

DISMANTLING DESCENT-BASED DISCRIMINATION

Report on Dalits' Access to Rights



National Campaign on Dalit Human Rights

Indian Institute of Dalit Studies

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DISMANTLING DESCENT-BASED DISCRIMINATION

Report on Dalits' Access to Rights

Section 1.

I. DALITS – UNTOUCHABILITY & DESCENT BASED DISCRIMINATION

II. Who Are Dalits?

What the world today knows as “Dalit”, 167 million people in India were till a few years ago known and publicly identified as "Untouchables". All Indian languages have their equivalent to the concept of ‘untouchables’. The government used ‘Depressed classes’ as the official term, which has been later changed to ‘Scheduled Castes’. In more recent times, various social movements that fight untouchability and caste based discrimination have promoted the name ‘Dalit’ (broken and oppressed people) as a common identity to bring together the various sub-caste communities as people who share the commonality of being discriminated on the basis of descent. While the term in some context are used to denote ‘all oppressed people’ in common, it is used here to refer to people who are considered ‘untouchables’ owing to their birth. ‘Untouchables’ meant and ‘Dalits’ continues to mean today that the touch, sight and approach defile those who are not part of them.

I.2. Dalits in the Caste system

Historically the caste system has formed the social and economic framework for the life of the people in India. In its essential form, caste as the system of social and economic governance is based on principles and customary rules that:¹

- Involve the division of people into social groups (castes) where assignments of rights are determined by birth, are fixed and hereditary.
- The assignment of basic rights among various castes is unequal and hierarchical, with those at the top enjoying most rights coupled with least duties and those at the bottom performing most duties coupled with no rights.
- The system is maintained through the rigid enforcement of social ostracism (a system of social and economic penalties) in case of any deviations.

Thus the doctrine of inequality is the core and heart of the caste system. Supported by philosophical elements and it constructs the moral, social and legal foundations of Hindu society. Dalits are ‘outcastes’ or people who fall outside the four-fold caste system consisting of the Brahmin, Kshatriya, Vysya and Sudra. Dalits are also referred to as Panchamas or people of the fifth order.

1.3. Caste System, Human Rights and Dalits

The caste system is the social organization of Hindus. However the residual consequences of the caste system are also found in the communities that have converted to other religions like Buddhism, Sikhism, Christianity and Islam from Hinduism. As a system of social, economic and religious governance caste system is not founded on the principles of equality, liberty (or

¹ Caste, Economic exclusion and Poverty, Sukhdeo Thorat, Paper presented to DFID,

freedom) or fraternity but on the principles of inequality in every sphere of life. The social, religious, cultural and economic rights of the member of each caste are predetermined in advance by birth into that caste and are hereditary, not subject to change.

In this framework the concept of "human rights" under the Hindu social system takes a specific meaning. Unlike other human societies, the Hindu social order in its classical form does not recognize the individual and her/his distinctiveness as the center of the social purpose. The unit of the Hindu society is not the individual. Even the family is not regarded as a unit of society except for the purposes of marriages and inheritance. The primary unit of society is caste. There is no room for individual merit and consideration of individual justice. Any right that an individual has are not due to her/him personally; it is owing to being born in a particular caste. Similarly, if an individual suffers from a lack of rights, it is not because s/he deserves it by their merit or conduct.

The other implication is that, the caste system is a hierarchically interlined system involving the principle of rank and gradation. In this framework castes are artfully interlined with each other in a manner such that the right and privileges of higher castes, become the disabilities of the lower castes, particularly the untouchables. Hence caste can only exist only in the plural; there cannot be such a thing as caste in a singular phenomenon. So one has to look at the castes as a system, which is interlined with each other in unequal measures of social, religious, economic relations and rights.

The unequal and hierarchical assignment of rights under caste system has its basis on the specific notion of "humanhood" which is different and unique. In this particular order of hierarchy, castes are placed at the top and given all privilege and rights as they are considered to be "superior social beings" worthy of all special rights and privileges. At the bottom the untouchables are denied all rights because they are treated as "sub-human beings or lesser human beings" considered unworthy of any rights. As inferior social beings untouchables are not entitled to any individual rights i.e. civic, religious, political or economic. In addition, they are considered to be impure and polluting and therefore are physically and socially isolated and excluded from the rest of the Hindu society. Isolation and exclusion of untouchables is a unique feature of the Hindu social order. Classes or social groups are common to all societies, but as long as the classes or social groups do not practice isolation and exclusiveness they are only 'non-social' in their relations towards one another. Isolation and exclusiveness makes them 'anti-social and inimical' to one another.

1.4.Caste/Descent And Work Based Discrimination

It is clear from the above characterization of caste system that untouchables who are placed at the bottom of caste hierarchy are denied basic human rights necessary for the development and growth of individual. Beside since they are considered impure and polluting, they also suffer from isolation and exclusion, reflected in social and physical segregation. This comprehensive and multiple exclusions and discriminations and denial of human rights of the untouchables have severe consequences on their poverty and deprivation. The denial of human right is not associated with race or colour, but based on descent associated with social origin determined by social and religious ideology.

Determination of occupation by birth and restrictions to change the hereditary occupation and social position obviously restricts the freedom of occupation and involves descent and work related discrimination. As occupation and property rights of each caste are fixed and compulsory

it necessarily involves forced exclusion of one caste from the occupations of other castes. Dalits having been excluded from access to social rights, property rights and source of livelihood for generations, except the labour or service to the castes above them, experience denial of basic rights in multiple spheres.

The religious and philosophical sanctions and societal mechanism of social ostracism against untouchables to change their position promoted the concept of impunity against harassment, exploitation and atrocities on Dalits from various angles – abuse and physical violence of women, children or men, sexual exploitation of Dalit women including practices like Devadasi system, exploitation of Dalit labour through beggar, bonded labour or child labour, destruction of assets belonging to Dalits and prevention of their right to free exercise of their franchise.

It must be mentioned that both legal and religious sanctions were powerful engines to keep caste going. But there is no doubt that the religious sanction was the primary sanction that has maintained caste. The legal sanction has been done away with the Constitution but caste and its practices continue unabated because of the more powerful religious and philosophical sanction. Therefore the life of Dalits even today is characterized by untouchable status, untouchability practice, discrimination and forced impure occupation, all for an accident of birth.

From the above brief account one understands that Dalits are discriminated primarily because they are born into the 'low caste'. From then on everything one can hope for or not hope for; do or cannot do is dependent on being born a low caste untouchable child. There is no way one can escape or change the status of birth or the implications thereof.

Section 2

2.RECOGNISING HUMAN RIGHTS VIOLATION IN CASTE-BASED DISCRIMINATION

2.1. Recognition By State

The Constitution of India adopted in 1950 is a total departure from the philosophy, norms and traditions of the Hindu social order. The adoption of the Constitution was preceded by strong social, religious and political movements of the untouchables in the early part of the 20th century against caste and Brahmanism. The induction of these viewpoints was particularly facilitated by the nomination of Dr. Ambedkar², who lead much of the struggle against caste and untouchability as chairman of the drafting committee of the Indian constitution.

Constitution – stark divergence

The philosophic ethos of the constitution proclaimed justice, equality, liberty, and fraternity to all Indian citizens as against rights based on birth. Further the democratic form of government with elected representatives also provided an opportunity for members from the different sections to participate in decision-making from a common platform. This is very different from the unseeable, un-touchable and un-approachable, hierarchical basis of the caste social order.

Rationale and scope of the special provisions for Dalits

In addition to the general frame of justice and equality, the Constitution also recognized the need for distinct and special provisions for Dalit communities (scheduled castes)³ on the basis that these sections were denied certain basic rights since ancient times resulting in their backwardness and leading to fundamental disparities between them and other sections of society.

“A section of people in the Indian society were denied of certain basic rights since ancient times with the result they remained economically, socially and educationally backward. Because of the fundamental disparities between the Schedules Castes and Schedules Tribes as compared to other communities and the urgent need for special measures to uplift their status, a clear distinction has been made in the Constitution itself in respect of the SCs and STs”⁴.

Importance given to issues of Dalits and tribals

The primacy given to the task of tackling the debilitating and dehumanizing effects of the inhuman practice of untouchability by the framers of the Indian constitution can be understood from the fact that the SC/ST Commission (under Art.338), along with the Comptroller and Auditor General of India and the Election Commissioner is one of the three regulatory institutions set up for the way the Indian democratic system was to evolve after the passage of the Indian constitution.

² Dr. B.R. Ambedkar is one of the foremost scholars of the nineteenth-twentieth century. Born into a Dalti family he was the architect of providing a framework for the elimination of caste disabilities for Dalits and inculcating the values of justice, equality, liberty and fraternity into the Indian Constitution. He is the foremost leader of the untouchable community.

³ The Constitution of India recognises Dalit communities as Scheduled castes

⁴ National Commission for Schedules Castes and Scheduled Tribes, Sixth Report (1999-2000& 2000-2001), New Delhi. Pg.8

The spirit of the Constitution is that the equality, justice and progress of the Scheduled castes and scheduled tribes will be a measure of the progress of the Indian society as a whole. The provisions have been towards enhancing spaces for social, economic and political participation of Dalits. Inherent in the provisions is also the faith and belief that there is sufficient political will to ensure the implementation of these provisions by the newly promoted legislative, executive and judiciary mechanisms of the state.

2.2. Constitutional Provisions (Annexure 1)

The Constitution emphasizes the ‘safe-guards’ for Scheduled Castes under the ‘Special Provisions Relating to Certain Classes’ in Part XVI of the Indian Constitution. The Constitution also provides for protection and promotion of their social, economic, educational, cultural and political interests to bridge the disparities and to bring them on par with other sections of the society. In addition, many articles in Parts III (fundamental rights), IV (directive principles of state policy), IX, IX A and in the fifth schedule of the Constitution is a measure of the Constitutional concern and commitment.

The constitutional provisions include general measures found in – equality before law (Article 14); Prohibition of discrimination (Art. 15), Protection of life and personal liberty (Art. 21)

The social safeguards extended specifically to address untouchability and caste based work and discrimination are found in – Abolition of untouchability (Art.17), Prohibition of traffic in human beings and forced labour (Art. 23), Prohibition of employment of children in factories etc. (Art.24), Freedom to practice religion (Art.25),

The economic safeguards are provided under - the provisions of Articles 23 and 24 stated above as well as under promotion of educational and economic interests of SCs under (Article 46 in Part III, Directive Principles of State Policy)

Educational and cultural safeguards are specified in – provision for reservation (Art. 15 (4) and that admission into educational institution will not be denied (Art.29 (2)),

Employment provisions are made under – equality of opportunities under (Art.16), and claim to services and posts (Art.335)

Political representation was based on a compromise between Gandhi and Ambedkar – Reservation of seats in parliaments and legislatures under Art. 330,332, 334,

Monitoring of safeguards provided under Constitution and all other provisions and policies is also provided for by - Setting up commission under (Art.338)

Safe guards – fond hope

“Special measures taken by independent India remain unparalleled then and even now, nothing short of revolutionary measures”⁵. It is very clear that the Constitution has taken full cognizance of caste based discriminations and prohibitions thrust upon the Scheduled caste communities and the consequent disabilities and disparities resulting in a very unequal society. A number of proactive steps in the form of safeguards have been provided in the Constitution to promote the interests of the scheduled castes as well as to protect the nascent and budding republic full of hopes and dreams.

⁵ Statement of Rajesh Prasad, Indian Representative to the thematic discussion on descent based discrimination before CERD on 8th August 2002.

2.3.Legislations (Annexure 2)

In keeping with the Constitutional provisions the state has been very progressive in promulgating legislations to prohibit untouchability and protect Dalit communities from all disabilities arising out of it; promotion of educational and economic standard of Dalit communities. In addition some of the legislations of a general nature have greater relevance to Dalit communities.

- The Untouchability Offences Act, later reformulated as the Protection of Civil Rights Act (1955) and rules 1977
- The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989 and rules 1995
- Bonded Labour (system) Abolition Act, 1976
- Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
- Devadasi system Abolition Acts in the states of Andhra Pradesh, Maharashtra and Karnataka.
- Child Labour (Prohibition and Regulation) Act, 1986
- Minimum Wages Act, 1948
- Equal Remuneration Act, 1976
- Land Reforms Acts

2.4.International Recognition of Caste Based Discrimination (Annexure 3)

One sees a parallel and simultaneous debate on human rights in the Universal Declaration of Human Rights with a commitment to a new world order. Despite India taking a leading role in the formation of the League of Nations and the UN, the anti-caste and anti untouchability movements within the country did not find any mention in this historical global document as a 'source of discrimination' nor 'Dalits in the victims of discrimination'. It is further surprising to note that India brought the issue of the discrimination of people of Indian origin in South Africa in 1946. Even further down India argued for inclusion of 'descent' as a source of discrimination while drafting of ICERD (A/C.3/1306 of UNGA 3rd Committee), but argued against the inclusion of caste discrimination under descent in the WCAR in 2001.

So caste based discrimination went into a black-hole for almost five decades and the issues of untouchability and caste discrimination that victimizes about a sixth of the world population did not come into the purview or debate of building universal human rights mechanisms. Caste is not listed in the UN treaties like ICERD, ICCPR, CEDAW or CRC and the specificity of caste dimension affecting over 200 million people in Asia was often overshadowed by other dimensions of discrimination nor did the Dalit concerns inform UN Human Rights discourse for almost five decades.

The issue got raised in 1996, at the CERD, later into the purview of the Sub Commission. The WCAR in 2001 raised the issue of untouchability and caste based discrimination forcefully as one of the three critical human rights issues of present day along with people of Palestine and reparation to African descendants. The issue has been further followed up through General Recommendation XXIX and the appointment of Special Rapporteurs. While the Indian state continues to take the theoretical position that 'caste' constitutes a 'social group' and 'class' and not a race, the National Human Rights Commission extended its support to the issue in the WCAR maintaining 'that it is not the nomenclature of the form of form of discrimination that

should engage our attention, but the fact of its persistence'.⁶

2.5. Role of Dalit Movements and NGOs

The adoption of the Constitution in 1950 was preceded by strong social, religious and political movements of the untouchables against the caste system in various part of the country, particularly from 1920 to 1950. Powerful Dalit movements again emerged in the wake of gruesome atrocities against Dalits in different parts of the country during the seventies and eighties. Among them The Dalit Panther Movement, the Dalit Mahasabha and the Dalit Sangharsh Samithi played important roles.

In 1998, a loose coalition of civil society organizations and Dalit activists came together under the umbrella organization 'National Campaign on Dalit Human Rights' (NCDHR) to review the human rights and development status of Dalits after 50 years of independence. Taking up many programmes within the country to raise the issues of Dalit communities and lobby for equal opportunities and elimination of the practice of discrimination and untouchability, NCDHR also took the agenda to the global forum in WCAR. NCDHR has since promoted a mass movement for Dalit Human Rights within the country while advocating and lobbying for support and solidarity from civil society and human rights organizations from within and outside the country. The lobby has demanded to include 'caste as part of the sources of discrimination and Dalits as victims of discrimination'.

The joint efforts of many organizations similar to that of caste in different parts of the world have opened the floodgates of recognition to work and descent based discrimination. The efforts also brought together victim communities and people in solidarity, truly recognizing (caste) work and descent this as the single largest human rights violations of the present day.

