



National Campaign on Dalit Human Rights and International Dalit Solidarity Network

Caste Based Discrimination in India – KEY RECOMMENDATIONS AND QUESTIONSⁱ

13th Session of the Universal Periodic Review of the Human Rights Council – India

(Review of India, 24 May 2012)

EXECUTIVE SUMMARY

In the first Universal Periodic Review (UPR) of India in April 2008, caste-based discrimination was one the main human concerns raised by several states.ⁱⁱ In follow up to the review, the Government of India (GOI) accepted some recommendations. However, much more needs to be done to implement recommendations from the first UPR (UPR-I). Regrettably, the GOI has not held any formal consultation with civil society in preparation of the second UPR. It is however commendable that the GOI has involved civil society in the follow-up to the UPR, and that it has issued a standing invitation to UN Special Procedures, and invited a number of rapporteurs already.

In India, the Dalits - officially known as Scheduled Castes (“SCs”) – constitute 167 million people according to the 2001 census. A central feature of caste discrimination is the “untouchability practices” stemming from the notion that different caste groups are considered to be “impure” and “polluting” to other caste groups. Consequently, the caste system leads to social exclusion and systematic denial of basic rights of Dalits at all levels in society.

Although India has an impressive range of constitutional provisions and laws that ban caste discrimination and untouchability, the lack of implementation remains a chronic problem. UN human rights bodies, including the Treaty Bodies and Special Rapporteurs, have made extensive recommendations on the need for the Government of India to take effective measures to prevent and address violations stemming from caste discrimination. Since the first UPR of India, serious concerns have been expressed by the Committee on Economic, Social and Cultural Rights and many UN Special Rapporteurs.ⁱⁱⁱ Some of the violations, which Dalits face in India, are the following:

Key human rights violations for Dalits in India:

- **Impunity and non-implementation of laws for the protection of Dalits:** As noted by the UN Special Rapporteur on Human Rights Defenders in her 2012 mission report, impunity for atrocities against Dalits is a chronic problem in India.^{iv} Though there are series of laws in place, the conviction rates of the SC/ST (Prevention of Atrocities) Act 1989, which aim to eliminate atrocities against SCs, are shockingly low.^v Moreover, special provisions are not implemented properly by the state machinery. For example, while the Special Component Plan did bring in benefits to SCs, the overall record based on factual findings found that many states had failed to allocate funds as per the normative SC population percentage.^{vi} There is an urgent need to check whether these laws ensure the protection and promotive aspects of Dalits, and to amend it where necessary.
- **Exclusion in access to basic services and extreme poverty:** Exclusion, segregation, and discrimination against Dalits in the education and health sector remain a widespread problem in India (e.g. access to adequate housing, water and sanitation, and land). Out of India’s 37.2 % poor population (323 mio people), the majority of them are Dalits (47.2% in rural areas and 39.9% in urban centers).
- **Diversion of economic benefits allocated for Dalits:** Allocations for Special Component Plan for SCs has been inadequate at national level and that many states have failed to allocate as per the normative SC population percentage.^{vii} The amount denied to SCs from 2005 to 2009 amounts to US \$ 20.8 billion. This means that annually around US \$ 5.2 billion have been denied through non-implementation as per the policy requirements of the Special Component Plan for SCs.

