

Alternate Report

To the joint 15th to 19th Periodic Report of the State Party (Republic of India)

To

**The Committee on the Elimination of Racial
Discrimination (CERD)**

**National Campaign on Dalit Human Rights
(NCDHR)**

India, 2006

In Association with

**IDSN (International Dalit Solidarity Network), Human Rights Law
Network (HRLN), Social Watch-Tamil Nadu, Centre for Budget and
Governance Accountability (CBGA), Institute of Development
Education, Action and Studies (IDEAS), Indian Institute of Dalit
Studies (IIDS), Safai Karmachari Andolan, Sakshi Human Rights
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Glossary

Adivasis	: Indigenous Tribal People
Beedi	: A type of local made cigarette
Begar	: Free labourer
Devadasi/Jogini	: A traditional practice where by girls are dedicated to the village deity as his wives, but they are forced into prostitution by the upper castes.
Mahars	: A Dalit caste found mainly in Maharashtra.
Musahar	: Name of the Dalit caste in the state of Bihar
Purdah	: form of clothing used by women to cover their face
Panchayat	: Local Administrative Body which constitutes of 5/10 village elders (mainly higher castes) who take decision on each and every matters of the village.
Sarpanch	: Village head.

Abbreviations

AP	: Andhra Pradesh (One of the States of India)
ARI	: Annual Risk of Tuberculosis Infection
CAG	: Comptroller and Auditor General
CBOs	: Community Based Organizations
CDS	: Centre for Development Studies
CEDAW	: Committee on the Elimination of all forms of Discrimination against Women
CERD	: Committee on the Elimination of Racial Discrimination
CPRs	: Common Property Resources
CRC	: Convention on the Rights of the Child
DPEP	: District Primary Education Programme
FIR	: First Information Report
G.Os	: Government Orders
HRD	: Human Resource Development
HRLN	: Human Rights Law Network
ICCPR	: International Covenant on Civil and Political Rights
ICERD	: International Convention on the Elimination of All Forms of Racial Discrimination
ILO	: International Labour Organization
IMRB	: Indian Market Research Bureau
IPC	: Indian Penal Code
MLPC	: Mine Labour Protection Campaign
MMP	: Mines, Minerals and People
MMS	: Mid Day Meals Scheme
MNCs	: Multi National Companies
NC	: National Commission
NCERT	: National Council for Educational Research and Training
NCF	: National Curriculum Framework
NCSK	: National Commission for Safai Karmachari
NCSC/ST	: National Commission for Scheduled Castes and Scheduled Tribes
NEP	: National Employment Plan
NFHS	: National Family Health Survey
NGO	: Non-Government Organization
NHRC	: National Human Rights Commission
NREGA	: National Rural Employment Guarantee Act
NREGS	: National Rural Employment Guarantee Scheme

NSS	: National Sample Survey
NSSO	: National Sample Survey Organization
OBCs	: Other Backward Castes
PDS	: Public Distribution System
POA	: Prevention of Atrocities
PRIA	: Participatory Research in Asia
PROBE	: People's Report on Basic Education
SCA	: Special Central Assistance
SCP	: Special Component Plan
SCs	: Scheduled Castes
SEZs	: Special Economic Zones
SKA	: Safai Karamchhari Andolan
SR	: Special Rapporteur
SSA	: Sarva Shiksha Abhiyan
STs	: Scheduled Tribes
TPDS	: Targeted Public Distribution System
UDHR	: Universal Declaration of Human Rights
UGC	: University Grant Commission
UN	: United Nations
UNCHR	: United Nations Commission on Human Rights
UNDP	: United Nations Development Programme
UNICEF	: United Nations Children's Fund
UNIFEM	: United Nations Development Fund for Women
UP	: Uttar Pradesh (One of the States of India)
UTs	: Union Territories
WCAR	: World Conference against Racism
WHO	: World Health Organization

