

NAVSARJAN TRUST

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Oral Statement: Eighth session of the Forum on Minority Issues

Dates: 24 and 25 November 2015

Item 5. Addressing the root causes of discrimination in the administration of justice

Thank you Mr. Chair,

We would like to endorse the draft recommendations covering varied aspects affecting the rights of minorities in access to justice, especially recommendations 10, 13, 14, 26 and 28. Systemic and pervasive forms of oppressions going on for several centuries have created barrier to 260 million people, who are facing continued caste based discrimination and many caste based violence in caste affected countries and the Diaspora. The historicity of caste system rooted in inequality perpetuates the extent of lawlessness and obstructs the fair trial for a victim or survivor of caste based violence.

Traditional beliefs, which are laid through religious scriptures and texts also justify that *Dalits* are impure, and hence untouchable. This further place the Dalits at the lowest level in the social structure, where access to justice or dignity is not recognised by the upper strata of a caste based society. The situation of Dalit women within the Dalit communities becomes more vulnerable as they are Dalits amongst the Dalits and due to structural inequalities the society does not recognises their rights as human beings.

In 1989 Indian government, enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to prevent and punish state and private actors for abuses against Dalits, to establish special courts for the trial of such offenses, and to provide for the rehabilitation and relief of the victims. However, without a serious and sustained commitment to implementing constitutional safeguards and other national and international legal protections, human rights abuses in their most degrading forms continue against Dalit communities called as Scheduled castes in the Constitution of India.

Caste-based discrimination was officially abolished in 1963 in Nepal. And despite Caste Based Discrimination and Untouchability Act 2011, Nepalese society has continued to observe social hierarchies and divisions. Its feudalistic orientation has served to strengthen the authoritarian nature of the state. Much of the caste-based sexual violence against Dalit women and girls emerges out of a feudal sense of entitlement among some upper-caste men.

The lawlessness and state impunity establishes the rootedness and generates a lack of hope in the criminal justice system for the most deprived of their constitutional rights. The response of state administrations to incidents of caste violence amounts to a failure to ensure equal protection under the law and exposes a pattern of complicity and collusion on behalf of police and local officials. Despite ambitious calls for action by central and state governments in the aftermath publicity of massacres and police raids, the Indian authorities have shown little commitment to resolving the root causes of caste conflicts.

Countries like Pakistan, Bangladesh and Srilanka have not framed any laws or policies for the protection of the rights of Dalit communities, as they are not recognized as discriminated communities in the Constitution, which has made the situation of Dalits more vulnerable.

We therefore recommend that:

- 1) Recognition to be given in the recommendations of this Forum to caste-afflicted minorities by inserting “caste” or “caste-based” in relevant paragraphs, e.g. 27, 42 and 55, in the recommendations.
- 2) The affirmative active policies, which include laws, framed for the protection of the rights of Dalits, in caste affected countries to be reviewed and reassessed by international bodies for effectiveness
- 3) Special attention be given by the caste affected countries, where there is no legal protection to design and enact special preventive legislations to prevent and protect the violations against caste- afflicted minorities.
- 4) Ensure a national action plan for caste affected communities, which should contain a set of activities with benchmarks and indicators, to ensure a framework exists for a comprehensive and coordinated approach for the prevention and protection of minorities
- 5) Formulate special investigation and accountability mechanisms, which shall provide prompt response to every request for assistance and protection to caste minorities and specially women and monitor strict execution of investigation mechanisms.

Thank you Mr. Chair