⁶ Report on Prevention of Atrocities Against Scheduled Castes, National Human Rights Commission, New Delhi, 2004 pg.(vii).

Section 3

3. CASTE-BASED UNTOUCHABILITY AND DISCRIMINATION TODAY

Despite Constitutional provisions and legislations, caste hierarchy, discrimination and untouchability continue to be the ethos and everyday practice in the social, economic, cultural and religious life of India. Dalits continue to experience and face the brunt of it in overt and covert ways, in old and new forms. The deeply entrenched prejudices, interests and societal norms that have religious sanction have been difficult to transform.⁷

3.1. Inequalities between Dalits and Other Communities

Historical sanctions: “For the sudra, the highest law leading to his bliss is simply to render obedient service to distinguished Brahmin householders and the higher classes.... Sudra is not freed from his slave status for it is innate in him....Even a capable sudra must not accumulate wealth”⁸, have excluded and limited Dalit development, resulted in deprivation and endemic poverty of Dalit communities and is the cause for inequality between Dalit and other communities in various development indicators.

Lower access to capital assets

Dalit communities constitute 18 percent of India’s population of which 81% live in rural areas. The National Sample Survey (NSS)⁹, 55th round in 2000 calculated that only 28% of SC population in the country earned their income from self-employment (16% from self-employment in agriculture and 12% from self-employment in non- agriculture sector) compared to 56% for other households (nonSC/ST). This is to say that 28% of SC households has acquired some access to fixed capital assets (agricultural land and non land asset) in rural areas compared to 56% of households from the dominant caste others. In the urban areas too the access of SC households to self-employment (27%) is compared to other dominant caste households(35.5%).

Landlessness

In 1991 about 13 % of SC households were still completely landless. 87% owned some bits of land, of which 56% owned less than one acre of land. Thus the landless and near landless (that is those owning less than one acre) put together account nearly 70% of the total SC household in 1991¹⁰. Evidence for more recent year, 1999-2000 from the NSS Employment survey put the figures of landless and near landless SC households close to 75%¹¹.

Higher proportion of wage labour

The lower access to capital assets lead to exceptionally high proportion of wage labour among the SCs. In rural areas 60% of SCs work as agricultural labour compared to 52.34% from nonSC communities. In urban areas 69.48% of SCs work as casual labour compared to 60.6% of nonSC

⁷ Informal thematic discussion on descent in the Committee on the Elimination of Racial Discrimination (CERD)’ on 8th August 2002).

⁸ ” Manu’s Code of Law – A critical edition and translation of the Manava Dharmasastra by Patrick Olivelle, Oxford University Press, New Delhi, 2005, Introduction.

⁹ Source: NSS Employment/Unemployment Survey, 1987-88, and 1993-94 CSO, Delhi.

¹⁰ NSS Land holding survey, 1992

¹¹ NSS Employment/unemployment survey 1999-2000

communities.¹² The studies also show that 61 % of all bonded labour comes from the SC households.

Discrimination in Wage earnings

NSS reflects disparities in the unemployment rate between SC and non-SC communities. Unemployment rates based on Current Daily Status (CDS) for SCs was about 5.0% as compared to about 3.5% for workers from other communities in rural and urban area.

The NSS data also reports disparities on the wage earning. For instance in 1999-2000 the average weekly wage earning of the worker (at 1993-94 prices) for SC worker was Rs.174.50 compared to Rs.197.05 for other workers. (estimates by Dubey & Arjan, 2003.)

Higher incidence of Poverty

With the high incidence of wage labour, associated with high rate of under and un-employment and low wage earning, the SC households suffer from low income and high incidence of poverty as compared to others. In 1999-2000, 35.43% of SCs were below poverty line (BPL) compared to 21% among others in the rural areas. The respective BPL figures in urban areas is 39% among SCs compared to 21% in the urban areas (estimates Arjan & Dubey, 2003)

More recent data on monthly per capita expenditure (MPCE)¹³ for 1999-2000 also bring out disparities between SC and nonSCs. The MPCE for SCs in rural areas is Rs.418.51 compared to Rs.577.22 for others and Rs.508.79 for SCs compared to Rs.1004.75 for others in urban areas.

Low Literacy Rate

The Population census shows that literacy rate among SCs is 37.82% compared to 58% among others. The literacy rate is particularly low among SC women. The drop out rate of SC children by high school is as high as 80%. Numerous studies also observe discrimination of various forms in the schools. (Nambissan and Sedwal 1997)

Poor Health

The National Family Health Survey (NFHS) data for 1998-99 revealed wide gap between SC and others. The infant (83) and child mortality (39) among the SCs is higher than others, 61 and 22 respectively.

In 1998-99 at least 56% of SC women suffered from the anaemia. More than 70% women's delivery took place at home and only one-fifth took place in institution. More than three-fourth of SC children are anaemic, one-fifth to one-third suffered from fever, and another one-fourth from ARI and diarrhoea. More than 50% of children from SC communities suffer from malnutrition and under nutrition. High morbidity and child mortality among SCs is closely linked with poverty, low educational status and also discrimination in access to health services

¹² Based on NSS Consumption Expenditure survey, 1993-94

¹³ NSS, *Consumption Expenditure Survey 55th Round –1999-2000*

3.2. Bridging the gap

Regarding this vast inequality the UNDP report had this to say:

“Taking into account the gulf between human development among SC/ST and the rest of population, the Ministry of Welfare has noted that even ‘if proportionate resources of the central and state governments are earmarked and utilized for the development of these communities, it would take many decades before they will be able to catch up with the rest of the population. It is therefore essential that much higher level of resources are mobilised, including from multilateral and bilateral sources, for accelerated development of these communities’¹⁴

3.3. Discrimination and Exclusion - Present Day Experience of Dalits

“...the atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet. The humiliation which persons belonging to the scheduled castes suffer even today, more than half a century after India proclaimed itself to be a Republic is a matter of shame”¹⁵. Untouchability is not an ancient cultural artifact, but a day-to-day living experience for Dalit communities. These are reported in the news, recorded by the state and also a subject of study by academicians, NGOs and others.

The reports of the government and a field study from across 11 states conducted by Action Aid (A development organization working in India) is referred to in this section to give a glimpse into the nature and extent.

3.3.1. Civil Disabilities, discrimination and crime against Dalits

The Protection of Civil Rights (PCR) Act 1955, (based on Article 17–Abolition of Untouchability) has scope over the entire country and its provisions are implemented by the respective State Governments and the Union Territories and coordinated by the Government of India. The Act provides penalties for enforcing untouchability or any disability arising thereof - preventing a person from entering a place of public worship and offering prayers or taking water from sacred tank, well or spring. Enforcing any kind of social disability such as denying access to any shop, restaurant, hotel, public hospital or educational institution or any place of public entertainment, or denying the use of any road, river, well, tank, water tap, bathing-ghat, cremation ground, etc attracts the provisions of this Act.

Offences under the PCR Act are cognizable as well as non-compoundable. The number of cases registered under PCR Act is an indication of the continued practice of untouchability and discrimination.

¹⁴ UNDP Report, 1997, p.11

¹⁵ Report on Prevention of Atrocities Against Scheduled Castes, National Human Rights Commission, , 2004, New Delhi. Pg.(viii)

Cases registered under the PCR Act in 2002 and 2000

Sr. No.	State/UT	Number of cases registered during the year 2002*	Numb. Of cases reg. in 2000**
1	Andhra Pradesh	343	284
2	Karnataka	101	95
3	Maharashtra	41	98
4	Pondicherry	18	-
5	Madhya Pradesh	07	27
6	Orissa	07	00
7	Himachal Pradesh	03	-
8	Jharkhand	02	-
9	Tamil Nadu	02	103
10	Rajasthan	01	00
11	Delhi	01	-
12	Bihar	-	06
13.	U P	-	18
	All India	526	631

Source: * Annual Report on The Protection of Civil Rights Act, 1955 for the Year 2002 (Twenty Second Report), Government of India, Ministry of Social Justice and Empowerment.

** Crime in India 1999-2001, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

It is seen that Andhra Pradesh tops the list in terms of reported cases, while UP and Bihar where a third of the country's Dalits live report very little. The data needs to be taken with much caution since many of these practices are considered part of the social rules and norms and are accepted even by the Dalit community as owing to their lower social and economic status. Cases also go unreported owing to the dependency of Dalit communities for their livelihood and the fear of backlash on the perpetrators as they hold social, economic and institutional power in the area. Dalit victims also do not receive any support from the police or administration to register human rights violations against them.

“From its review with various state governments, the Commission is of the view that a large number of cases of atrocities go unregistered, mainly because of reluctance on the part of police officers to register the cases...”¹⁶

¹⁶ The NCSCST, Sixth Report, 1999-2000 & 2000-20001, New Delhi. Pg.(ii)

3.3.2. Incidences of Crime, Violation of Civil Rights and Atrocities Against Dalits, 1999-2001

In addition to the PCR Act, crimes against Dalits are also registered under the SC/ST Protection of Civil Rights Act, 1989 and other sections of the Indian Penal Code (IPC). At the All India level 25,093, 25,455, and 33,501 cases of crimes against Dalits were registered during the three-year period 1999-2001. This is an annual average of 28,016 crimes. Approximately 03 SC Dalit persons per hundred thousand were subjected to atrocities and violence during this period.

Incidences of Violation of Civil Rights and Atrocities against the SCs in India, 1999-2001								
Sr. No.	States/India	Incidence of Total Crime				% of Crime to All India	Rate per Lakh	Rank
		1999	2000	2001	Average of 3 yrs			
1	Andhra Pradesh	1749	1582	2933	2088	7.5	2.8	06
2	Assam	07	11	06	08	0.0	0.0	15
3	Bihar	820	741	1303	955	3.4	1.2	11
4	Gujarat	1781	1332	1242	1452	5.2	2.9	05
5	Haryana	121	117	229	156	0.6	0.7	12
6	Himachal Pradesh	54	52	110	72	0.3	1.2	10
7	Karnataka	1277	1329	1621	1409	5.0	2.7	07
8	Kerala	514	467	499	493	1.8	1.5	09
9	Madhya Pradesh	4667	4631	4212	4503	16.1	7.5	02
10	Maharashtra	605	489	625	573	2.0	0.6	13
11	Orissa	772	793	1734	1100	3.9	3.0	04
12	Punjab	39	34	134	69	0.2	0.3	14
13	Rajasthan	5623	5190	4892	5235	18.7	9.3	01
14	Tamil Nadu	883	1296	2336	1505	5.4	2.4	08
15	Uttar Pradesh	6122	7330	10732	8061	28.8	4.9	03
16	West Bengal	00	00	10	03	0.0	0.0	16
	All India	25093	25455	33501	28016	100	2.7	

Note: All figures represent the number of cases registered under the PCR Act (1955) and SC/ST POA Act (1989).

Source: Crime in India 1999-2001, National Crime Records Bureau, Ministry of Home Affairs.

It is inferred from the data that during the period 1999-2001, the most intolerant States as far as crimes against the SCs are concerned were Uttar Pradesh, followed by Rajasthan, Madhya Pradesh, and Andhra Pradesh respectively. It is strange that UP and Rajasthan show a very small record of cases registered under PCRA in the same years. West Bengal consistently claims that there is no practice of untouchability in the state.

3.4. Nature and Extant of Untouchability and Discrimination

The study on untouchability by Action Aid is fairly extensive covering 11 states and 514 villages. It is based on the quantitative analysis of data collected from a detailed micro-level study. The study is related to the practice of untouchability in the 'secular public sphere' defined as an area of public life that is neither directly associated with the state, nor with the purely individual or religious-cultural aspects of community life.

The study includes within its purview the practice of untouchability, access to secular resources and discrimination within spheres like access to water resources, public thoroughfares, modes of public (but not State-owned) transport, and other village level services and amenities like tea shops, barbers or washermens' services and so on. Within the scope of the 'secular public sphere', the practice of untouchability is categorized into residential segregation, denial of access and discriminatory treatment in basic public services, and discriminatory restrictions on public behaviour. Information from the study on the practice of untouchability in economic and market spheres is also referred to in this section.

3.4.1. Residential Segregation

“So long as the scheduled castes continue to live on the outskirts of the Hindu village, with no source of livelihood and in small numbers compared to Hindus, they will continue to remain untouchables and subject to the tyranny and oppression of the Hindus and will not be able to enjoy a free and full life” Dr. BR Ambedkar¹⁷

Residential segregation is the most common and taken for granted aspect of untouchability in the public sphere. Caste-segregated neighbourhoods tend to be the rule, rather than the exception in Indian villages and the dwellings are usually clustered on caste-basis. Dalit neighbourhoods are unique being separated in physical-spatial terms and also beyond the social boundaries. The segregated housing of Dalits limits interaction and exchange; nurtures myths and misconceptions; is an easy target for social boycott, easy target for atrocity; and is also the place where the dirt and the waste can be dumped. Residential segregation has its impact on the daily life, including such things as children playing together.

The study found that such 'outcasting' of the Dalit *wada* or *cheri* or *basti* or colonies is a common feature and is found all over the country. The term 'cheri' has become synonymous with lack of cleanliness, cheap and of low standard. It was found that there are often explicit customs about which particular direction (relative to the 'main' village) the Dalit settlements can or cannot occupy. While these customs are not always enforced or followed very strictly, their very existence is indicative of the deeply legitimized nature of untouchability across India. Dalit neighbourhoods, when located within the village in exceptional cases are also subject to severe sanctions.

It is also worrisome, to note that even the Government programmes of housing for the economically poor or specifically for Dalits also follow the spatial segregation dictated by the upper caste 'tradition'.

In disaster relief programmes spatial separation is insisted upon by the dominant castes as seen even in Tsunami. Immediately after the disaster, Dalits in many places were not allowed to stay in the same camps as the fisher community, themselves a backward community. There were reports of Dalits being thrown out of relief camps located in temples, marriage halls and schools. In some places, Dalits themselves decided to stay in separate places owing to fear of discrimination and harassment. This is worrisome that both government and NGOs are not able to overcome the segregated housing pattern even in disaster response programmes.

¹⁷ Hidden Apartheid, Anhad, New Delhi pg.27

3.4.2. Denial of Access To Basic Public Services

The Action Aid study explored Dalits' access to basic public services that may not be directly related to the State. As is evident from the table below, by far the most prevalent practice of untouchability in this realm was related to the denial of access to water resources – a little less than half (48.4%) of the villages surveyed reported the presence of this practice in some form or the other.

The notions of purity and pollution have been particularly resilient in relation to drinking water sources. The study also confirmed the fact and found that persistent conflicts were reported with regards to drinking water. While complete denial of access to a particular water source (well, tank, tube well etc.) designated as upper caste was quite common, what was even more common was the imposition of differential behaviour on Dalits. This generally consisted of having to wait for non-Dalits to fill water first, or vacating the well if non-Dalits arrive; ensuring that they wait on one side of the water source, and that their vessels do not touch those of the upper caste persons who are drawing water or waiting for their turn, and so on. It is hardly surprising that continual friction on this score leads to major fights, and at the very least it forces Dalits to seek alternative water sources wherever feasible.