Introduction

1. In 1998, a 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 India's 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.
2. Formed in March 2000, the International Dalit Solidarity Network (IDSN) is a network of national solidarity networks, groups from affected countries and international organisations concerned about caste discrimination and similar forms of discrimination based on work and descent. IDSN campaigns against caste-based discrimination, as experienced by the dalits of South Asia to the Buraku people of Japan, the sab (low caste) groups of Somalia, the occupational caste people in West Africa and others.
3. NCDHR along with IDSN (International Dalit Solidarity Network) and other national organizations - Centre for Dalit Rights (CDR)- Rajasthan, Centre for Budget and Governance Accountability (CBGA), Human Rights Law Network (HRLN), Institute of Development Education, Action and Studies (IDEAS), Indian Institute of Dalit Studies (IIDS), Indian Social Institute (ISI) New Delhi, Safai Karmachari Andolan, Social Watch-Tamil Nadu, Sakshi Human Rights Watch - Andhra Pradesh have come together to document their own experiences, research the state statistics and bring to light and visibility this heinous practice of Untouchability and discrimination and exclusion being experienced by the Dalit people as well as the impunity being enjoyed by the perpetrators and the gross negligence of the duty bearers in ensuring that the violators are brought to book.
4. The Constitution of India not only guarantees basic human rights, as Fundamental Rights but also prohibits practice of untouchability in any form. There are progressive laws and human rights redressal mechanisms and institutions but these bodies and laws are not effectively implemented. The mindset of the supporters of untouchability has yet to be changed. Laws are blatantly violated; perpetrators of crimes against Dalits are often hand in glove with duty-bearers resulting in impunity.
5. India has a population of 167.2 million people (2001 census) who are termed as Scheduled Castes (SCs) are erstwhile Untouchable communities, presently called as Dalits by most movements and political bodies in the country. In addition, there are at least 42 million Muslim and Christian Dalits who in one form or the other are vulnerable to discrimination and back lash violence that is different and particular.
6. Untouchability is a dominant factor still continuing in the matter of social relationships and discrimination takes the form of barriers against bathing, eating, drinking, worshipping, and having access to common properties. It puts a ban on all common cycles of participation. In the use of public facilities, the spirit of discrimination manifest itself in the exclusion of the Dalits from schools, wells, temples, means of conveyance and access to land, water and other livelihood resources. Public administration is also deeply entrenched in discrimination against Dalits. It has affected Law Courts, Governments departments, Banks and particularly the Police. Discrimination against Dalits in the matter of securing land, credit, jobs etc. exist in the most rampant form.

7. A recent study of untouchability in rural India¹, covering 565 villages in 11 States, found that public health workers refused to visit Dalit homes in 33% of villages, Dalits were prevented from entering police stations in 27.6% of villages, Dalit children had to sit separately while eating in 37.8% of government schools, Dalits did not get mail delivered to their homes in 23.5% of villages, and Dalits were denied access to water sources in 48.4% of villages because of segregation and untouchability practices.
8. Police statistics averaged over the past 5 years show that 13 Dalits are murdered every week, 5 Dalits' homes or possessions are burnt every week, 6 Dalits are kidnapped or abducted every week, 3 Dalit women are raped every day, 11 Dalits are beaten every day and a crime is committed against a Dalit every 18 minutes². This is despite the fact that many Dalits do not report crimes for fear of reprisals by the dominant castes. Despite 27 officially registered atrocities being committed against Dalits every day, police often prevent Dalits from entering police stations, refuse the registration of cases by Dalits and regularly resort to the practice of torture against Dalits with impunity.
9. There exists a gross negligence of the state machinery, especially the police, resulting in impunity. This is indicated in the response of the State Police Department, Andhra Pradesh to the query raised by the Chief Justice of the High Court of AP on the Public Interest Litigation filed by Sakshi Human Rights Watch³ admitted to 14,452 cases that were delayed in filing charge sheet beyond the stipulated period of 30 days as per the SC/ST POA Act. This results in insurmountable impunity resulting in denial of justice to the victims of violence.
10. Dalit women face double discrimination on the basis of caste and gender in all spheres of life and are subjected to gross violations of their physical integrity, including sexual abuse by dominant castes with impunity; are socially excluded and economically exploited.
11. The practice of '*divine prostitution*' (*Jogini/Devadasi systems*) continues even today despite laws enacted to prohibit this menace affecting the Dalit Women.
12. There are over 1.2 million people, engaged in manual scavenging and of these over 95% are Dalits, who are compelled to undertake this inhuman and degrading task under the garb of 'traditional occupation'. The practice of manual scavenging is illegal and unconstitutional and a blot on the face of humanity – But ... it still continues.
13. In disaster relief programmes, like the one experienced in Tsunami, there is discrimination.
14. Many violent incidents are reported from across the country when Dalits try to exercise their legitimate and rightful claim to representation, participation or leadership in the electoral process and so Dalits do not have fair access to exercise their franchise nor access political leadership.
15. Untouchability in schools has contributed to drop-out and illiteracy levels for Dalit children far beyond those of the general population, with the 'literacy gap' continuing between Dalits and non-Dalits and literacy rates for Dalit women