- **Lack of political participation:** Dalits are often limited from equal and meaningful political participation. While legal mechanisms to protect Dalits are in place, implementation remains very weak.
- **Dalit women, trafficking and forced prostitution:** A significant proportion of India's Dalit women suffer multiple forms of discrimination, incl. verbal abuse, physical assault, sexual harassment and assault, domestic violence, naked parading, and rape. Some young Dalit girls are even exposed to a form of forced prostitution in temples, serving as sex workers for men from dominant castes.
- **Manual Scavenging and Bonded Labour:** An estimated 1.3 million Dalits in India make their living through the inhuman and outlawed practice of manual scavenging (the job of cleaning human excrement from dry toilets with bare hands). The use and abuse of Dalit bonded labourers remains endemic within a range of occupations. In this aspect, Dalit children are particularly vulnerable.
- **Disaster Risk Reduction and Dalits:** During disasters, Dalits are systematically excluded in rehabilitation measures. The existing laws, policies and guidelines of the national and state governments are not comprehensive enough to capture the sensitive issue of caste-based discrimination in emergencies.^{viii}
- **Discrimination in Education:** 50% of all SC children, and 64% of girl students drop out due to discrimination being practiced against them in school. The difference in dropout rates between SC youth and all Indian youth has actually grown from 4.39 % in 1989 to 16.21 % in 2008.^{ix}
- **Faster Growth, Faster Exclusion:** As India is taking a lead in economic development, Dalits are paying a price for it. Infrastructure inaccessibility, demolition of houses, displacement are some of the problems that Dalits are facing due to the non-inclusive growth of the nation.

IMPLEMENTATION OF THE UPR-1 RECOMMENDATIONS (OF PARTICULAR RELEVANCE TO CASTE)

Recommendation No. 1: Ratification of the Convention against Torture (UK, France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (UK)

Currently, the Prevention of Torture Bill 2010 in its amended version has yet to be tabled before both Houses of Parliament. In 2008, a series of People's Tribunals on Torture covering 47 districts across 9 states clearly revealed that more than 60% of the victims of torture belonged to Scheduled Castes or were religious minorities. The adoption of the Bill (2010) should be given immediate priority, even prior to ratification at UN level.

Recommendation No. 5: Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg)

Despite early strong resistance from the GOI, the 2011 nationwide census of caste-wise enumeration has been done, but with serious lacunae: (i) Disaggregation of data by caste, gender, religion, status and region is missing; (ii) There is no data available on education, health, civic amenities, employment, entrepreneurship, and other important social indicators. Secondly, the National Crime Record Bureau Report of the GOI does not provide disaggregated data on crimes against SC and ST women and children, which is essential for proper policy intervention. Besides, there is neither proper analysis, nor mention of the extent of crime complaints of SCs unregistered by the police. Social audit is seriously missing regarding implementation of special protective legislations and policies, although in place for these communities.

Recommendation No. 7: Consider signature and ratification of the ILO Conventions No. 138 and 182 concerning Child Labour (Brazil, Netherlands, Sweden)

Across social groups, the incidence of child labor was 1.6 % for SCs while it was 0.36 % for others in India. Similarly, in the age-group of 10-14 years, the incidence of child labor was the highest i.e 15% for SCs compared to others (5 %). Given this strong data weightage against SC Children, it is imperative for the GOI not only to give urgent priority to ratifying the ILO Conventions, but also bring consistency and coherence in the formulation and implementation of all child-related laws and policies.

Recommendation No. 8 (accepted): Share best practices in the promotion and protection of human rights taking into account the multi-religious, multicultural and multi-ethnic nature of Indian society (Mauritius)

Several governments and UN experts have called for the sharing of good practices to eliminate caste-based discrimination. During a visit to India in 2009, the UN High Commissioner for Human Rights noted that the Indian Prime Minister Manmohan Singh has strongly condemned the practice of "untouchability" associated with caste-based discrimination and has compared it with apartheid. The High Commissioner stated that "This is an area where India can not only address its own challenges nationally, but show leadership in combating caste-

based discrimination globally.” The GOI should take a global lead by sharing examples of the range of laws and provisions enacted for the protection of Dalit rights in the country, by engaging in substantive discussions on the topic.