Denial of Access to Basic Public Services

(Forms/Sites arranged in decreasing order of incidence; pooled data from 11 states)

Form/Site of Untouchability Practice	Percentage of Villages where Form is Practiced	Percent Villages Not Practiced	Total Surveyed Villages
Denied access to water facilities	48.4 (255)	43.5	527
No entry into village shops	35.8 (186)	57.0	519
No access to restaurants/hotels	25.6 (92)	64.9	359
No entry into private health center/clinic	21.3 (74)	72.4	348
No access/entry to public transport	9.2 (41)	87.0	447
No entry / seating in Cinema Halls	3.2 (6)	93.0	187

Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.

Source: Action Aid, People's Report on Untouchability in Rural India.

In over one-thirds (about 35.8%) of the villages surveyed, the Dalits were denied entry into village shops. This usually meant that the Dalits were not allowed to come up to the counter like other customers, but were made to wait outside (or at some distance) from the shop. The shopkeepers would put the things to be sold on the ground for the Dalits to pick them up; similarly, money was not directly accepted from the Dalits, who had to leave it somewhere (often on a piece of wood, which is considered non-polluting) for the shop keeper to pick up. Money too, was unable to dissolve untouchability; even though the Dalits and non-Dalits paid in the same currency (Dalits sometimes have to pay a higher price for the same goods, or accept

inferior goods for the same price), they are still made to observe humiliating rules of public subservience.

3.4.3. Discriminatory Treatment in Public Services

(Forms/Sites arranged in decreasing order of incidence; pooled data from 11 states)

Form / Site of Untouchability Practice	Percentage of Villages where Form is Practiced	Percent Villages Not Practiced	Total Villages Surveyed
Denied barbers' services	46.6 (229)	41.3	491
Denied washer men's services	45.8 (194)	43.2	424
Separate seating in restaurants/hotels	32.7 (144)	58.0	441
Separate utensils in restaurants/hotels	32.3 (145)	58.1	449
Denied carpenters' services	25.7 (117)	68.1	455
Tailor will not take measurements	20.8 (96)	70.1	462
Potter will not sell pots	20.5 (75)	68.2	365
Untouchability during transactions in shops	18.5 (87)	73.8	470
No seating / last entry in public transport	12.8 (57)	82.9	444
Discriminatory treatment in private clinics	8.7 (24)	83.7	276

Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.

Source: Action Aid, People's Report on Untouchability in Rural India.

In about one-thirds of the villages, the teashops discriminated against the Dalits by asking them to be seated separately and were served in separate utensils, which were usually to be washed by the Dalit customers themselves. Village teashops were often the source of recurring friction between Dalits and dominant caste villagers. Even apart from the cases mentioned in the above Template, there are far too many reports about the widespread prevalence of the "two glass system" in the India villages that suggest that discriminatory treatment in matters of food and drink is among the most resilient aspects of the practice of untouchability.

In the provision of services, the social status of the castes providing these services – washer men and barbers – is itself dependent on their denying Dalits, for that is the condition upon which non-Dalits will accept their services. Discrimination by washer men and barbers was found to be present in as many as 46-47% of the villages surveyed. Even where the service providers did not actively practice such discrimination, the ingrained effect of custom was so strong that the Dalits themselves may tend to defer to the upper castes and accept subordination in order to avoid trouble.

These can be seen even in time of emergency and disaster response as seen even in the time of Tsunami. Dalits are forced to huddle in a corner and be invisible when relief and aid came, were not allowed to use the water tanks or toilets provided by aid agencies. In many places, dominant castes actively prevented Dalits from accessing food brought by organizations and would serve the spoilt and left over rice the next day after fresh supplied reached them.

3.4.4. Discriminatory Restrictions on Public Behaviour

As has been amply demonstrated by scholars, untouchability is not a trait that defines particular people, but a relationship between people. One of the distinguishing features of this relationship is that it requires the continual reproduction of public signs proclaiming the ‘inferiority’ of those marked as ‘untouchables’ relative to the rest of society. Thus, the institution of untouchability is partly sustained through the imposition of discriminatory sanctions on behaviour in public – sanctions which make it incumbent on Dalits to behave in ways that announce their low status, and as a corollary, underline the ‘superior’ status of the upper castes. Upper caste society is extremely sensitive to violations of this public, highly visible code, and transgression immediately invites retribution.

The table below summarizes some of the most prominent forms of sanctions on public behaviour. It is not surprising that a ban on marriage processions on public roads should be, by far, the most widely prevalent (observed in more than 47% of the villages surveyed) practice of this sort. Such processions – when taken out by the upper castes – are not just expressions of collective joy; rather, they are an occasion to demonstrate publicly the power and wealth of the family or clan. By the same token, those who are meant to be lowly must be denied the opportunity to indulge in similar displays, should they be fortunate enough to be able to afford them. Clashes around marriage and festival processions are common and sometimes take a terrible toll.

Discriminatory Restrictions on Public Behaviour

(Forms/Sites arranged in decreasing order of incidence; pooled data from 11 states)

Form / Site of Untouchability Practice	Percentage of Villages where Form is Practiced	Percent Villages Not Practiced	Total Surveyed Villages
Ban on marriage processions on roads	47.4 (229)	49.9	483
Forced to stand in front of upper caste men	25.6 (136)	67.9	532
Ban on festival processions on public roads	23.8 (114)	64.2	478
Cannot wear new/'bright' clothes	19.0 (101)	75.1	531
Cannot use umbrellas in public roads	16.7 (82)	80.4	490
Cannot wear dark glasses, smoke etc.	13.7 (66)	82.5	481
Cannot use chappals on public roads	10.6 (47)	86.9	443
Cannot use bicycles on public roads	7.1 (32)	90.6	448

Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.

Source: Action Aid, People's Report on Untouchability in Rural India.

But it is not only on such special occasions that Dalits must display publicly the signs of their subordination. In fact, being Dalit in rural India involves internalizing a repressive regime of self-control and servility in normal everyday life. The closest parallels are with the explicit and implicit restrictions on public behaviour faced by women in our patriarchal society. In an analogous fashion, all Dalits, not only Dalit women, must constantly restrain themselves in public and ensure that they do not violate the norms of caste hierarchy.

In concrete terms, these norms of behaviour cover every conceivable situation where Dalits and non-Dalits come into public contact and together constitute an incredibly oppressive regime for everyday life. For example, Dalits must stand in the presence of upper caste men, especially if they happen to be older; they must not make eye contact with members of the upper caste but stand with heads bowed. They must not laugh too loud, point fingers or wave their arms about. They must not stand erect, or walk with a swagger, or appear to be strolling (instead of scurrying about their business). In short, they must not do anything that might make the upper castes feel that they are getting 'uppity'.

Apart from the physical behaviour, this regime also involves strict dress code, since the upper castes consider them dirty and unclean, it is up to the Dalits to ensure that this upper caste image is not contradicted – in other words, Dalits must not wear very clean, good or 'bright' clothes. There are upper caste neighbourhoods and thoroughfares where Dalits are still expected to take off their footwear and carry it in their hands or dismount from their bicycles. They may not walk through non-Dalit areas with their umbrellas up. Dalit boys and men must not be seen wearing dark glasses or fashionable clothes of the sort sported by upper caste youth or Dalit women wearing modern clothes, flowers in their hair etc. Violations of these codes invite humiliating reprisals, including violence. Such repressive practices are reported from between 10% to 20%

of the villages surveyed.

3.5. Economic and Market Discrimination

“... our constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean one man, one vote....While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy... The ideal before those who are in the government is economic democracy.” Dr. B.R Ambedkar¹⁸

Under the traditional economic framework of the caste system, the occupation and economic rights (including property rights) of each caste are fixed and compulsory and therefore, involve forced exclusion of one caste from the occupations (and rights) of another. The untouchables are particularly excluded from access to all sources of livelihood, except manual labour and service to other castes. The exclusion of untouchables is multiple and comprehensive covering almost all economic spheres.

Discrimination in labour markets, refers to a situation of unequal treatment of the workers possessing same productivity in hiring or in wage payment due to non economic group characteristics such as race, colour or gender or caste. Some researchers on caste have applied the concept of labour market and occupation discrimination to caste. (Banerjee and Knight, 1991). While applying the concept developed in context of race and gender to the caste, it is necessary to recognise the uniqueness of caste discrimination. The normative framework of the caste system involves exclusion and discrimination in multiple market and non-market transactions and social relations. Untouchables also suffer from social exclusion due to the practice of untouchability, which brings an additional dimension to their discrimination and exclusion.

3.5.1.Aspects of economic exclusion and discrimination

Denial of Dalits in hiring for jobs, in sale and purchase of factors of production (like agriculture land, non-land capital assets and various factors inputs), consumer goods, social services like education, housing and health, including common property resources (such as water bodies and grazing land) etc;

The restrictions on change of caste-based occupations are a form of exclusion, which may operate through discriminatory working of capital markets. In modern economic terms, the Dalits may not be allowed to invest (and to share) in occupations of other castes;

Differences in prices received or charged form the Dalits in the markets, depending on whether they are sellers or buyers. This may relate to the price of factor inputs, and consumers goods, such as wages for labour, price of land or rent on land, interest on capital, rent on residential houses, charges or fees for services such as housing, water and, electricity; and Dalits may also face exclusion and discrimination from participation in certain categories of jobs and sale and purchase of certain consumer goods. On account of untouchability and the notion of pollution and purity, the untouchables may also face discrimination and exclusion in use of public economic services like water, electricity, health services and other services.

3.5.2. Labour Market discrimination

The Action Aid study brings to the fore the nature and magnitude of discrimination in labour

¹⁸ From Speech delivered by Dr. Ambedkar in the constituent assembly on 19th Nov. 1948. Ambedkar and Social justice, Vol1, GoI, Patiala House, New Delhi, 1992, pg.216-217.

markets, input markets, consumer markets and in access to common property resources. The individual reports from the eleven States under survey also provide some evidence on discrimination in agricultural land markets.

Labor market discrimination- Exclusion in employment, lower wages and exploitative labor relations

The discrimination of the Dalits in the labour markets may operate through exclusion in hiring, and lower wages- that is, wages lower than market rates and unfavorable terms and conditions of work- involving overwork and other forms of extra economic coercions and caste-related obligations.

The table below indicates that in labour markets, exclusion and discrimination is practiced both in hiring and wage payments in a significant number of sample villages. In about 36 percent of villages, the Dalits were denied wage paid employment in agriculture. In about 25 percent of the villages, the Dalits faced discrimination in wage payments. The Dalit wage labourer, received daily wages at a rate, which was less than the market wage rate or wages paid to the non-Dalit workers.

What was striking is the fact that in 37 percent of the villages, untouchability was practiced in making wage payments- the Dalits received wages in cash or kind from a respectable distance so that physical touch of a Dalit was avoided. Belief in purity and pollution also come in to effect in hiring the Dalit labourer in house construction- in about one-thirds of the villages they were excluded from employment for construction of houses.

Market Discrimination — Access to Work & Resources

Form/Site of Untouchability Practice	Percentage of Villages where Form is Practiced	of Villages where Form is Not Practiced	Total Surveyed Villages	
(a) Labour Market				
Denied work as agricultural labour	35.5	(158)	60.0	445
No touching when paying wages	37.1	(174)	59.7	469
Paid lower wages for the same work	24.5	(119)	70.8	486
Dalits not employed in house construction	28.7	(152)	62.0	529
(b) Input Market				
Denied access to irrigation facilities	32.6	(152)	59.4	466
(c) Common Properties Resources				
Denied access to grazing/fishing grounds	20.9	(76)	71.7	364
(d) Consumer Market – Sale & Purchase				
Not allowed to sell to milk cooperatives	46.7	(162)	48.1	347
Prevented from selling in local markets	35.4	(165)	54.9	466
Not allowed to buy from milk cooperatives	27.8	(100)	59.2	360
Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.				

Source: Action Aid, People's Report on Untouchability in Rural India.

Another aspect that emerged quite clearly from the micro level survey was related to the practice of untouchability among the Dalit and non-Dalit labourers themselves. Way back in 1936, Ambedkar had argued that occupational division across castes is not a division of labour alone, but a division of the labourers themselves. The Dalit and the non-Dalit wage labourers who work together and form part of the same economic class get into socially separate modes in the events of eating and drinking after doing the same work.

The class fraternity that otherwise binds them together, breaks down in the social interaction beyond the work environment. In fact, the proletarian commonness and fraternity among the Dalit and non-Dalit workers is severely mutilated due to the better and preferential treatment to the fellow higher caste workers - in terms of priority in hiring, reasonable wage, good working conditions and humane behavior by the higher caste employers.

The impact of labour market discrimination in terms of exclusion in employment, altogether or in selected works, lower wage rates etc on the income of the Dalit labour households is quite obvious. It leads to high unemployment and low wages earnings, which lower the overall incomes of Dalit households and thereby, induce high deprivation and poverty compared to their counterparts from the non-Dalit communities.

3.5.3. Discrimination in other factor markets- irrigation and agriculture (land)

The discriminatory treatment to the Dalits is not just confined to the labor market alone, but is equally operative in other factor markets as well. These include markets in agricultural (land) and irrigation (public and private). The evidence, although limited in nature, sheds light on the repressive and hostile market environment, which the Dalits generally face in the course of their participation in various factor markets.

In almost one-thirds of the villages the Dalits were denied access to irrigation water for agriculture. The exclusionary and discriminatory access to irrigation was quite high in the States of Punjab, Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Orissa and some what less in other states, but surely not absent. This was particularly experienced in the case of canal water, which was cheaper than ground water. The study also highlighted the fact that since the Dalits lacked access to canal irrigation, they were compelled to depend more on well irrigation operated through diesel machines, which was a relatively costly option. Discrimination was reported in tube-well irrigation also.

It has been well documented that land is a source of constant conflict and atrocities on the Dalits are closely associated with the issue of land. Further, discriminatory practices were also reported in leasing of agricultural land to the Dalits and even the Dalit tenants were subjected to unfavorable terms and conditions of work by the higher caste landowners.

3.5.4. Discrimination in accessing common property resources

The Common Property Resources (hereafter CPRs) like grazing land, fishing ponds and other resources are the supplementary source of livelihoods in rural areas. These sources are particularly important for the Dalits as a majority of them are landless, and it is these CPRs that provide them with an alternative livelihood support and a subsistence base. The study indicates that in most of the cases, the upper castes have developed a stronghold on the CPRs. In about one-fifth of the sample villages (21 percent), the Dalits were being denied access to CPRs like grazing lands and fishing ponds. The percentage of such villages was more than the national average in the States of Andhra Pradesh (48 percent), Tamil Nadu (40 percent), Orissa (34 percent), and Bihar (32 percent). In some cases the CPRs in Dalit dominated settlements had been encroached by the non-Dalits. Efforts to regain such lands or to access the village CPRs by the Dalits led to severe punitive measures being incorporated by the higher castes. The ability of Dalits to take up subsidiary sources of livelihoods like animal husbandry is severely limited by lack of agricultural land in the first place and inaccessibility to CPRs in the second, while one of the major government income generation schemes for households is provision of milch animals.