¹ Published as *Untouchability in Rural India* by Shah, Mander, Thorat, Deshpande and Baviskar, Sage Publications, India, 2006

² Derived from figures provided in Crime in India 2005, <http://ncrb.nic.in/crime2005/home.htm> and <http://ncrb.nic.in/crime2005/cii-2005/CHAP7.pdf>

³ Writ Petition WP No. 1019 of 2006, High Court of Andhra Pradesh, filed by Sakshi Human Rights Watch, Response by the State Police Department in Annexure R-2/1

remaining as low as 37.8% in rural India⁴; Teachers have been found to maintain discriminatory attitudes and practices that underlie caste relations in society.

16. Half of India's Dalit children are undernourished, 21% are 'severely underweight', and 12% die before their 5th birthday⁵.
17. The Government of India has a potentially powerful mechanism for the economic empowerment of Dalits known as Special Component Plan (SCP). The spirit of the Plan has been consistently thwarted in its application and implementation by most of the departments at the Central and States level, by diverting on an average Euro 2,000 million every year⁶ during the past five-year plan period.
18. Labour market discrimination - Like other sectors Dalits also face discrimination in the labour market. This is clearly exhibited in⁷ exclusion of Dalits from employment by 'higher caste'; exclusion of 'low caste' from certain types of jobs/work due to notion of pollution and purity associated with Untouchability; Selective inclusion in employment but with unequal treatment reflected (i) in lower wages (lower than wages given to other labourer), (ii) in terms and conditions with respect to hours of work, (iii) differential behaviour towards low caste labourer /worker in work place, and (iv) compulsive and forced work governed by traditional caste related obligations
19. There also exists economic exclusion and discrimination. This is evident through differential pricing in sale, purchase and hiring activities ranging from raw materials to finished goods⁸. The nature and forms of land market discrimination is evident in the form of - denial in sale and purchase of land for agriculture and non agricultural use, which include land for agricultural production, business location and residential purposes.
20. To the Dalits in India and outside, it is extremely disheartening to realise that the Indian Government's official stand is still the traditional defence of stating an obsolete theoretical position that 'caste' constitutes a 'social group' and 'class' and not a race. National Human Rights Commission differed from the stand of the government in the WCAR maintaining 'that it is not the nomenclature of the form of discrimination that should engage our attention, but the fact of its persistence'.⁹
21. The Government of India has been arguing with CERD as well as with all other UN bodies and international institutions that 'Caste is not Race' and does not fall within the ambit of racism, racial discrimination or related intolerance; that Constitutional and Legislative Mechanisms are adequately provided for and these are adequate to protect the Dalits from discrimination and to promote their socio-economic advancement. The government argues that it does not need external mechanism and that change takes time and is a slow process and they are doing all they can to solve the problem.

⁴ 2001 Census of India

⁵ National Family Health Survey, commissioned by the Indian Ministry of Health and Family Welfare, 1998-99 (last survey available), p11, <http://www.nfhsindia.org/data/india/indch6.pdf>

⁶ Calculated from Expenditure Budget Vol.II (Notes on demands for Grants), Union Budget 2006-07; Statement No. 21, Expenditure Budget Vol. I, Union Budget 2006-07; Outcome Budget 2006-07- for various Ministries of Central Government

⁷ Sukhadeo Thorat, M. Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006.

⁸ *ibid*

⁹ Report on Prevention of Atrocities against Scheduled Castes, *National Human Rights Commission*, New Delhi, 2004 p.(vii).