Recommendation No. 11: Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico)

Although the National Human Rights Commission (NHRC) has been tasked with drafting a national action plan (NAP), there is still no NAP. The GOI should give immediate priority to design, develop and implement a NAP to eliminate all forms of discrimination, including caste- and gender-based discrimination, applying the CERD General Recommendation No. 29 on descent, the Durban Review Conference Outcome Document (2009), the Durban Declaration and Programme of Action (2001) where appropriate. The draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent can serve as a useful tool in developing a NAP to prevent and eliminate caste-based discrimination. This exercise should begin with a State policy instrument, and should integrate Human Rights Education and Training at all levels.

Recommendation No. 13: Strengthen human rights education, specifically in order to effectively address gender and caste-based discrimination (Italy):

With the World Programme on Human Rights Education already in its second phase, together with the Declaration on Human Rights Education and Training, the GOI is strongly recommended to come out with a coherent plan that will include, among others, focused training for officials and professionals, including law enforcement personnel on anti-discriminatory approaches to policing. State and non-State actors should take active part in this reform process. Those involved in the judicial system should also be given training in the prevention of discrimination in the administration and functioning of the criminal justice system, in accordance with the provisions in CERD General Recommendation XXIX (2002).

GENERAL RECOMMENDATIONS

Besides implementing the recommendations from UPR-I, the GOI is requested to take action on the following:

1. The GOI should **take effective measures to address impunity of the State and dominant castes and prevent and eliminate atrocities against Dalits** by ensuring that the Ministry of Social Justice & Empowerment brings in amendments to the SCs & STs (PoA) Act, as per the recommendations from Dalit Civil Society Bodies.
2. The GOI should **recognize that caste-based discrimination is a violation of international human rights law**, as reaffirmed by several UN human rights bodies and experts, and show global leadership in promoting and exchanging views on best practices to eliminate caste-based discrimination in a constructive dialogue with the national and state governments, relevant UN bodies and experts, the private sector, local authorities, national human rights institutions, CSOs and academic institutions for Dalits and other excluded groups in India (e.g. in access to safe drinking water, health & sanitation and adequate housing). In the process, the GOI should consider the draft UN Principles and Guidelines for the effective Elimination of Discrimination based on Work and Descent as a comprehensive, voluntary framework to eliminate caste discrimination.
3. The GOI should take concrete steps to **follow up and implement UN recommendations on caste-based discrimination by Treaty Bodies and UN Special Procedures** (e.g. CERD Concluding Observations 2007, CESCR Concluding Observations 2008, and report of the Special Rapporteur on human rights defenders). In the implementation process, the GOI should ensure proper and active coordination of line ministries and National and State institutions, and should actively involve NGOs/CSOs. The GOI should comply with its reporting obligations as a signature to international conventions and prevent further delays in the submission of reports to Treaty Bodies.
4. The GOI should ensure that **a national action plan (NAP) is developed and implemented without further delays**, giving immediate priority to design, develop and implement a NAP to eliminate all forms of discrimination, including caste- and gender-based discrimination.
5. The GOI should take effective measures to **prevent atrocities and multiple forms of discrimination against Dalit women** as recommended by CEDAW, CERD, and the UN Special Rapporteur on violence against women. Specifically, the GOI should take steps to eliminate the culture of impunity for perpetrators of violations, incl. physical assaults, sexual harassment, rape, naked parading, and forced prostitution.
6. The GOI should extend **disaggregated data to caste and gender, religion, status and region** to ensure effective policy formulation and implementation for Dalits and other vulnerable groups. Data should be made

available on social indicators such as education, health, civic amenities, employment, entrepreneurship, and the National Crime Record Bureau Report of the GOI should provide disaggregated data on crimes against SC & ST women and children.