Similar are the consequences of exclusion and discrimination in the fishing ponds in villages. Exclusionary and discriminatory access of the Dalits in fishing ponds also translates into the fact that they are deprived of a source of livelihood in the villages.

3.5.5. Discrimination in consumer markets- sale and purchase

The continuing faith in notions of pollution and purity by the higher castes and their associated

outcomes on the untouchables are, particularly, reflected in the exclusionary and discriminatory behavior of the higher castes in the consumer markets, i.e. in the sale and purchase of consumable goods, particularly eatables like milk, vegetables and other products.

The table on Market Discrimination- Access to Work & Resources given above in the chapter shows that in about 35 percent of the villages (equivalent to about 160 villages), the Dalit were not allowed to sell any kind of goods in the local markets. The ratio of villages in which the Dalits faced exclusion from sale of consumer goods in village markets was as high as 72 percent in Andhra Pradesh, 48 percent in Tamil Nadu and 35 percent in Madhya Pradesh.

The exclusion in the case of sale and purchase of milk was particularly high. In about 47 percent of the villages (out of a total of 347 surveyed villages), the Dalits were not allowed to sell milk to village cooperatives and to private buyers and in about one-third of the villages, they were not allowed to buy milk from village cooperatives. Some evidence in the form of case studies and isolated evidence on the practice of exclusion and discrimination in the sale and purchase other consumer goods such as bakery products and vegetables was also reported.

It must, however, be recognized that the nature and forms of exclusion/discrimination, as well as the notions behind such irrational economic behavior of the higher caste persons towards the Dalits in the market spheres takes various forms, and does not necessarily follow a uniform pattern. In parts of Orissa there is a belief that if anyone sells milk to a Dalit, his/her cattle will die, or will stop giving milk. In other cases, discrimination was practiced in the market by denying space to a Dalit entrepreneur; it was even more manifest if they happened to sell the same product as the one put on sale by the non-Dalits. The temple in Tirupathy in Andhra Pradesh is one of the wealthiest religious institutions in the world. There are around 3000 small shops in the pathway leading to the temple. No Dalit owns any.

Restrictions in sale and purchase wherein the caste identity of the seller was visible, pushed the Dalit sellers to look for markets in small towns and other places where the caste identity was not so obvious and remained hidden. Reaching out to markets outside their own villages or in nearby villages involved additional time and effort and multiplied the operational costs.

3.5.6. Consequences of economic discrimination

Exclusion in hiring of Dalit labourers, particularly those in house construction and discrimination in wage payments (paying lower wages than the prevailing market wage rates), and restrictions on the sale of various consumer items produced by the Dalits has an obvious impact on the income and earnings of the Dalit households explains the incidence of high poverty among them. Exclusion in employment and lower wages further reduces the wage earnings of a large majority of the Dalit households in rural areas- the bulk of who are wage labour households. The linkages of exclusion and discrimination, lower income and poverty are obvious and strong in the case of the Dalits.

3.6.Discrimination in Education

3.6.1. Literacy rates by social groups, 2001

Social Group	Male	Female	Total	M/F Gap
SC – Rural	63.7	37.8	51.2	25.90
Non SC –Rural	74.3	50.1	62.6	24.20
Gap bet. SC and non SC	10.6	12.3	11.4	
SC – urban	77.9	57.5	68.1	20.40
Non SC – urban	87.6	75.3	81.8	12.30
Gap bet. SC and non SC	9.7	17.8	13.7	

Census 2001

The caste fetters on education began to weaken in 19th c through efforts starting from Mahatma Phule, missionary efforts and the post independence policies of universalization of education and reservation policy. While Dalits have begun to participate and gain from education there continues a wide gap between Dalit communities and nonDalits in the literacy rates, representation in higher and employment-oriented education. Root causes are found in the caste system, its exclusionary and discriminatory mandates and the attendant lack of social, economic and cultural freedom and liberty under which Dalits continue to live.

3.6.2.Enrolment and drop out

“Enrolment of SC and ST boys and girls at primary stage has reached an astonishing 92% during 1999-2000”.¹⁹

“However, the worrying feature is the high drop out rate in children from SC&ST categories. The drops out rate in all three stages i.e. Primary, Middle and Secondary stages are quite high. The drop out rate in Scheduled Castes during 1990-91 was high as 49.35% at primary stage and 67.77 % at middle stage and 77.65% at secondary stage”.²⁰

“As far as the higher education is concerned, during 1988-1999, the enrolment of Scheduled Caste students at graduate, post graduate and professional / research – Ph.D. level is abysmally low. At the graduate level it was only 8.37%, post graduate level 8% and at the research\ Ph.D. level only 2.77%”.²¹

The committee (Parliamentary committee) during its visits to a few districts with a sizeable SC/ST population found the situation very bad. The visit revealed out to the surface that the actual literacy rate and female literacy rate has been very conveniently suppressed by the NSSO figures. The figures are very misleading.²²

¹⁹ Report, National Commission for Scheduled Castes and Scheduled Tribes, pp. 151-183, Government of India, New Delhi, 1999-2000 & 2000-2001

²⁰ Ibid. p. 177.

²¹ Ibid. p. 153.

²² Parliamentary Standing Committee on Human Resource Development on Implementation of Elementary Education Schemes, 114 Report , March 2002 – study in MP, Bihar, UP, Orissa

The various studies and reports bring out a situation where there is a high level of motivation among Dalit communities to enroll children into schools as seen in the enrollment statistics. There is a disproportionately large drop out rate resulting in lower levels of literacy and still lower levels of quality education or gainful employment oriented education that is available and accessible to Dalit children or youth.

3.6.3.Dominant caste attitude to Dalit education

In many habitations the school is situated in localities inhabited by dominant castes who are hostile to students belonging to lower castes and minority groups.²³

Members of the high-ranked caste groups and the dominant actors of the village often see education for the working and laboring castes as a waste and also a threat. This denial is linked to the popular perception that low ranked caste members are incapable of being educated, and, if educated, pose a threat to village hierarchies and power relations.²⁴

3.6.4.Discrimination by teachers

Caste prejudices doggedly persist even in our modern settings. Teachers have been found to maintain discriminatory attitudes and practices that underlie caste relations in society. B K. Anitha's study in Karnataka revealed that Dalit pupils were called 'kadu-jana' (forest people) who would not learn without being beaten.²⁵ In their study in Rajasthan, Jabbi and Rajyalakshmi found that fear of teachers and corporal punishments are factors that parents (especially of Dalit Children) cite as constraining regular school attendance.²⁶

"We have an appalling body of evidence that suggest that teachers' preconceptions, bias and behaviour, subtle or overt, conscious or unconscious operate to discriminate against children of SC/ST background...low expectations, condescending and downright abusive, unstated assumptions of 'deprived or deficient' cultural backgrounds, languages and inherent intellectual deficiencies of SC/ST children. Labeling, discriminatory classifications are common and routine. Discrimination include- made to sit at the back, used as servants, menial jobs like sweeping, forced to form their own circles result in the feeling of isolation, alienation and discrimination experienced by SC/ST children"²⁷

A recent study conducted in 1998 highlighted continuing caste discrimination in the heart of Delhi, where one of them bluntly put it: "What is the point of teaching Dalit children? Let them learn how to beat drums, that is good enough".²⁸

There is convincing evidence that Dalit children are subjected to various forms of discrimination and humiliation coupled with low expectations that result in their dropping out and subsequent

²³ Aruna, R., "Learn Thoroughly: Primary Schooling in Tamil Nadu", Economic and Political Weekly, pp., 1011-14, May, 1999.

²⁴ A.R.Vasavi, et al., "Blueprint for Rural Primary Education: How Viable?", p., 3184, Economic and Political Weekly, 1997.

²⁵ B.K.Anitha, Village, Caste and Education, Rawat Publications,Jaipur, 2000.

²⁶ Mona Jabbi and C Rajyalakshmi, "Education of Marginalized Social Groups in Bihar", in A Vaidynathan and P R Gopinathan Nair(Eds.), Elementary Education in Rural India: A Grassroots View, Sage Publication, New Delhi, 2001.

²⁷ NCERT - National Focus Group on problems of scheduled caste and scheduled tribe children, pg.31

²⁸ Classroom Prejudice, Public Report on Basic Education (PROBE), New Delhi, 1998.

withdrawal from higher education, professional courses or finding gainful employment in emerging fields.

3.6.5. Alienation through cultural domination²⁹

The curriculum itself as a tool of cultural domination and hegemony has an alienating and intimidating impact (Velaskar 2005). The Scheduled castes and their issues and problems have remained peripheral to the curriculum and their representation if at all has been weak and distorted. Brahminical world-view and perspectives are valued while others presented as of less value and devalued.

3.6.6. Under-utilization of funds³⁰

With the large section of children from SCs/STs and a section of the other backward communities attending state run schools, the commitment of state to education has been found falling steadily. Not only is there reduced allocation and spending, there is a negligent attitude even to utilize foreign grants. The study by the parliamentary committee in a few states (Bihar, Orissa, Madhya Pradesh and UP) found that 'there is large unspent balance with these states and hence further release has been stopped. Bihar the funds release to 'Operation Blackboard' was held up from 1998-99 as an unspent balance of Rs.51.74 crores is lying with the state. There was Rs.48.66 crores unspent in MP and 59.58 crores unspent in Orissa. In the mid-day meals scheme the state of Bihar did not lift the quota of ration rice since 1998-99. In MP and UP lifting was declining....The Audit report showed a negative growth rate of girl children and SC/ST children'.

3.6.7. Caste Discrimination and right to food

The National Programme of Nutritional Support to Primary Education is designed to give a boost to primary education by impacting upon enrolment, attendance, retention and the nutritional needs of children in primary education. Empirical studies show evidence on denial of access and access with differential treatment in food security programs like Mid-Day meal schemes (MDM) in the schools. The study on Mid-Day meal scheme for Rajasthan reported the exclusion of scheduled caste person as cook and helper in almost sixty percent of sample villages. (Jean Dreze 2003).

Another study based of 550 villages from five States -U.P. Bihar, A.P., T.N. and Rajasthan, reported massive scale of exclusion and discriminatory treatment in operation of MMS. (Thorat and lee, 2003). In terms of scale, caste discrimination afflicts more than one out of three government schools serving midday meals (averages for five States of 35.5% and 37%, respectively). In terms of geographical spread, it is unquestionably a nationwide problem - from 24% in Andhra Pradesh to 52% in Rajasthan, to the vast majority in Uttar Pradesh and Bihar.

While the problem is nationwide, its degree varies considerably from state to state.. Where higher percentages of MMS cooks and organizers are Dalit, and where a higher percentage of midday meals are held in Dalit colonies, lower incidences of caste discrimination in the MMS are reported. In Andhra Pradesh, where indicators of Dalit participatory empowerment and access are relatively high (49% of respondent villages have Dalit cooks, 45% have Dalit

²⁹ NCERT - National Focus Group on problems of scheduled caste and scheduled tribe children

³⁰ Parliamentary Standing Committee on Human Resource Development on Implementation of Elementary Education Schemes, 114 Report, March 2002 – study in MP, Bihar, UP, Orissa

organizers, and 46% are held in Dalit localities), reported caste discrimination in the MMS stands at 24%. Tamil Nadu reported discrimination of 36%. And in Rajasthan, where indicators are alarmingly low (8% Dalit cooks, 0% Dalit organizers, 12% held in Dalit colonies), reported discrimination stands extremely high at 52%.

The mid-day meals scheme started in 1995 in a few districts with 33.4 million children in 1995-96 has increased to 105.0 million children across the country in 2000-02. SC children covered under this programme has fallen from 22638260 in 2003-04 to 22004919 in 2004-05 causing concern in the context of the discriminations reported.³¹

3.6.7. Smoking out of higher education

Dalit students in higher education

Courses	Total Students	SCs	
Graduate	68,09,100	5,70,130 (8.37%)	
Post-Graduate	7,58,000	60,661 (8.0%)	
Research	68,369	1,898 (2.77%)	
Total	77,33,612	6,32,689 (8.18%)	

Source – Annual Report of University Grants Commission, 1999-2000, MHRD

The table shows that the share of Dalit students in higher education goes down drastically. The cumulative dropout from the elementary stage culminates in higher education where Dalit presence is way below their population – mere 8.37% in graduate level and 2.77% in the doctoral and research levels. This raises serious concerns in a fast growing global economy and knowledge based community – what will be the participation and benefit derived by the youth from the Dalit community. Much more what is the future of Dalit youth?

Discrimination and humiliation has been reported from various universities – a Dalit boy was beaten up in Delhi University for drinking water from the pot kept in the hostel, a case is pending in the AP High Court where 10 scholars from the Central University were rusticated for life for a disagreement that arose from substandard quality of food in the hostel in 2002.

3.7. Child Labour

The NSSO survey (1999-2000) estimate the number of working children to be 10.4 million while unofficial sources estimate it to be 100 million. Both caste and class attributes, reinforced by vested interests contribute to child labour in India. Children from migrant and bonded families naturally fall into the trap of child and child bonded labour. The National Commission of Labour reported the case of an unborn child being pledged to the match factory where the mother was working in Sivakasi, Tamil Nadu.

Majority of child labour (90%) is found in rural areas where children are engaged in agriculture, grazing animals, cotton seed farms and in urban and semi-urban areas in beedi rolling, carpet weaving, bangle making, match and fire-work factories, coffee/tea plantations, hawking, rag picking and domestic work and in specified industries like gem cutting, garment making, brass industry, coir industry etc. Girl children face the added threat of sexual harassment, which is also widely prevalent.

³¹ Social Watch-Citizens Report on Governance and Development, 2006, Pearson Education-Longman, Delhi, 2006.

Study by VV Giri National Labour Institute in 1998, estimated that 90% of those employed in this football industry in Punjab come from SC community. Dalits carried out the work, leather being a traditional polluting occupation. “As against the minimum wage of Rs.63/day they were being paid Rs.20/day in 1998. Monthly average family income was Rs.413/. A mother and daughter stitching 32 separate panels of a football together for a long working day of 12 hours earn around Rs.35/day” (Jai Singh, Volunteers for Social Justice, Punjab.)

Mining is another area where Dalit children are employed in large numbers. A Fact finding by mines, minerals and people, (mMP) an NGO, in Bellary district, Karnataka estimated that out of an estimated 4 lakh workers, about 50% are children and 70-80 of the children belonged to Dalit communities. Women earn Rs.50/day and children about Rs.35/day.

In a study of the mines in Budhpura in Bundi district, majority of workers come from Gujjar, Bhil, Reghar and Chamar communities – the last three are SCs and the 1st a low caste Kshatriya.³²

The facts that some of these industries are not categorized as hazardous industries, that home-based work is not included under child labour allow child labour to continue in these sectors. The law enforcing authorities are hand in glove with the contractors and there is no monitoring of legal enforcement of wage or safety standards whatsoever.