22. India actively participated in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban from 31 August-8 September 2001 but despite the massive uproar from the Dalit peoples and movements has declined to address the issue of caste based discrimination.
23. While presenting these 15th to 19th round of reports in 2006 also India sternly refuses to acknowledge the discrimination due to the caste system that is still going on in its report to the UN CERD, giving lip service to prevent the caste based discrimination and the resulting backlash violence taking place when these practices are challenged.
24. 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. Protecting the rights of marginalized and vulnerable persons is probably the most overlooked and disregarded area of human rights in India.
25. We would like to bring to the kind notice of the members of the UN CERD that even the Prime Minister Dr. Manmohan Singh at an international conference on Dalits and Minorities in New Delhi on the 27 November 2006¹⁰, Prof Singh drew the parallel on social and caste injustices saying it was modern India's failure that millions of Dalits were still fighting prejudice. "Even after 60 years of constitutional and legal protection and support, there is still social discrimination against Dalits in many parts of our country. Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was apartheid."
26. We appeal to those who have drafted India's 15th-19th report to CERD, to do away with semantics and address the massive problem of discrimination and exclusion and the accompanying backlash of violence against Dalits and the impunity that is being granted to the perpetrators and other negligent duty bearers in this country. It is in the interest of the whole nation that this issue gets addressed.
27. In an attempt to address this squarely, NCDHR, IDSN and all the collaborating organizations have collected and collated this data in the following pages to bring before the nation as well as present this to the honorable members of the UN CERD to examine and bring a change to the lives of not only Dalits but to the whole of the population in India.

Drawing on the resilient inspiration of those Dalits and progressive people who have sacrificed their lives to bring change and with a hope that truth will prevail.

¹⁰ Guardian, UK, 28 December 2006 – reporting the Prime Minister of India's inaugural address on the occasion of the International Conference on Dalits and Minorities in New Delhi, 27-28 December, 2006.

Summary

1. The Constitution of India guarantees basic human rights, as Fundamental Rights incorporated in Part III. These rights are inviolable rights of the citizens against the State. Any law or executive action depriving individual citizens of their freedom could be challenged in the Supreme Court or High Courts. The Constitution of India also prohibits any forms of discrimination and there are progressive laws and human rights redressal agencies but these bodies and laws at times are not effectively implemented. **The mindset of the supporters of untouchability has yet to be changed. Laws are blatantly violated; perpetrators of crimes against Dalits are often hand in glove with duty-bearers resulting in great impunity.**
2. In the matter of social relationships, discrimination takes the form of barriers against bathing, eating, drinking, worshipping, and having access to common properties. **It puts a ban on all common cycles of participation. In the use of public facilities, the spirit of discrimination manifest itself in the exclusion of the Dalits from schools, wells, temples, means of conveyance and access to land, water and other livelihood resources. Public administration is also deeply drenched in the spirit of discrimination against Dalits. It has affected Law Courts, Governments departments, Banks and particularly the Police. Discrimination against Dalits in the matter of securing land, credit, jobs etc. exist in the most rampant form.**

Who Are Dalits?

3. India's population, as on 1 March 2001 stood at 1,028 million (532.1 million males and 496.4 million females). **Out of them, India has a population of 167.2 million people (2001 census) who are termed as Scheduled Castes (SCs) are erstwhile Untouchable communities, presently called as Dalits by most movements and political bodies in the country.** In addition, there is a sizeable population among the Muslims and Christians (as per a rough estimate there are 42 million Muslim Dalits and Christian Dalits who count about 16 million) people in India were till a few years ago known and publicly identified as "Untouchables", are not treated as Scheduled Castes officially and are denied Constitutional safeguards as available to others who are treated as Scheduled Castes.
4. The caste system is the social organization of Hindus. The unequal and hierarchical assignment of rights under caste system has its basis on the specific notion of "human-hood" which is different and unique. In this particular order of hierarchy, castes are placed at the top. Dalits being considered outcastes and termed as '*Untouchables*' are at the bottom are denied of all rights because they are treated as "sub-human beings or lesser human beings" considered unworthy of any rights. The religious and philosophical sanctions and societal mechanism of social ostracism against Dalits 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 *begar* (free labour), bonded labour or child labour, destruction of assets belonging to Dalits and prevention of their right to free exercise of franchise.