7. National and State Governments should **enact equal employment opportunity and equality laws** and other measures that prohibit discrimination against Dalits in capital market, labour hiring, work place, private enterprises, etc.
8. The GOI should **extend reservation measures to Dalits of all faiths**, including Dalit Christians and Muslims, who are presently excluded from the reservation benefits owing to religion-based discrimination.
9. The GOI should adopt the **Unorganised Workers Social Security Bill** without any further delay. Equal attention should be given to Dalit women domestic workers by giving due consideration of the ratification of the recent ILO Convention on domestic workers and rules, 2011.
10. The GOI should enact and ensure cross **border monitoring mechanisms to stop the flow of trafficking of Dalit women and children.**

QUESTIONS

1. Which concrete steps will the Ministry of Social Justice & Empowerment take in the next year to ensure that all the State Governments are implementing the SCs & STs (PoA) Act, thereby adhering to the guidelines by the Ministry of Social Justice & Empowerment and the Ministry of Home?
2. When will the Ministry of Social Justice and Empowerment commit to tabling the annual report on implementation of SC's and ST's Prevention of Atrocities Act, 1989 mandated under section 21(4) of the Act every year in the Parliament, as required?
3. Which steps will the GOI take to ensure the proper implementation of Special Component Plan in its true spirit and measures, in order to check whether it is reaching the true beneficiaries?
4. When will the Government take measures to produce disaggregated data on Caste and Gender and other social indicators like religion, status and region?
5. Which steps will the Government take to extend reservation benefits to Dalits belonging to other faiths especially Muslims and Christians in the next year?
6. What steps will the GOI take in the next year to frame a specific legislation and measures to protect Human Rights Defenders, including defenders working on rights of marginalized groups such as Dalits and Adivasis, as suggested by the UN Special Rapporteur on human rights defenders?
7. When will the GOI introduce special provisions in the Right to Education (RTE) to address issues related to discrimination in educational institutions, especially in midday meal scheme and Sarva Shiksha Abhiyan? When does the GOI intend to bring out a National Action Plan for Human Rights Education in the curriculum and training at all levels?
8. Which steps and measures will the GOI take to ensure the complete elimination of Manual Scavenging?

ⁱ The observations and recommendations in this briefing note are based on the UPR submission prepared by NCDHR (November 2011), endorsed by 563 Dalit organisations: http://idsn.org/fileadmin/user_folder/pdf/New_files/UN/UPR/UPR_India2012_NCDHR.pdf
The briefing note has been prepared in collaboration with IDS. Similar concerns about caste discrimination in India have been expressed in other submissions, incl. by the Working Group on Human Rights in India and the UN (a coalition of which NCDHR is a member), Human Rights Watch, Asian Centre for Human Rights, Asian Human Rights Commission and Lutheran World Federation.

ⁱⁱ In total, 13 states raised questions and recommendations concerning caste-based discrimination (oral statements or written submissions): Canada, Singapore, Belgium, the Netherlands, Luxembourg, Germany, United States of America, South Korea, UK, Azerbaijan, France, Italy, Denmark.

ⁱⁱⁱ Special Procedure mandate holders on violence against women, human rights defenders, contemporary forms of racial discrimination, adequate housing, right to food, torture, freedom of religion and belief, and minority issues. For references see: www.idsn.org/uncompilation

^{iv} Report from Mission to India, A/HRC/19/55/Add.1

^v In 2010, out of the total of 32712 atrocities, only 10513 (32%) cases were registered under PoA Act. At the year-end, 28% of cases were pending for investigation. About 21% of cases were closed by the police.

^{vi} The Planning Commission Working Group on the "Empowerment of Scheduled Castes" 2007 stated that allocations for Special Component Plan for SCs has been inadequate at national level.

^{vii} Andhra Pradesh, Assam, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tripura, West Bengal and UTs of Chandigarh and Pondicherry

^{viii} Report of the National Convention on "Exclusion of Dalits – Disaster Risk Reduction Interventions – Effective Civil Society Monitoring", National Dalit Watch, June 2010

^{ix} IDS. 2010: Dalit Children in India – Victims of Caste Discrimination, Briefing Note by Navsarjan Trust (www.navsarjan.org), Center for Human Rights and Global Justice (www.chrgj.org) and International Dalit Solidarity Network (www.idsn.org)