3.8. Land Rights -The Unfinished Agenda

Land Reforms Acts envisaged as a ‘re-distributive’ strategy to change agrarian relations and break the caste-class nexus of big landlords, had the potential to provide reparation for one of the crucial disabilities placed on Dalits by the caste system. “The implementation has however been subverted by the absence of political will and bureaucratic commitment, loopholes in the laws, tremendous manipulative power of the landed classes, lack of organization among the poor and excessive interference of courts”³³

“The programme of ceiling set out in the plan had been diluted in implementation. There were deficiencies in the law and delays in its enactment and implementation resulting in large-scale evasions. Several states had made provisions for disregarding transfers made after a certain date but often these provisions proved to be ineffective and not much surplus land has been available for distribution. The main object of ceiling which is to re-distribute land to the landless at a reasonable price on a planned basis has thus been largely defeated”.³⁴

³² Budhpura Report, Dec. 2005, Rajasthan,

³³ Report on Prevention of atrocities against scheduled castes, NHRC, 2004, pg.85

³⁴ Planning Commission of India

Land Distribution among SCs as on 30.9.96³⁵

Area declared surplus -	74.94 lakh acres
Area taken possession -	64.84 lakh acres
Area distributed among SCs -	18.08 lakh acres
No. of SC beneficiaries -	18.49 lakh
Area distributed among STs -	7.31 lakh acres
No. of ST beneficiaries -	7.19 lakh
Area distributed among non-SC/ST -	26.74 lakh acres
No. of non-SC/ST beneficiaries -	25.53 lakh
Total land distributed -	52.13 lakh

Gaps are obvious at every step in the implementation of the land reforms agenda. The declared surplus itself is under question. All the land declared surplus has not been taken possession of. All the land taken possession has also not been distributed. Only 69.5% of the declared surplus is distributed. Dalits received 34.6% of the distributed land.

The current total landlessness among Dalits is 13% and near landlessness (less than one acre holding) among Dalits is estimated to be 75% in the 1999-2000 National Sample Survey. The reports of the 'Quin Annual Agricultural Census Holdings', AP, show a negative trend in ownership of irrigated land by Dalits, which has reduced during the period. In 1981 39.7% Dalits had irrigated land holdings which decreased to 17.7% in 1991.

Land continues to be an aspiration among Dalits and a bone of contention and violence. A study of 105 cases of atrocities committed on Dalits and related to land between 1999-2000 by Sakshi-Human Rights Watch AP shows the rise of the conflict, which very clearly questions the freedom, opportunities and rights of Dalit communities for development and participation in economic resources arena.

- Dalits try to purchase land from other castes
- Dalits are unwilling to sell their land
- Dalits resist encroachment of their lands by dominant castes
- Dalits attempt legal recourse when dominant castes encroach their lands
- Dalits attempt to cultivate lands assigned to them by the government
- Dalits approach government for land
- Dalits question illegal or ineligible assignments by the government to dominant caste members.

Perceptions of land is linked to social status and economic freedom "Land owning patterns and being a high caste member are coterminous. There is also a nexus between being lower caste and landless".³⁶ (R. Balakrishnana, Chairman SC/ST Commission, Tamil Nadu.

Dalits are also cheated and forcibly pushed out of any land ownership. A case in point is the 'Panchami land' – In 1892, the British parliament declared that Dalits in the country would enjoy land and distributed known as 'Panchami land' (under the caste hierarchy Dalits are also called Panchamas or the fifth group of people) or 'depressed class land' under conditions that these

³⁵ Annual report, Ministry of Rural Areas and Employment, GoI, 199-97

³⁶ Broken People-caste violence against India's untouchables, Smita Narula, Human Rights Watch, 1999, pg.27

lands cannot be transferred to anyone for ten years and after ten years only among Dalits. However, today most of this land is under the control of dominant communities. The issue has become a long-drawn out battle between Dalits and nonDalits in Tamil Nadu. In 1994, two Dalit youth were killed in police firing when they were holding a peaceful demonstration in front of the Dist. Collector's office. "Though most of the manifestos highlight the issue, no genuine efforts have been taken up even to identify such lands, much less to make sure that these lands are returned to their rightful owners, the Dalits"³⁷.

A study by Dalit Bahujan Shramik Union in Andhra Pradesh assessed that 'from the various Land Reforms Acts from 1948 to the 70s (Abolition of Estates Act, Enam Abolition Act, Telangana Tennancy Act) the lands have been transferred from king, jagrdars, enamdars, zamindars etc to farmers and tillers of the land. This extant alone is 349 lakh acres. Only a meager 0.5% of this land has reached the SCs/STs....Recognising this in the Land Reforms movements of the 70s and 80s, large transfers of government land has been made to the SC/ST families. Despite these efforts SC/ST are facing serious hurdles in accessing and enjoying ...Various bodies including the legislature, judiciary and various arms of the executive have so meticulously watered down implementation of the Ceilings on Agricultural Lands Acts that it needs to be thoroughly re-vamped"³⁸

3.9.Wage Labour

As seen earlier the large majority of Dalits are dependent on wage labour. Despite existing legislations, minimum wages are not paid in rural or urban wage labour. The Ministry of labour does not enquire or take action on this matter.

"In Gujarat alone, underpayment of Dalits (below the prescribed minimum wages) annually results in Rs.3330 million (US\$77,441,860.47) loss of wages."³⁹

3.10. Bonded labour

Bonded labour in India, a manifestation of caste and descent-based discrimination is abolished in India through Article 23 of the Constitution and the Bonded Labour (System) Abolition Act of 1976. The law mandates the release of all labourers from bondage, cancellation of their outstanding debts and their economic rehabilitation by the state. "While this Act does not specifically mention scheduled castes and scheduled tribes, it is of special significance for them because majority of the bonded labourers belongs to Scheduled Castes and Scheduled Tribes"⁴⁰.

"It is estimated that there are 40 million bonded labourers in India and Dalits constitute a majority of them."⁴¹. As per estimate of the Programme Evaluation Organisation of the Planning Commission, 83.2% of the total number of bonded labourers belong to SCs and STs.⁴² High incidence of bonded labour is established in the states of Andhra Pradesh, Bihar, Karnataka, Tamil Nadu, Maharashtra, Orissa, Punjab, Rajasthan and Madhya Pradesh.

³⁷ Social Development of Dalits and Tamil Nadu budget- A critique, Tamil Nadu People's Forum for Social Development, 1998. pg.13.

³⁸ Memorandum submitted to The Land Committee, Dalit Bahujan Shramik Union, AP, 7th Jan.05

³⁹ Dalits-Realities, Martin Macwan, Study by Navsarjan Trust, pg. 3, 1998.

⁴⁰ Report of Prevention of Atrocities Against SCs and STs, National Human Rights Commission, New Delhi, 2004, pg.10.

⁴¹ Broken People-Caste violence against India's untouchables, Smita Narula, Human Rights Watch, New York, 1999, pg.139.

⁴² Special Report of the National Commission for SCs and STs, Causes and Remedies, pg.14

Research carried out in 2000 by the Mine Labour Protection Campaign (MLPC), found that there is a high incidence of bonded labour amongst the three million mine and quarry workers in Rajasthan state and that approximately 95% of these are dalits or adivasis.⁴³

As recent as November 2005, the TV channels and news papers flashed the stories of Babulal Jatav in Rampura village being forced to walk like a camel, because he had taken a loan of Rs.10,000/- from a landlord and unable to bear the ill-treatment had dared to change his employer.

Since 1998, Volunteers for Social Justice working on the issue of bonded labour in Punjab has filed 3000 cases in Punjab. Only 10 have completed the judicial process, but with no result; the rest are still pending....It takes years for a case to be filed... and the silence from the court is painful” Jaysing, founder of VSJ⁴⁴

Bonded child labour is also rampant, particularly children from Dalit communities. The National Human Rights Commission Rapporteur personally got two children working in a beedi unit in Kurnool in 2002, where the employer happens to be a government employee working in the panchayat office.

A study in the Sivakasi match factories of Tamil Nadu quoted in the National Commission of Labour report refers to the statement of a woman that the child in the womb is pledged to the factory and consumption and maternity loans are obtained on the undertaking that the child born, girl or boy would work for the factory.⁴⁵

Globalisation has not done anything to reduce the incidence of bonded labour. From the agricultural field it has now moved to manufacturing and industries, mines, stone quarries, brick kilns, weaving, carpet industry, garment industry, cutting of semi precious stones, manufacture of foot balls, foot wears, domestic work, cotton seeds

Various causes perpetuates and bonded labour system continues unchallenged even after 30 years of its prohibition:

- The vulnerability, economic dependency and socially weak position of the labour
- The non-implementation of other labour laws like minimum wage, equal remuneration, inter-state migrant worker, child labour prohibition etc.
- The attitude of the enforcing machinery favour the dominant community exploiters
- Lack of political will as can be seen from the political pressure extended on implementing bureaucracy against identification of the bonded labour
- The difficulty in accessing rehabilitation from the state
- The lack of support in reprisals against those who dare to stand up
- Vigilance committees under the Act is non established or non functional
- The shared ideology and caste-biased mindset of civil society and the state that bonded labour is not a crime

⁴³ Forced Labour in the 21st century, Anti slavery/ICFTU report, pg.8-9.

⁴⁴ Reporter, Anti Slavery , July 2004.pg11.

⁴⁵ Report on prevention of atrocities against SCs & STs, NHRC, New Delhi, 2004, pg.71.

The NHRC has been monitoring the implementation of the Bonded labour abolition Act under the Supreme court orders. In the report submitted by NHRC to the Supreme Court it notes that “the situation has not undergone any significant improvement since the Gandhi Peace Foundation and National Labour Institute study (1977-80) where they found that only 1.35% of the reported cases were registered, 32 of the culprits arrested and 0.08% given prison sentences. The provision of summary trial available under section 20(2) has rarely been used.⁴⁶ “In order to eliminate bonded labour the Indian government will have to confront the powerful local elites and the caste system”⁴⁷

3.11. Multiple Discrimination of Dalit Women

Dalit women are often described as the oppressed of the oppressed, the violence and oppression on them being more complex and manifold even compared to Dalit men. There is inseparable relationship between caste status, occupation and discrimination. The Dalit women faces triple discrimination because she is an untouchable, of a poor class and is a woman.

Dalit women constitute an important portion of the labour force in the country both in rural and urban as well as agriculture and non-agriculture production. 89.5% of Dalit women participate in some productive labour outside their homes.⁴⁸ More than 94% of Dalit women workers are employed in the unorganized sector. Of this 81.5% work in the agricultural sector and of this group 50% are wage labourers.⁴⁹

In urban areas Dalit women fill unorganized, self-employed sectors such as hawkers, scrap collectors, municipality contract workers, garbage collectors, petty traders and domestic servants. They earn their livelihood in wage work: domestic workers, construction workers, earthwork, beedi rolling, agarbatti making, candle making, garment and jari work, embroidery work. All these are characterized by low wages, irregular work and wages, absence of social security, sexual harassment and dependency on the whims of middlemen and employers. The strong caste and patriarchy systems deny them just and equal wages, fair share in economic distribution, maternity benefits, health care, security or protection of property rights. Descent based discrimination based on caste results in the violent appropriation and sexual control over Dalit women by men of dominant caste evident in the systematic rape of Dalit women and the tradition of forced prostitution in the name of religion through Devadasi system. Though the system has been abolished, it is found prevalent in many parts of the country.

In keeping with the work and descent based discrimination, which accords Dalits the most unclean and polluting occupations and dalit women the worst of the lot, more Dalit women and girls work as Safai Karmacharis when compared to Dalit men. The practice of witch hunting is still prevalent in many parts, where Dalit women are depicted as witches and severely abused through violent practices like –forced to eat faecus and drink urine, their teeth pulled out, chilli powder put into their eyes, branded and beaten up badly enough to result in death, maimed. One often finds that many of these instances have background stories of refusal of sexual relationships, refusal to sell or give up land etc.

⁴⁶ Report on prevention of atrocities against SCs & STs, NHRC, New Delhi, 2004, pg.68.

⁴⁷ Forced labour in the 21st century, Anti Slavery/ICFTU report, pg.9.

⁴⁸ ‘Caste and women’s participation in Labour Markets in – A study of landless labour’ by M. Indira in ‘Changing status and role of women in Indian society’, eds C. Chakrapani and S. Vijaya Kumar, MD Publications, New Delhi, 1994.

⁴⁹ Labour Bureau, GOI

The impact of historical discrimination and exclusion is evident from the unequal status of Dalit women even compared to Dalit men or other women. Thus literacy rate, education and other skills, nature of employment, employment in higher strata of jobs, nutrition and health status of Dalit women fall way below both Dalit men as well as non-Dalit women. The violence against Dalit women causes deep social, physical and mental trauma to women, much of which is long-term suffering. Where the perpetrator commits the violence with impunity, aided by the failure of the state actors such as the police to arrest and prosecute perpetrators, the fact of the perpetrators and their caste community freely moving about the village and often intimidating the victim and her family invokes feelings of the futility of the legal system and fatalism about positive changes to address the violence. This calls for immediate and holistic remedial action at all levels of the government, law and order agents, judiciary and civil society.

A field study of 500 Dalit women who are survivors of violence in Bihar, UP, TN and AP brings out the nexus between gender and caste. It presents the voice-lessness and powerlessness of Dalit women as against the perceived availability and impunity by the dominant caste perpetrators. Subservience of Dalit women is a demand. The high level of economic dependency on dominant castes for livelihood, linked to landlessness is very visible. Dalit women have no right to privacy, protection, sexual integrity, dignity or self-respect.

Devadasi system- Dedicating girls to a deity is part of the customary practice of India and continues today. “The powerful section of society brought this custom into vogue to exploit the ritual and religious pretext since the divine prostitutes ultimately become sex objects of dominant caste persons or groups’.⁵⁰ Devadasis come from the Dalit and a few backward caste communities who live in extreme poverty. Prevalence of the system is high in the states of Andhra Pradesh A.P Devadasi (Prohibition of Dedication) Act, 1988, Karnataka Devadasi (Prohibition of Dedication) Act, 1992 and Maharashtra (under a partial Bombay Devadasi Act of 1934) though the practice extends in some form across the country in all temples. (Singh Nagendra K study – Divine Prostitution, 1997). The prohibition Act, has resulted in the shifting of the dedication from main temples to smaller temples or in villages⁵¹

There is an estimated 40,000 devadasi (jogini) women in 7 districts of A P⁵². It is found that girls as young as 10 or 11 are dedicated before they understand even what they are going through. In many cases the impetus for dedication and financial support also come from the dominant caste sections, who, want to perpetuate the system. One of the most painful situations is that of the children who are stigmatized as being bastards and cannot claim to the name of a father. The women themselves are sexually exploited with no responsibility from the man and left to seek her life when the man loses interest in her or his family pressures over run. Many of the women become abused and beaten physically and psychologically and the plight of the children continues in similar ways.

⁵⁰ NHRC Report , 2004, pg.60.

⁵¹ Report of Public Hearing in Tirupathy on 18 Aug.2001 by the National Women’s Commission and National Public Hearing, NCDHR, Chennai -

⁵² AP Jogini Vyavastha Vyathireka Poratta Samithi (A body working for the elimination of the system in AP).

3.12. Dalit Rights in Local Governance⁵³

73rd Constitutional Amendment in 1993 provided for reservation to Dalits in the Panchayats. This is a phenomenal step bringing in more than 30lakh elected leaders at different levels of local government across the country. As on 31st May 1998, there are 364,563 Dalits at various levels of the panchayat system⁵⁴.