Rationale and Scope of the Special Provisions for Dalits

5. In addition to the general frame of justice and equality, the Constitution also recognized the need for distinct and special provisions related to the protection of Dalit communities (scheduled castes).¹¹ "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

¹¹ The Constitution of India recognises Dalit communities as Scheduled Castes

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 (Dalits) and STs (Adivasi)”¹².

CERD and its Position on Caste Based Discrimination

6. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in December 1965, defined the term ‘Racial Discrimination’ as “any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic which has the purpose or effects of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social and cultural or any other field of public life.”

7. In 1996 CERD made its first reference to caste discrimination, ‘untouchability’ and Scheduled Caste under the rubric of Descent: “The Committee states that the term ‘Descent’ mentioned in Article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the Scheduled Castes and the Scheduled Tribes fall within the scope of this Convention”. The Committee is particularly concerned at reports that people belonging to the scheduled castes and tribes are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in school, in violation of Article 5 (f) of the Convention.”

8. Needless to say, the Indian Government has till date not permitted the Special Rapporteur to visit India. When the Indian Government submitted its first report to the CEDAW Committee in 2000, the Committee raised many questions on the plight of Dalit women.

India’s Position in CERD and Other UN Bodies on Caste Based Discrimination

9. The Government of India has been arguing to the UN human rights bodies, including the CERD, Sub Commission on Promotion and Protection of Human Rights, CEDAW and WCAR, that caste discrimination is not an issue relevant to the evaluation of its performance *viz-a-viz* the human rights conventions to which it is party. This argument is based on three main premises:

27.1 Caste is not Race: The term ‘caste’ does not denote race or racial grouping and even the term ‘descent’ in Article 1 of the CERD Convention refers solely to racial descent. Therefore, does not fall within the ambit of racism, racial discrimination or related intolerance.

27.2 Constitutional and Legislative Mechanisms are adequately been provided for: Numerous constitutional provisions and laws have been enacted and government schemes exist already within the country to promote the welfare, rights and socio-economic conditions of the Scheduled Castes. These are adequate to protect the Dalits from discrimination and to promote their socio-economic advancement

27.3 Use Internal Mechanisms, not External ones: There is no need to utilize international human rights mechanisms and bodies to strengthen these laws. The internal Mechanisms are sufficient.

27.4 Change takes Time: Change is a slow process and respective countries are doing all they can to solve the problem.

National Human Rights Commission (NHRC)

10. 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 discrimination that should engage our attention, but the fact of its persistence’¹³.

¹² *National Commission for Schedules Castes and Scheduled Tribes, Sixth Report (1999-2000 & 2000-2001)*, New Delhi. p.8

¹³ Report on Prevention of Atrocities against Scheduled Castes, *National Human Rights Commission*, New Delhi, 2004 p.(vii).

The Dalit Movement

11. Emergence of powerful Dalit movement during 1920-1950 (The Dalit Panther Movement, the Dalit Mahasabha and the Dalit Sangharsh Samithi).
12. The Dalit movement had a tremendous effect on framing of Indian Constitution as it is reflected in Constituent Assembly debates.
13. In 1998, a 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.

Human Rights Council and Special Rapporteur's on Work and Descent Based Discrimination

14. It was on 19 April 2005 that the erstwhile UN Commission on Human Rights (UNCHR) adopted a resolution to appoint Mr. Yozo Yokota and Ms. Chin-Sung Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent, on the basis of the three working papers submitted to the Sub-Commission on this topic (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31) Ever since their appointment, Mr. Yozo Yokota and Ms. Chin Sung Chung have submitted a preliminary report and also the progress report to the Sub-Commission on Promotion and Protection of Human Rights in 2005 and 2006 respectively.

ARTICLE 2 of ICERD

15. This article focuses on a policy/measure to eliminate racial discrimination in all its forms and promoting understanding among all races and, to this end by all appropriate means and without delay to ensure adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

