir Kala Manch, a cultural group which, through their music and poetry, took up the cause of social inequality, exploitation of the underclasses, farmer suicides, female infanticide, Dalit killings and the widening net of corruption.

<sup>48</sup> Unlawful Activities (Prevention) Act is an Indian law aimed at effective prevention of unlawful activities associations in India. Its main objective was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

<sup>49</sup> The six were Deepak Dingle, Siddharth Bhosle, Sheetal Sathe, Sachin Mali, Sagar Gorkhe, and Ramesh Gaichor. Kabir Kala Manch

## VII. Right to Water and Sanitation

### *UPR Recommendations*

138.139. Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas (Myanmar );

### *Government response to the recommendations – Recommendation accepted*

#### *Status of government action*

The Constitution of India guarantees the right to life<sup>50</sup>. India has allocated resources to modernise sanitation. National sanitation schemes aimed at modernising human waste management include the Integrated Development of Small and Medium Towns Scheme (1969), Sulabh Shauchalaya (simple latrines) Scheme (1974), the Integrated Low Cost Sanitation Scheme (1981), the Low Cost Sanitation for Liberation of Manual Scavengers Scheme, 1989, and the Total Sanitation Campaign, 1999, renamed Nirmal Bharat Abhiyan (Clean India Campaign).

#### *Status of implementation*

In terms of water and sanitation provision, Dalit habitations are often systematically excluded. Dalits have been unable to collect water from shared wells or have been fined for drinking from a common water tap, and Dalit women have reportedly had to wait in a separate queue until non Dalits have fetched water. Large-scale violence and physical attacks by members of the dominant caste have been reported where Dalits attempted to access facilities in areas inhabited by the dominant castes<sup>51</sup>.

Only 57 per cent Dalit and 55 per cent Adivasi households have drinking water within their premises compared to the national (urban) average of 71 per cent. In the sphere of sanitation, a quarter of Dalit and Adivasi populations defaecate in the open, against an overall percentage of 12 per cent. Female-headed households have similarly poor access to a water source within premises, and to exclusive use<sup>52</sup>.

### *Recommendations*

- Revise existing water and sanitation related laws, regulations, policies and operating procedures to ensure that they refrain from discrimination.
- Review public water and sanitation budgets to ensure that they address the needs of vulnerable and marginalised groups, including those living in informal settlements and arid and semi-arid areas.

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<sup>50</sup> In April 2002, a new National Water Policy was announced in India, wherein each state is obliged to formulate its own water policy within two years. The policy makes a blanket statement that water should be provided to all, but there are no specific measures mentioned to address discriminatory practices with respect to, and atrocities consequent to Dalits accessing their right to water.

<sup>51</sup> (de Albuquerque, Catarina. (2012). *Report of the Special Rapporteur on the human right to safe drinking water and sanitation: Stigma and the realization of the human rights to water and sanitation*. UN Doc. A/HRC/21/42, paras. 13, 22& 32)

<sup>52</sup> India Exclusion Report, 2015, a comprehensive, annually updated analysis on the exclusion of disadvantaged groups in India, supported by UNICEF, UNFPA, UN Women.



**Besides fulfilling the recommendations of UPR-II following recommendations are purposed for consideration:**

1. The draft UN Guidelines on Elimination of Discrimination based on Work and Descent<sup>53</sup> lays down the framework of State obligations to remove Caste based Discrimination from all areas of life. India shall engage in —substantive discussions on these guidelines, and accordingly adopt this comprehensive framework in order to eliminate caste-based discrimination.
2. UN Human Rights Council shall ratify the above draft U.N Guidelines and hold a international Convention on Elimination of all forms of Discrimination based on work and Descent (Caste<sup>54</sup>).
3. The government shall 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 government shall issue orders to remove caste identity from schools, institutions, trade unions and associations, which are named after the castes.
4. 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.
5. Adequate measures to enact ‘Anti Discrimination’ and equal opportunity and equality laws legislation covering governance, social processes, service delivery and budgetary allocations and which prohibit discrimination in capital market, labour hiring, work place, private enterprises, etc.
6. 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.
7. 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.
8. Effective and serious implementation of recommendations given by the Treaty Bodies and Special Rapporteurs with regard to Caste Based Discrimination with

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<sup>53</sup> UN Study on Discrimination based on Work and Descent (2009) by Mr. Yozo Yokoto and Ms. Chin Sung Chung - Published by HRC on 18.05.2009 (A/HRC/11/CRP.3).

<sup>54</sup> Caste discrimination is a global human rights issue. It is particularly widespread throughout South Asia, but similar forms of discrimination also exist in diaspora communities, Japan, Yemen and a number of African countries.

proper and active co-ordination of line ministries and National and State institutions, involving NGOs / CSOs.

9. On 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.