Untouchability continues to be practiced in not allowing Dalit representatives to sit on the allocated seats and chairs, not eating together, not accepting offer of drink and food when the non-Dalit representatives visit the homes of the Dalit members, not offering them seats when Dalit representative visit the homes of non-Dalit members, ill-treatment and lack of respect by the panchayat functionaries, not allocating works etc. In many cases the legal provisions are used to force the Dalit sarpanch to resign in a reserved constituency, making way for the non-Dalit vice-sarpanch to take power and authority. In many cases the corrupt members and officials, trap the Dalit members so that they become accountable for any misappropriation or embezzlement.

Many violent incidents are reported from across the country when Dalits try to exercise their legitimate and rightful claim to representation, participation or leadership.

The four panchayats of Pappappatti, Nattarmangalam, Keeripatti in Madurai and Kottakkachiyendal in Virudhunagar districts in Tamil Nadu. For a decade from 1996, the government has not been able to hold panchayat elections in these four panchayats, because the dominant caste communities prevent any Dalit to contest from the post, saying they cannot allow any Dalit to occupy a position of respect. In 2005, upon government pressure, the dominant caste people put up their labourer, V. Azhagumalai who simply to prevent Pookodi another dalit who was standing with the support of the local Dalit organisations from winning. Minutes after winning the post on 24th April 2005 he was forced to resign the post. The village also put a social boycott against the 15 Dalit families who dared to vote for a Dalit candidate P.Poonkodi, the unsuccessful candidate who was put up by Dalit organizations.

In 1996, in the first panchayat elections in Tamil Nadu, the country was rocked by the gruesome murder of Murugesan who contested against the wishes of the dominant castes in Melavalavu in Madurai, dragging him and his supporters out of a public transport bus they were traveling and killed on the spot.

On 15th August 2005, Anita Bai Ahir, the sarpanch of Patehra gram panchayat in Damoh district of Madhya Pradesh was not allowed to hoist the flag on the Independence day celebrations, contrary to tradition. The decision was communicated to her by the sub inspector of police, Mr. Vikram Singh.

In October 2005, Prabhati Devi, a Dalit woman was burnt alive for standing for panchayat elections in Kshetra Panchayat in Mirzapur district inShe was set ablaze on the day of the elections for refusing to withdraw her candidature in support of Sandip Tiwari a, dominant caste member.

The Dalit woman Sarpanch of Rajhana panchayat in Rajasthan accused three police officials of

⁵³ Cases reported here are primarily taken from Panchayat Raj Updage, a monthly news bulletin brought out by Institute of Social Sciences, New Delhi during 2005.

⁵⁴ India Panchayat Raj Report, Vol.1, National Institute of Rural Development, Hyderabad, 2001(pg.77)

raping her in the police station, when she went to complain about corporal punishment in the schools on 22nd Sept.2005.

On the other hand Dalit women and men have also shown that they are able to work creatively and constructively for the good of the entire society when they are given the opportunities.

Tillya Devi, from the Mushar community (one of the most backward Dalit communities in Bihar) is member of the Lakhnore Block Panchayat in Madhubani district of Bihar and is one of the 1000 women that has been nominated for Nobel Peace Prize this year. She emerged as a panchayat leader when she lead the struggle against the dominant castes who were forcefully occupying the 156 acres of land given to the Mushar community by the government.

Radhikabai, a recently released bonded labourer, and the sarpanch of Chandan Panchayat succeeded in implementing many development works such as deepening of tanks and construction of a school building, a road for her village, forced a liquor shop to close.

All Sanningappanavar Phakirappa, 45 year old Dalit wanted was to be confirmed as the peon of the gram panchayat after putting in 18 years of work. When the administration did not do it, he stood for panchayat elections in February 2005, and is the sarpanch of Kattenbennur gram panchayat in Bellary district of Karnataka. He says his priorities are to solve the drinking water problem and improve the sanitation conditions in addition to other development works.

3.13. Discrimination in Disaster and Emergency Response

The Tsunami that struck on 26th December 2005, also brought to the fore much discrimination in the disaster response both in relief and rehabilitation programmes. While discrimination was alleged earlier in other disaster response programmes in the Gujarat earthquake response as well as the Orissa super cyclone response. However it came with a punch in the Tsunami.

The fishing communities prevented and prohibited Dalit communities from staying in common camps, refused to take shelter in community halls or temples, not allowed to use the drinking water tanks provided by UNICEF, prohibited equal access to food provided by relief organizations or local community, insisted that as loss of lives was less among Dalits and they were anyway assetless to begin with they do not deserve relief and rehabilitation. The understanding and attitude of the state was also that Tsunami has affected only the fisher communities and Dalit communities experienced much hardship to approach and convince authorities that their loss in terms of livelihoods too was complete and they needed support to build their lives again.

A grave discrimination was transporting and forcing municipal workers from other districts to unearth and dispose off dead bodies. A number of public hearings have brought out the discrimination meted out to Dalits both in relief and rehabilitation programmes. The attitude and response to Dalits bringing out their experience of discrimination from many quarters was that these are exaggerated and may not be warranted.⁵⁵

The jury findings of one of the Public hearings is annexed. (Annexure 6)

⁵⁵ TISS report

3.14. Dalits in Conflict Zones

“Due to education and marginal cultural development, when some youths either assert their right to equal treatment or attempt to protect the dignity of their person or of their women, or resist the perpetration of the practice of untouchability or atrocities being committed on Dalits, they are often branded as “naxalites” or “extremists”. They are implicated in false crimes and killed in false encounters. When they resist as a group, mass killings, arson of their hamlets, mass rape of their women, stripping them naked and parading them in the village are regular features”. (NCSCST observations in the case of the village of Devalia, Gujarat, Oct.22nd, 1999.)

The general opinion of the police is that Dalits are sympathizers and so when they want to apprehend any person, search in Dalit locality, put pressure on them, repression, no freedom of movement, threat, violence also. Police harass and brutally attack on them for information. On the other side are pressures from radical groups for place to stay, food, counter violence

Section 4

4. SPECIAL INSTITUTIONAL MECHANISMS - GAPS IN IMPLEMENTATION

A review of some of the specific instruments and schemes put in place to protect the life and security of Dalit communities, provide dignity and promote equal development among Dalits present specific gaps in implementation.

4.1. The authority of the National Commission for Scheduled castes and Scheduled Tribes (NCSCST)

The NCSCST has been set up to:

(1) Investigate and monitor all matters relating to the safe-guards provided for SCs/STs under the Constitution or under any other law or under any order of the government and to evaluate the working of the safeguards. (Art.338 (5)(a))

(ii) Enquire into specific complaints with respect to deviation of rights and safeguards for the SCs and STs (Art.338 (5)(b)).

In various annual reports the Commission has brought up constraints in fulfilling its mandate:

“... it has been our unfortunate experience that even after detailed inquiries and investigations, the directions and findings of the commission are not being implemented by a number of departments/authorities. The problem as we see it lies not only in the attitudes of the concerned departments/managements, but also in the fact the powers of the commission as presently enunciated in Art. 338 do not clearly specify that the powers of the recommendations and directions of the commission are binding”.⁵⁶

“The commission noted that the Constitution in Art. 338 did not stipulate within what period after the presentation to the President the government has to place the report before the Parliament for discussion. The government was taking a very long time to prepare the ‘action-taken’ report, which records the compliance by the different departments of the union or the state governments with the recommendations of the Commission. The suggestions/recommendations of the Commission is accessible neither to the Parliament nor to other public institutions. Over time they lose their importance and become in fruituous. There is a necessity of de-linking action taken from laying the main report in the parliament”.⁵⁷

4.2. Half-hearted Implementation of Reservation in Education and Employment

The country’s progress today is visible in the sectors of high industries, exports, imports, electronic industries....the share of the SCs and STs in the above mentioned indicators of visible progress is dismal. All factors are concentrated only in providing reservation in services which also has not reached the prescribed limit”.⁵⁸

⁵⁶ IIIrd Report of National Commission for SCs & STs, New Delhi, 1996, pg.247

⁵⁷ IIIrd Report of the NCSCST, New Delhi, 1996, pg.247

⁵⁸ 50 years of independence-a retrospect and the tasks ahead, NCSCST Report 1996-97 & 97-98, pg.19-20

Representation of SCs in Central Government Services as on 1.1.2001⁵⁹

Group	Total	Scheduled Caste	% of SCs
A	98066	10998	11.21
B	144145	17915	12.43
C	2377895	386142	16.24
D(excluding sweepers)	956947	167947	17.55
Sweepers	132102	79850	60.45
Total (excluding Sweepers)	3577053	583002	16.30%

Source: DOPT. (Information from departments of culture, economic affairs, revenue and Ministry of personnel, public grievance was not included as was not received).

Representation of SCs in Central Government Services in Groups A (11.21%) and B (12.43%) is below the prescribed 15%. The position of SCs and STs in both teaching and non-teaching cadres in almost all the Central and Deemed universities is way below the prescribed percentage. The present position is 0.73% in the category of Professors, 1.83% among Readers and 7.4% among lecturers. In the non-teaching cadre it is 11.96% in Group A, 12.1% in Group B, 7.18% in Group C and 22.4% in Group D⁶⁰. The data shows that except in the lowest category of sweeping and manual work, representation in all other categories is very low.

“The fourth report of the NCSCST for the years 1996-97 and 1997-98 has brought out certain striking facts regarding representation of SCs/STs in different sectors. For eg. in March, 1982 out of the 325 judges in all High Courts in India, there were only 4 SC judges (1.23%); in March 1993 out of 547 judges at the all India level, there were only 13 judges (2.38%). It is also to be noted that there have been only 4 SC judges in the Supreme Court ever since it was set up in 1950”.⁶¹ Despite demands from Dalit communities and a number of Dalits who take up studies in law and practice in the courts there is very low representation of Dalits in the judiciary.

Despite the fact that in the past, the Sikh Light Infantry and the Mahar regiment were exclusively from amongst the Scheduled Castes and were known for their excellent achievements, post-independent India has withdrawn reservation to Dalits in the Armed Forces on the argument that introduction of reservation will impair the fighting efficiency of the army.

“This situation is alarming in technical and professional courses where most of the SC\ST seats remain unfilled.”⁶² Many universities do not follow the University Grant Commission (UGC) guidelines regarding relaxation and facilities to be provided to the SC&ST students.⁶³

Five Official Memos issued by the Department of Personnel and Training during 1997, which had the effect of withdrawing the concessions/relaxations given to SC/ST employees or diluting the reservation policy were later withdrawn after much representation by Dalit employees

⁵⁹ NCSCST, Seventh Report, New Delhi 2001-02

⁶⁰ NCSCST Seventh Report, 2002-02 pg.59-60

⁶¹ National Commission for SCs and STs, Fourth Report, 1996-97 & 1997-98, New Delhi, pg.14-15.

⁶² Report, National Commission for SC and ST, p. 60, Government of India, New Delhi, 1996-97 and 1997-98.

⁶³ Ibid. p. 65.

federations and the Commission.

4.3. Gross Deviation in Implementation of Special Component Plan (SCP)

In its review of 1999-2000 and 2000-2001, the National Commission for SCs and STs:

“The Commission has observed that the Central Ministries/Departments have no clear concept of Special Component Plan & Tribal Sub-Plan (SCP& TSP) and are not earmarking their plan budget as per Planning Commission’s guidelines, even though the concept of TSP was evolved in the Fifth Five Year Plan and the SCP in the Sixth Five Year Plan....Certain Ministries have allocated some amounts in the name of development of Scheduled castes and Scheduled tribes without specifying the schemes and earmarking was not done separately for SCP and TSP”⁶⁴. A very negligent attitude is seen in the implementation of the SCP.

Flow of funds under Special Component Plan during Ninth Plan (1997-2002)

(Rupees in crores)

Item	Outlay	Flow to SCP	Variation
Flow from Central Plan in respect of 14 ministries/depts..	15,478.90	1646.00	13,832.9
Flow from state plan (in respect of 22 states/UTs)	3,46717.05	57819.67	2,88897.38
Special Central Allocation to SCP	2092.95	2008.64	84.31
Total Outlay	3,64288.90	61474.31	302814.59

During the Ninth plan as also in the earlier plans, the mandate and commitment to designate 15% of the budget for direct benefit to Dalits is not followed by Ministries or departments. Over and above this even the budget outlaid is not released; only 17% of the outlaid budget was released in the ninth plan as seen in the table above. Further there is large scale diversion and unspent balances.

‘The NCSCST is undertaking a study on the implementation of SCP guidelines by the states. Preliminary finding have brought out a large scale diversion of funds earmarked for the welfare of the SC by the states’⁶⁵

The situation in the states was found to be similar. A study by Sakshi-Human Rights Watch and Centre for Dalit Studies, Hyderabad⁶⁶, on the allocation and expenditure under SCP in irrigation, education, health, housing, women and child and social welfare found the following. The allocation under Minor irrigation in 2002-03 was 1.25% and actual expenditure was 1.15%; the allocation and expenditure under Major and medium irrigation was nil. As against the 15% allocation, which would have amounted to Rs.268.63 crores for the period (2000-01 to 2003-04), only Rs.16 crores was allocated and a meager Rs.4.68 crores was spent. Similar under-allocation was studied in the Women and Child Welfare budget, Primary Health and Family Welfare budget and the housing budget.

The AP state cut down its social welfare budget from 8.4% in 1995-96 to 0.7% in 1999-2000. Subsequently it was increased to 1.5% in 20001-01, 2.7% in 2001-02, 2.4% in 2002-03, 2.6% in

⁶⁴ NCSCST Sixth Report, 1989-2000, 2000-2001

⁶⁵ NCSCST, Seventh Report, 2001-02, New Delhi. pg.16

⁶⁶ Budget and Dalits – Implementation of Special Component Plan, Andhra Pradesh

2003-04 and 2.7% in 2004-05. With the overall decrease in the budget all programmes meant for SCs has also come down considerably.

From various studies and reports and the governments own reports it is very clear that there is an attitude of negligence, even unwillingness to allocate the mandated resources under the special component plan at the state and the center, which raises questions on the actual beneficiaries of state expenditure and the stated commitment to development of Dalits.

4.4. Impunity in Implementation of the Employment of Manual Scavenger and Construction of Dry Latrines (Prohibition) Act, 1993

The National Commission for Safai Karmachari (NCSK) was set up in 1994. Further in 1997, a separate National Safai Karmacharis Finance Development Corporation (NSKFDC) was set up for all round socio-economic uplift of the Safai karmacharis. Considerable sum of money has been allocated and spent for the release and rehabilitation of the safai karmachari community. The Ministry of Social Justice and Empowerment estimate that there are 5,77,228 manual scavengers eking out their life from the most inhuman occupation of manually cleaning dry toilets while Safai Karmachari Andolan⁶⁷ estimates there to be about 13 lakhs. Reports of misuse and diversion of funds has been reported by even Commission members⁶⁸. A Public Interest Litigation has been filed by Safai Karmachari and other organizations in the Supreme Court of India on the non-implementation of the Act.