Measures of Indian Government in accordance with Article 2

16. The Constituent Assembly debates recognized that a section of people in Indian Society had been denied certain basic rights since ancient times and had therefore remained economically, socially and educationally backward. This understanding is clearly reflected in the Constitution itself. Social safeguards are contained in Article 14, 15, 17, 23, 24 and 25(2)(b) of the constitution. As per Article 17, untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability has been made an offence punishable in accordance with the law." Two important legislations have been enacted to give effect to contents of this article. The Protection of Civil Rights Act, 1955 has been enacted with the objective of providing punishment for preaching and practice of untouchability, in the enforcement of any disability arising there from and for matters connected therewith. Article 25(2)(b) provides that Hindu religious Institutions of a public character shall be open to all classes and sections of Hindus. The term "Hindu" includes persons professing Sikh, Jain, and Buddhist religions. This provision strikes against the opinion held by some sects of Hindus that members belonging to Scheduled Castes / Scheduled Tribes have no right to enter the temples. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 seeks to prevent the commission of offences against the members of Scheduled Castes and Scheduled Tribes. Article 23 prohibits traffic in human beings and '*begar (free labour)*' and forced labour in any form and contravention of this provision has been made an offence punishable in accordance with law. In pursuance of this Article, Bonded Labour System (Abolition) Act, 1976 has been enacted and a special programme for identification of bonded labourers, their liberation and rehabilitation has been in existence to operationalise its provisions. While this Act does not specifically mention Scheduled Castes and Scheduled Tribes, it is of special significance for them because majority of the bonded labour belongs to Scheduled Castes and Scheduled Tribes. Article 24 provides that no child below

the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. There is a Law to prevent child labour practices- The Child Labour (Prohibition and Regulation) Act, 1986. The practice of manual scavenging has been prohibited by law under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 but the actual practice of cleaning/removal of human shit with hands still exists.

Civil Disabilities and Discrimination against Dalits: Present Situation

17. Dalits have been worst sufferers in the exploitative social order. Segregation and exploitation have been their fate. They are born in servitude and die in penury. They continue to be peripheral and marginal incapable to claim equality with the privileged. Society at large remains exploitative, unfair and unjust to them.

18. The National Human Rights Commission concerned with the growing atrocities on Dalit had this to comment: "...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"¹⁴.

19. Violence or atrocities against Dalit women is systemic and structural, occurring at three levels. At one level, violence is an inherent part of the caste system whereby it is utilised to reinforce caste norms and Dalit women are specifically *targeted* due to their 'low' caste-class-gender identity and status. That is, their identity is often known to the perpetrators of the violence, whether it be spontaneous or planned criminal acts. Their identity likewise is factored into the perpetrators' calculations of the possibility of a successful act of violence taking place with impunity. Violence acts as a crucial social mechanism to maintain Dalit women's subordinate position to particularly dominant caste men.¹⁵ Dominant caste perceptions of Dalit women as 'inferior' and 'untouchable', as sexually available, as inherently criminal in nature, and as available for all forms of violence, especially sexual violence, contribute to their specific vulnerability to violence.¹⁶

20. The only caste-and-gender disaggregated crime reported by the Government of India is rape, with 1,089 cases reported by Dalit women in 2003. Notably, the National Human Rights Commission has stated that "the number of rapes against scheduled caste women shows an increasing trend. 'Upper' caste militias use mass rape as a weapon to break morale of the entire community. Rape is used as a political instrument, and these women become the targets for anger and wrath of the dominant castes."¹⁷ Moreover, in some villages across India today, dominant castes continue to perceive their 'right to rape' Dalit women. For example, on the day of her marriage, Keerthana was warned by some of the Dalit girls in her husband's village in Coimbatore district in Tamil Nadu that Rakkamuthu Gounder, son of the Panchayat President, would come to her home at any time. At the time, she did not take their words seriously, as she was unaware of his 'right to rape' of any newly married Dalit woman in the village. However, on 5 November 2002, two weeks after her marriage, Rakkamuthu came to Keerthana's home while her husband was away for night shift work. He straight away came up to her and touched her body. She reacted by biting his hand and managed to escape into her house and bolt the door. When her in-laws told Rakkamuthu, "Don't bother her; if she doesn't like it, leave her alone", he became furious and shouted at them, "If she doesn't like it, should I leave her alone? I tell you, in

¹⁴ Report on Prevention of Atrocities Against Scheduled Castes, *National Human Rights Commission*, , 2004, New Delhi, p.(viii)

¹⁵ Though it should be noted that Dalit women also face violence from dominant caste women, who benefit from, and hence are complicit in, maintaining the power of their caste, and hence also participate in perpetuating caste inequalities and violence against Dalit women.

¹⁶ See Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India, Volume I: Study Report*, Chennai: NCDHR, NFDW & IDEAS, 2006.

¹⁷ National Human Rights Commission, *Report on Prevention of Atrocities against Scheduled Castes: Policy and Performance, Suggested Interventions and Initiatives for NHRC*, New Delhi: National Human Rights Commission, 2004, p.161.

this village who has not slept with me? And if she doesn't want, do you think she should be left alone? You dare to say this to me?" He then beat up Keerthana's in-laws, though Keerthana did not open the door all night and so escaped being sexually assaulted. She then left the village in order to avoid further violence, but did not file a police complaint, as she was scared of what Rakkamuthu would do to her marital family if she did so.¹⁸

Forced Occupation

Devadasi/Jogini ('Divine' Prostitution)

21. Tradition of Divine prostitution wherein a woman is dedicated to a deity body as a sacred body has been a part of customary practice in India for a long time. The practice continues even today due to the extreme poverty of Dalits and other weaker sections of the society who under the compulsion of circumstances and exploitative mechanism allow this practice. Governments of Andhra Pradesh, Karnataka, and Maharashtra enacted laws to prohibit this menace and have undertaken rehabilitation programmes for welfare of liberated Devadasis. Implementation of law as well as rehabilitation of liberated Devadasis in several states miserably failed.

Manual Scavenging

22. The inhuman practice of manual removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements in the basket to the dumping site is still prevalent in most part of India even to day. There are over 1.2 million engaged in manual scavenging and of these over 95% are Dalits, who are compelled to undertake this inhuman and degrading task under the garb of 'traditional occupation'. The practice of manual scavenging is illegal and unconstitutional and a blot on the face of humanity. It is a practice that violates fundamental rights enshrined under Article 14 (right to equality), 17(right against untouchability), 21 (right to life and personal liberty) and 23 (right against exploitation) of Indian Constitution. The Parliament enacted The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 to prohibit manual scavenging. The Act has so far not been properly implemented because of the apathy and sinister design of the governments at Centre and States. The National Commission for Safai Karmachari (NCSK) Report noted that manual scavengers are being employed in the military engineering services and the Railways.¹⁹

Bonded and Child Labour

23. Bonded labour in India, a manifestation of caste and descent-based discrimination is abolished 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 belong to Scheduled Castes and Scheduled Tribes"²⁰.

ARTICLE 3 of ICERD

24. Article 3 is an expression of international solidarity of the States Parties to the Convention with people living under racial segregation and *apartheid*.

25. 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

¹⁸ Case extract from Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India, Volume I: Study Report*, Chennai: NCDHR, NFDW & IDEAS, 2006. Note that the names of the Dalit woman and perpetrator have been changed to protect her identity.

¹⁹ *Report of the NCSK for the year 1997-98 Dated 31-1-2000*

²⁰ Report of Prevention of Atrocities against SCs and STs, *National Human Rights Commission*, New Delhi, 2004, p.10.

the waste can be dumped. Residential segregation has its impact on the daily life, including such things as children playing together.

26. 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.

27. The Common Property Resources (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 majority of them are landless, and it is these CPRs that provide them with an alternative livelihood support and a subsistence base. 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 milky animals.

ARTICLE 4 of ICERD

28. Article 4 is of paramount importance for the implementation of the Convention, as it contains imperative provisions obliging States Parties to adopt legislation to criminalize and punish the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence against any race or group of persons of another colour or ethnic origin, and assistance in such activities.

29. The State Police Department, Andhra Pradesh in response to the query raised by the Chief Justice of the High Court of AP on the Public Interest Litigation filed by Sakshi Human Rights Watch²¹ admitted and gave a list of 14,452 cases that were delayed in filing charge sheet beyond the stipulated period of 30 days as per the SC/ST POA Act. They have admitted to delays in getting approval, legal opinion and superior's order; delayed due to 'more Witnesses' in the cases, due to delay in obtaining caste certificates and delay in the collection of Documents & evidence and so on. These facts are yet another admission to the gross negligence of the state machinery, especially the police, in causing the impunity.