4.5. Implementation of The SC/ST (POA) Act, 1989, Rules 1995

“In theory, from the very moment an atrocity takes place the road to full judicial and even financial redress through the SC/ST (POA) Act lies open for the victim. But this road is long and has many pitfalls. In the sample study of 500 cases of atrocities done by Sakshi, Human Rights Watch, AP less than 5% ultimately reached the court.⁶⁹

4.7.1. Gaps in implementation of legal remedy

The cases of offences and atrocities are prosecuted under the Special Courts provided under the SC/ST (POA) Act and where the Special Courts are not set up the regular courts try the cases. Following up the procedures one is concerned about a number of issues:

i). The large number of cases that are pending before the courts.

The NCSCST has pointed out in its sixth report (1999-2000 & 2000-2001) that less than a sixth of the cases that reached trial stage were actually adjudicated in 1999-2000.

The NCSCST seventh report shows that only 11% of the cases were only disposed off during 2001-2002. From the data available as of 2002, of the 134,052 cases of atrocities before the various courts (information available from 18/-- states/UTs) 119,702 were still pending.⁷⁰

⁶⁷ A movement working for the liberation of manual scavengers in the country lead primarily by members of the community. SKA undertook a dry for demoliting dry latrines in AP and has filed a Public Interest Litigation in the Supreme Court for the total eradication of the system.

⁶⁸ Ms. Santhoshi, Commission Member in Karnataka on 19th Nov. 05

⁶⁹ Dalit Human Rights Monitor, 2000-2003, Sakshi, Human Rights Watch, AP, Secunderabad, October 2003.

⁷⁰ The NCSCST, Seventh Report 2001-2002, pg.128

ii).The high rate of acquittals

The NCSCST study of 1000 cases of atrocities against SCs and STs in 1990 found that there were some “disquieting features” about the high acquittal rates.⁷¹ The third NCSCST report for 1996 reported a conviction rate of 15.49% and acquittal rate of 84.51%⁷². The sixth NCSCST reports (1999-2000 & 2000-2001) that 89% of the cases resulted in acquittals of the dominant caste accused.⁷³

The seventh NCSCST report (2001-2002) reported that the percentage of acquittals is alarming in the states of Assam, Gujarat, Kerala, Maharashtra, Orissa, Rajasthan, Uttaranchal, Karnataka and Haryana (even to the tune of 97%)⁷⁴

These data actually relate to the cases that come to the trial level. When compounded with the fact that less than 5% of the crimes reach the court, conviction rate is about 1%.

iii).Reluctance to use the provisions under the SC/ST (POA) Act

“By and large the police Station House Officers do not register crimes under the SC/ST (POA), Act, 1989 nor is investigation done in those lines. Only the sections in the IPC are recorded in several cases..... It would appear that attempts were made to omit the registration of offences under the Act to help the accused as well as to avoid the payment of compensation to the victim as per the Act and Rules”⁷⁵

An analysis of the judgments pronounced in 112 randomly selected cases of atrocities from the state of Andhra Pradesh during 2001-2004 by ‘Sakshi- human rights watch’ AP reports that 103 of the 112 cases (92%) ended in acquittal and 9 resulted in conviction. It is also interesting to note that while the victims in all these cases were Dalits, there was no conviction based on the SC/ST (POA) Act alone. 5 out of the nine were convicted on IPC sections and 4 on a combination of IPC and SC/ST (POA) Act.⁷⁶

iii). Grounds used for acquittal

Five grounds for justifying judgments against Dalits are reported in Dalits and the Law published by HRLN⁷⁷.

- Difference of opinion on section 18 of the SC/ST (POA) on Non-granting of bail: The judiciary is divided on this provision as being a violation of Article 21 (Right to life and liberty) of the Constitution.
- Investigation not done by competent authorities – Rule 7 of the SC/ST (POA) Act requires that investigation is done by Deputy Superintendent of Police (Dy.SP) or higher

⁷¹ Atrocities on Scheduled castes and tribes: causes and remedies, NCSCST Report, April 1990, pg.24.

⁷² The NCSCST – Third Report, 1996, New Delhi. Pg.211-213.

⁷³ Dalits and the Law by Girish Agrawal and Colin Gonsalves, Human Rights Law Network, 2005, New Delhi. Pg.13

⁷⁴ The NCSCST – Seventh Report (2001-2002) pg.128,

⁷⁵ ‘Attitude and Approach’, paper presented by Justice Ramaswamy, former Supreme court judge and member of NHRC at the Judges Colloquium organised by NHRC and HRLN on 17-18 December 2005 at Delhi.

⁷⁶ Justice Delivery Systems and Dalits: Analysis of Special Courts Judgements, Sakshi-Human Rights Watch, AP, December 2005, Secunderabad. Pg.20

⁷⁷ Dalits and the Law by Girish Agrawal and Colin Gonsalves, Human Rights Law Network, New Delhi, 2005

ranking officer. Cases are acquitted on the ground that investigation is done by lower ranking officials, without looking into matters of justice or merit of the case, resulting in not meting out justice to a victim for an administrative lapse.

- Special court has no jurisdiction to take cognizance of SC/ST cases: In some cases, the judges have ruled that the special courts being courts of sessions, they cannot take cognizance of atrocity offences without the committal from a magistrate; often defeating the very purpose of setting up special courts for speedy trial.
- Crime not committed on the ground of the victim being a member of SC/ST community: An interpretation is also that while the victim may be a Dalit, the atrocity was not committed owing to the caste factor. Hence the (mens rea) clause is used to judge the case on other IPC charges, as seen particularly in serious and heinous crimes like murder and rape, where the SC/ST (POA) Act, provides enhanced punishment.
- Appreciation of the lower courts judgments.

The NCSCST Report (2001-2002) has made a reference to the harassment and improper treatment meted out to witnesses who attend courts finally making them turn hostile.⁷⁸

The poor representation of members from the Scheduled castes in the judiciary has also been noted by the NCSCST.⁷⁹

4.5.2. Role of the police in implementing SC/ST (POA) Act, 1989

“A responsive police administration is the first requisite for ensuring that the scheduled castes and tribes secure their rights and redress under the law”⁸⁰.

The 1990 study of the NCSCST refers to a report of the National Police Commission (NPC), which studied in detail the role of the police vis-à-vis the weaker sections of society. This NPC report is said to have disclosed that the “failure to register complaints, delayed arrival on the scene, half-hearted action in investigation, brutality in dealing with accused persons of the weaker sections, soft treatment of accused persons from influential sections and making or failing to make arrests on mala fide considerations” were some of the important ways in which the sabotage of the laws meant to protect the vulnerable SCs and STs were successfully achieved.⁸¹

“In any conflict between SCs/STs and others communities, the former are at a great disadvantage both socially and economically. They look up to the administration, police and the judiciary to give them protection and justice.”⁸²

“From its review with various state governments, the Commission is of the view that a large number of cases of atrocities go unregistered, mainly because of reluctance on the part of police officers to register the cases...”⁸³

Section 4 of the SC/ST (POA) Act meant to address negligence or erring of the officials is not

⁷⁸ The NCSCST – Seventh Report (2001-2002) pg.129

⁷⁹ The NCSCST –Fourth Report, 1996-97 & 1997-98, New Delhi. Pg.15

⁸⁰ Atrocities on Scheduled castes and tribes: causes and remedies, NCSCST Report, April 1990, pg.24.

⁸¹ Atrocities on Scheduled castes and Tribes: Causes and Remedies, Report by NCSCST, 1990. pg.25

⁸² The NCSCST, Sixth Report, 1999-2000 &2000-20001, New Delhi. Pg.227

⁸³ The NCSCST, Sixth Report, 1999-2000 &2000-20001, New Delhi. Pg.(ii)

used. In addition the various issues stated above is clear evidence that Dalit victims do not get any support from the police and administration in accessing justice, rather they reflect the dominant caste attitude to which they belong more than their allegiance to their role and responsibility

4.6.Implementation – Some Reflections

One is forced to draw certain conclusions from Dalit experiences across the country and other studies and reports:

i). Lack of funds is not the problem

The National Scheduled Castes and Scheduled Tribes Finance Development Corporation (NSFDC) was set up to finance income generating activities assist SC/ST families to go over the poverty line in both rural and urban areas. The NSFDC provides concessional finances through its state units. Reports of the NSFDC for 1999-2000, shows that against a target of Rs.200 crores set as the target for the year, only Rs.100 crore was achieved; in 2000-2001, shows that out of the Rs.117.48 crores disbursed by it to the states, Rs.99.04 remained unutilized at the end of the year.⁸⁴

The Chairperson, NCSK, report that Rs.17 crores was unspent by Gujarat and Raichur district in Karnataka had misused 1.70 crores. The Parliamentary committee reported gross underutilization of budgets allocated under various educational programmes in some of the most backward districts.

ii). The magnitude is not the core of the problem

One of the problems quoted is the fact that Dalits constitute 160 million people and hence too big a problem to be managed. However big or small, the problems of Dalits seem to face the same hurdles. The problems of the 600,000 safai karmacharis nor the problem of the devadasi, a few thousands in number again, the bonded labour are problems of a much smaller number. Various institutional mechanisms and budget has been allocated but the problems continue to grow as seen in the growth of dry toilets than its reduction.

iii). Human resources and institutions are available.

It is to the credit of the state, that special institutions to deal with the issues of Dalits have been set up with a large network of government personnel spread all across the country.

iv).Continuing caste mindset

The big gap seems to be in the attitudes and mindset of the personnel who share the attitudes and values of the caste they belong to and in addition empathize with the perpetrators of crime against Dalits. The culture does not promote respect for the rights or concern for the violations faced by Dalits as these are usually taken as given and accepted. The change in the mindset is a critical factor in the implementation of the provisions in addition to ensuring that Dalit community members themselves are represented in any service. The lack of a political will to ensure compliance with legislations and implementation in some ways can also be attributed to the pervasive mindset.

⁸⁴ NCSCST Sixth Report, 1999-2000 & 2000-2001, pg.32.

v). Insufficient representation of Dalits in decision-making positions

The very low representation of Dalits in Judiciary, higher ranks of police, Groups A&B in administration, low representation in media exacerbate the caste mindset in administration are also causative to the poor implementation of programmes for Dalit development and the difficulties in accessing justice.

vi). Insufficient knowledge on the operation of discrimination and exclusion

There is insufficient knowledge and lack of appreciation by the majority community members and those in power and authority on how, where and to what extent exclusion, discrimination and untouchability actually contribute to the inequality, disability and deprivation of Dalits. These compound the problems of developing the necessary strategies.

vii). Gaps in operationalising Constitutional values and goals of equality & fraternity

Equality and fraternity are far removed from the societal norms and values. The two sets of values and principles are in conflict and dissonance. The erstwhile member of the dominant community now vested with the power and authority in the present system, finds it easy and beneficial to propagate and practice the societal values. We have a very simple way of portraying it in the local language – the ‘malik’ (owner) has become the ‘sarkar’ (government). The Dalits by and large are unable to confront or demand alternate ways of behaviour from the dominant communities and when they demand, counter violence and atrocities are the results.

viii). Lack of disaggregated data

Most information available with the state are general trends without having specific information that can help to understand the impact on specific sections and communities. These prevent proper analysis to pinpoint the core of the problem and also limit the building of strategies to resolve the problems.

ix). Lack of monitoring

As seen many times, the monitoring bodies are set up, but seldom do consistent monitoring of the programmes. The lack of monitoring prevents any authentic or progressive strategy building.

x). Impunity – basis in both society at large and the state

There is a strong comfort level in both society and the state that crimes against Dalits do not matter, need not be punished. This attitude of impunity is rooted in the social and cultural values and though the constitution has made a very conscious change, the mindset in society has not changed. Officials who also are part of and sympathize with the social values do not see the need for strict implementation.

Section 5

5. RECOMMENDATIONS

5.1. International

5.1.1. UN Bodies

- The efforts taken by the UN Sub-commission to study descent based discrimination practices as in Caste and the recognition accorded in ICERD need to be extended to other UN covenants like – ICCPR, ICESCR, CEDAW and CRC.
- The UN agencies working in India should incorporate CERD General Recommendation XXIX into all UN bodies working in India (UNDP, UNICEF, UNIFEM, WHO, ILO).
- The UN agencies working in India should establish mechanisms to work with Dalit organisations, CBOs, academics and other professionals to reach out to Dalit communities in their programmes with particular reference to Millennium Development Goals.
- UN agencies working in India should implement affirmative action measures in order to proportionately employ Dalits including women in all development agencies.
- Ensure that caste and gender desegregated data is collected on the impact of all current programmes and develop social, economic, educational and health programmes and strategies that ensure non-discrimination and social inclusion.
- The Secretary General of the UN and the UN High Commissioner for Human Rights should ensure that all UN agencies working in India should incorporate an analysis of caste into poverty reduction and disaster response strategies, pay particular attention to caste discrimination, disabilities and violence and develop specific strategies and programmes to curb discrimination and violence, support Dalit empowerment and facilitate education and awareness on diversity and multi/inter-culturalism.
- ILO should conduct a thorough analysis of the impact of caste discrimination on labour and should work with social partners and develop specific plan of action to address and eradicate caste based discrimination in the labour force, forced and bonded labour and child labour including gender analysis.

5.1.2. Bilateral Bodies

- Develop policies and strategies that incorporate caste analysis into poverty reduction and disaster response strategies, recognize caste discrimination and disabilities and ensure that diversity, multiculturalism as well as anti-discrimination measures are built into their organizational policies, structure and programmes.
- Bilateral agencies working in India should implement affirmative action measures in order to proportionately employ Dalits and Adivasis including women.
- Ensure Dalit and Adivasi activists, academics, other professionals, NGOs and CBOs are involved in design of programmes and proportionate representation and resources are allocated to them in the programmes.
- Ensure that caste and gender desegregated data is collected on the impact of all current programmes and develop social, economic, educational and health programmes and strategies that ensure non-discrimination and social inclusion.

5.1.3. International Financial Institutions

- Incorporate caste and gender desegregated analysis into corporate social development strategies and Poverty and Social Assessments to ensure equal benefits to Dalits and Adivasis.
- Prior to approval of projects and in ongoing projects, in consultation with Dalit NGOs and academics, investigate the effect of the proposed policies and programmes on caste discrimination and disabilities and seek ways to strengthen Dalit and other marginalized communities in new and ongoing projects through anti-discriminatory and pro-Dalit measures.
- Develop an accountability framework that allows Dalits and other civil society groups to monitor service provision in health and education.
- Ensure that all infrastructure programmes supported by the institutions facilitate Dalit and Adivasi communities to access water, food, sanitation, land, rural transport, irrigation and social infrastructure proportionately and without discrimination.

5.1.4. Corporate Bodies

- Support and implement the UN Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, Global Compact, OECD Guidelines for Multinationals and other Enterprises, Ambedkar Principles (Employment, Economic and Social Exclusion) and principles contained in the ILO Tripartite Declaration.
- Affirm and ensure the unacceptability of caste discrimination within own organizations as well as within the sphere of influence including suppliers and business partners with special focus on equal access to markets and services and labour rights and actively contribute to implementing all anti-caste and pro-Dalit laws of the state.
- Develop and implement affirmative action plan (setting targets wherever possible), including training opportunities for employees and potential recruits from Dalits and Adivasis (integrated and additional where necessary) including English language support to enable them to fulfill their potential.
- Appoint a specific board member to oversee the policy areas; a senior manager to maximize the benefits of diverse workforce and report the progress in the annual reports that are open to scrutiny from members of Dalit/Adivasi community.
- Require that all corporate support to community development programmes and other charitable activities include the active participation of Dalits and Adivasis in planning and implementation, and that they receive at least an equal share of the benefits.

5.1.5. International Non governmental Organizations

- Incorporate caste analysis into the country policies and strategies and disaster response programmes and include documentation on caste based discrimination and abuses.
- Plan for the elimination of caste based discrimination through their programmes, lobby with governments, raising the awareness of international civil society, aid agencies and UN bodies.
- Develop and implement staff policies that will ensure the maximum representation of Dalits, including Dalit women at all levels within and in partners and their participation in planning, implementation, monitoring and evaluation.
- Pay particular attention to the intersection of gender and caste discrimination in all programme interventions.
- Ensure proportionate representation and financial support to programmes that work for

eradication of untouchability and caste based discrimination and disabilities, in particular drawing upon and supporting Dalit activists and NGOs.

5.2. National

5.2.1. Commissions

- Expand the Constitutional mandate to the National Commission for Scheduled Castes and National Commission for Safai Karmacharis to ensure that their recommendations become binding on Union or State government, Public Sector Units, Financial Institutions, and they have powers to undertake corrective measures, including action taking on erring officials is vested in them⁸⁵.
- Ensure that Commissions present substantive annual reports and the Government place them before the Parliament within three months for discussion and action.
- Ensure that all States, Ministries and Departments follow up recommendations of the Commissions and action-taken reports are submitted to the Parliament or respective bodies within six months.
- Support and facilitate the National Human Rights Commission and National Commission for Women to incorporate analysis of caste discrimination and disabilities and take necessary additional steps to support Dalit women and communities in ensuring and accessing their rights and entitlements.

5.2.2. Union/ State Governments Bodies

Legislative

- Amend Art. 21 of the Constitution of India to include the following rights to all citizens, with special emphasis on Dalits and tribals on the basis of low economic income; the right to a standard of living adequate for the health and well being of women and men equally, including food, safe drinking water, clothing, housing, public health and medical care, social security and social services, the right to living wage and the right to 5 acres of cultivable land or to gainful employment.
- Adopt the amendments recommended by the National Human Rights Commission, National Commission for SC/ST and other bodies for effective implementation of SC/ST to the SC/ST (POA) Act to ensure justice to Dalit victims-expand rule 7 to include sub inspectors of police, holding Dalit officials accountable for neglect and erring in their duties, include social and economic boycott and blackmail as crimes.
- Ensure land and livelihood rights of Dalits living in scheduled areas in the Forest Bill.
- Dalit communities should be ensured freedom of religion and protection and development should be extended to Dalits from all religions on the basis of the continuing caste discrimination and disabilities.
- Promote comprehensive Central Act to protect Dalit women from sexual oppression and exploitation based on cultural and religious practices, mass rapes and threats.
- Enact necessary legislations to enable Dalits to have an equitable share in the control and access to rural and urban common property resources.
- Enact legislation to extend reservation to private sector

⁸⁵ The National Commission for SC/ST has made these recommendations in their many reports to the government.

Executive

- Organize periodic sensitization and exposure programmes to all members of the executive on untouchability, caste based discrimination and disabilities drawing resource persons from Dalit communities to share experiences and bottlenecks and progressive developments and best practices in diversity and multicultural principles and programmes.
- Take up confidence building measures among Dalit communities on Constitutional values and principles, government institutions and implementation through frequent interaction and visit to Dalit communities, pro-active and prompt response in times of discrimination and conflict and immediate relief and adequate rehabilitation.
- Ensure that the local bodies, district administration as well as state and ministries develop comprehensive mechanisms and programmes for enhancing for mandatory and increased access and availing of development programmes by Dalits.
- Identify atrocity and discrimination prone areas and take up special measures for early identification, prevention and peace building.

Judiciary

- Ensure that the relevant provisions of SC/ST (POA) Act, 1989 is cited under grounds in all crimes against Dalits in keeping with the objectives of the Act and recognizing the vulnerability of Dalit communities and the power and domination of the dominant castes in society and bureaucracy. Mens rea is presumed by the law and need not be proved specifically because the intent is built into social attitudes and is not a matter of personal intent.
- Set up Special Courts for the trial of SC/ST cases in all districts and allow them to take cognizance of crimes against Dalits, without having to wait for the committal procedures from a magistrate.
- Ensure speedy trials and disposals of crimes under PCRA, SC/ST (POA) Act and other crimes related to Dalits as they are under threat from dominant castes and their financial situations do not allow them to fight long battles in the courts.
- Promote the usage of Section 4 of SC/ST (POA) Act to bring to book erring officials to increase greater accountability in the system.
- Ensure legal aid provisions are availed by the victims
- Promote greater sensitivity among the fraternity through organizing orientation and exposure sessions for the judiciary on caste based discrimination and disabilities as well as progressive understanding of diversity and multiculturalism.

Police

- Promote greater understanding and sensitivity to caste based discrimination and disabilities through training, orientation, exposure and greater interaction with Dalit communities.
- Take strict punitive actions on police personnel for under-reporting, mis-reporting, threatening and forcing to compromise, supporting the perpetrators in cases of SC/ST POA and PCR cases.
- Review the closure of cases by the police reported under the SC/ST (POA) Act and ensure that justice is not compromised and Dalit victims are not jeopardized.
- Take strict punitive actions against police for involving in land related matters and providing support to landlords.
- Take strict measures on police who do not respect and devalue elected representatives

from Dalit communities and their authority.

- Senior officials and human rights bodies must review any arrest or harassment of Dalit members or community by police in conflict zones.
- Complaints against police by community, human rights activists, Dalit organizations must be verified and action taken if necessary.

5.2.3. Local Bodies

- Ensure free and fair elections in the local bodies that allow Dalits to exercise their franchise freely and without fear.
- Ensure timely elections to all reserved constituencies if necessary taking stringent punitive measures on dominant caste communities that prevent elections and threaten Dalits from standing for elections.
- Organise trainings and orientations for Dalits in particular Dalit women in managing their responsibilities and duties under their office.
- Take stringent measures on officials who disrespect or undermine the authority of elected Dalit women and men.
- Support Dalit headed panchayats with additional resources to carry out development activities.
- Extend support and protection and take urgent action when any Dalit elected representative complains of harassment, threat or violence against them.
- Any complaints or presumably consensus decision to dismiss elected Dalit members must be investigated and ensured that caste hatred is not the basis for it.

5.2.4. Monitoring Bodies

- Ensure representation of Dalit women and men in vigilance bodies, monitoring bodies, parliamentary committees, standing committees all statutory committees.
- Ensure that these bodies hold regular meetings and function effectively and provide timely reports to appropriate bodies to ensure the fulfillment of their mandate.

5.2.5. International Obligations

- Support the recognition of caste as an institution of gross human rights violations affecting about 300 million people across many countries in the UN and take a lead role in developing instruments and resources to address related discriminations and disabilities.
- Ensure that timely reports are submitted to all treaty bodies, giving disaggregated data on the context of Dalit children, women and men and drawing upon the experience and knowledge of Dalit leaders and organizations.

5.2.6. Public Education and Awareness creation

- Launch a wide and long-term 'campaign against untouchability and caste discrimination' in the same manner as the 'pulse polio campaign' marking untouchability as unconstitutional and punishable, through electronic media, television and newspapers, pamphlets and wall-writings to reach all sections of society, urban and rural, Dalits and nonDalits.
- Massive sensitization programme among the public against employment of child labour and their inhuman treatment.
- Wide dissemination among the public on PCR and SC/ST (POA) Act.

5.2.7. Ensure equity and non-discrimination in disaster relief and rehabilitation programmes

- Ensure that all officials entrusted with disaster response programmes are sensitized about manifestations of caste discrimination and untouchability in the particular context and take measures to ensure anti-discriminatory principles and practices in both relief and rehabilitation, going a step ahead to ground Constitutional visions of equality, fraternity and justice and international standards.
- Ensure that damage assessment data is collected in a disaggregated manner and rehabilitation is based on the need for building a life of dignity and freedom, sufficient resources are provided to Dalits who are particularly vulnerable in times of disaster and emergency, for immediate livelihood support and long-term life with dignity.
- Ensure that dignity, equality and freedom of Dalits are not compromised and caste based disabilities or occupations are not thrust on them during emergency or disaster situations as has been done with the safai karmachari workers in many instances.
- Ensure that Dalit representatives, both women and men are included in all planning, monitoring and vigilance committees at all levels set up during emergency and disaster.
- In all matters ensure safety and protection of Dalit women and children.
- Initiate legal proceedings against members of society or bureaucracy promoting or practicing untouchability and discrimination in times of disaster and emergency response.

5.2.8. Enhance Land and livelihood opportunities

- Ensure that each Dalit family will own enough cultivable land for socio-economic well being. The government should pursue all possible measures including the distribution of surplus land, government revenue lands and temple lands within a specific time frame. If need be government should purchase cultivable land and distribute it among Dalits, ensuring joint ownership of women and men.
- Appoint a statutory committee at the national and state level to identify within specified time frame all the Dalit lands occupied by nonDalits, to assess the quantum of compensation to be paid by nonDalits, to identify the original owners and their nearest kith and kin for restoring these lands back to them.
- Ensure control and access of Dalits to common property resources like land, water, trees, forests.
- Strictly enforce legislations on minimum wages, equal wages, interstate migrant workmen regulations Acts to protect Dalit workforce.
- Democratise capital so as to ensure proportionate share for Dalits. Make budgetary allocations for Dalits to enable them to enter the market economy with adequate investment resources, and to develop their capacities and skills for such market enterprises.

5.2.9. Implement Bonded labour abolition Act

- Enforce with stringent measures the Bonded Labour System (Abolition) Act, 1976 and ensure immediate release and sufficient rehabilitation package to victims to prevent their lapse into the system.
- Take up study to identify and understand new and emerging forms of forced and bonded labour.
- Take punitive action on persons who encourage or enforce bonded labour practice.

5.2.10 Release and rehabilitate all involved in manual scavenging

- Immediately and urgently release and rehabilitate all members involved in the work of manual scavenging providing alternate and sustainable livelihoods and employment and development programmes for the victims as well as their families and prosecute all violators and perpetrators of the dehumanizing practice.
- Set up an enquiry into the outcome of the relief and rehabilitation programmes implemented so far by the state and the union government.

5.2.11. Ensure devadasi system abolition

- Extend the Devadasi System Abolition Acts to cover the practice in any part of the country and ensure the abolition of the system with immediate effect and provide relief and rehabilitation to victims and livelihood and development programmes for their families.
- Ensure that all those from society as well as officials who promote and condone the practice are punished stringently.

5.2.12. Earnest implementation of Special Component Plan

- The mandated 15% of the budget must be allocated and spent strictly for the direct development of the scheduled castes by all ministries and departments at the central and state levels.
- Any unspent money under SCP must be allowed to carry over and not be diverted or lapsed in the following year.
- The social welfare department should be made the nodal department with full autonomy in the policy, planning, and implementation of the SCP as is being done in the state of Maharashtra.
- The Standing Tripartite Committee constituted by the Planning Commission in Sept.1999 should meet regularly to review the allocation, planning and implementation of SCP. Demand that states also set up similar tripartite committees.
- The formulation of the SCP should be right at the plan formulation stage through identification of schemes and earmarking of funds, so that systematic monitoring of the utilization of earmarked funds can be planned for.
- Union government should ensure that states come up with a need-based plan for the SCP before the release of budgets.
- Proper coordination amongst the various authorities involved in the programmes must be ensured.

5.2.13. Protect rights of Dalit children

- Ensure strict enforcement of Child Labour (Prohibition and Regulation) Act, 1986, with comprehensive measures to enumerate disaggregated data, and special vulnerability of Dalit children.
- Implement focused measures to arrest child labour among Dalit children - disaggregated data on Dalit children in child labour, inspection and rescue of children in hazardous industries, Special measures to protect the vulnerability of Dalit girl children, special development programmes for areas that provide child labour, special measures to arrest distress migration and special drives to prevent trafficking of children etc.
- Implement compulsory, free and high quality education for all Dalit children, making

adequate funds allocation proportionate to the level of illiteracy, increase the number and amount of scholarships, provide better infrastructure facilities in SC schools and hostels, and offer market oriented vocational and technical education.

- Make reservation quota applicable in all public and private educational institutions from primary to technical and professional levels. Compulsory, quality and free education to develop the abilities and skills of all Dalit children from low-income families should become the bounden duty of the state towards its future citizens.
- Ensure special protection in the child related legislations and welfare programmes for Dalit children, particularly girl children, who are victims of physical, mental and sexual violence and exploitation both at community and work places.
- Ensure non-discrimination in all welfare and development programmes like mid-day meals.
- Conceptualize innovative schooling for Dalit children under Sarva Shiksha Abhiyan and launching projects in pursuance of it.

5.2.14. Ensure Rights of Dalit Women

- Recognize Dalit women as a distinct category among women and accordingly make disaggregated data on Dalit women available in census reports, action taken reports, and progress reports and while reporting to international treatise bodies.
- Evolve national and state level perspective plans for mainstreaming Dalit women in developmental programmes, market enterprises, financial allocations, reservation in education and employment and health facilities.
- Ensure proper representation of Dalit women in statutory bodies and committees, vigilance and monitoring bodies and undertake capacity building programmes to promote their active participation.
- Push for more expansive and sensitive understanding of gender-caste based crimes against Dalit women and take special care to ensure social, physical and sexual protection of Dalit women under SC/ST (POA) Act, as there is an increasing trend of heinous crimes against them. The intersection of caste and gender should also be incorporated into the understanding and interventions of all commissions.
- Survey and rehabilitate Dalit women in vulnerable situation like devadasi, Safai Karmachari, Bonded labour and Women and girls who have been victims of atrocities.
- Protect and encourage Dalit women human rights defenders and promoters.

5.2.15. Reservation

- Extend reservation to the armed forces as has been recommended by the National Commission: “The National Commission for SCs/STs still however feels that the Government should introduce some element of reservation in Armed forces without adversely effecting the efficiency as there was no substance to challenge the competency when there were regiments like Sikh and Mahars known for their excellent achievements. The Commission recommends that as far as possible in direct recruitments the reservation may be introduced⁸⁶
- Extend reservation to the judiciary as has been recommended by the National Commission: “The Commission reiterates its recommendations made in its earlier reports that reservation provided for in judicial appointments below the High Courts needs to be implemented to fulfill the prescribed reservation percentage. The Commission also

⁸⁶ NCSCST Seventh Report, 2001-02, New Delhi, pg.65

reiterates its recommendation to consider provision of reservation in appointments of judges to the High Courts and Supreme Court of India”⁸⁷

- Extend Reservation to Private sector and it should apply to multiple spheres, namely private employment, market, private capital market, agricultural land, private education and housing, access to inputs and services, products and consumer-goods

Reservation in private sector should include 1.legal safeguards of equal opportunities and non-discrimination; 2. be in proportion to population and 3.put in place adequate monitoring mechanisms.

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