30. This is not only applicable to AP but all the states in India in general have shown no keenness or enthusiasm to implement various provisions of the Special Legislations. The impression thus conveyed is that either the problem of untouchability does not exist or its incidence is so negligible that it is not worthy of much attention. This clearly shows the inability or perhaps the unwillingness of the State government to come to grips with the practice of untouchability, particularly in its most suitable forms at various levels in society²². The declining number of cases under Protection of Civil Rights Act does not represent a marked reduction in the practice of untouchability. Rather, it is a reflection on the ineffectiveness of the law- a conclusion, which tallies with the view, expressed by the National Commission for Scheduled Castes/ Scheduled Tribes in its Report²³.

ARTICLE 5 of ICERD

31. This article contains a long list of rights and freedoms in the enjoyment of which racial discrimination shall be prohibited and eliminated. The States Parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in Article 5 of the Convention one by one.

²¹ Writ Petition WP No. 1019 of 2006, High Court of Andhra Pradesh, filed by Sakshi Human Rights Watch, Response by the State Police Department in Annexure R-2/1

²² *ibid*

²³ Sixth Report, p 207

Political Participation viz a viz the Denial to Participate Freely

27.5 The granting of reservations to Dalits within the new Panchayats (local bodies) established by the 73rd constitutional amendment in 1993 is one of the most significant changes introduced in recent decades. Apart from seats for Dalits in every Panchayat based on their population, the posts of Sarpanch (Village head) together with 1/3 of the seats for Dalit women have been reserved. These provisions have the potential of throwing up a new leadership among Dalits who can play a seminal role in participation and decision-making in the new Panchayats. Untouchability continues to be practiced in not allowing elected 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, 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.

32. Many violent incidents are reported from across the country when Dalits try to exercise their legitimate and rightful claim to representation, participation or leadership. For almost a decade from 1996, the government has not been able to hold Panchayat elections in four Panchayats of Pappappatti, Nattarmangalam, Keeripatti in Madurai and Kottakkachiyendal of Virudhunagar districts in Tamil Nadu because the dominant caste communities prevented any Dalit to contest, saying they cannot allow any Dalit to occupy a position of respect. The Dalit woman Sarpanch of Rajhana panchayat in Rajasthan accused three police officials of raping her in the police station, when she went to complain about corporal punishment in the schools on 22nd September 2005.

Land Rights

33. Denial of land rights to Dalits is directly linked to caste system and its pernicious influence resulting into gross human rights violations of worst kinds in multiple forms. There is also a nexus between being lower caste and landless.²⁴ “The implementation of land reform law has 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”²⁵

Right to Education for Dalit Children

34. The enrolment of Dalit children has increased over the years, revealing the increased interest in education and mobility. “Enrolment of SC and ST boys and girls at primary stage has reached an astonishing 92% during 1999-2000”.²⁶ But the real problem is an alarming drop out rate among Dalit students. In many habitations the school is situated in localities inhabited by dominant castes that are hostile to students belonging to lower castes and minority groups.²⁷ 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.²⁸

Denial of Access to Basic Services

35. The National Family Health Survey (NFHS) - a government of India agency data for 1998-99

²⁴ Smita Narula, “Broken People-Caste Violence against India’s Untouchables,” *Human Rights Watch*, 1999, p.27

²⁵ Report on Prevention of atrocities against scheduled castes, *NHRC*, 2004, p.85

²⁶ *Report, National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1999-2000 & 2000-2001, pp. 151-183

²⁷ Aruna, R., “Learn Thoroughly: Primary Schooling in Tamil Nadu”, *Economic and Political Weekly*, pp. 1011-14, May 1999.

²⁸ B.K. Anitha, *Village, Caste and Education*, Rawat Publications, Jaipur, 2000.

revealed wide gap between SC and others. The infant (83) and child mortality (39) among the Dalits is higher than others, 61 and 22 respectively. In 1998-99 at least 56% of Dalit 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 Dalits is closely linked with poverty, low educational status and also discrimination in access to health services.

Caste Discrimination and Food Security Programmes

36. The right to food is considered a fundamental human right under Indian Constitution and International human rights instrument. But when it comes to the dalit children it is severely violated in different forms and ways. Considering high drop out rate in primary education the Supreme Court of India directed the Union government to provide Mid Day Meals Scheme (MMS) so students may be retained and the right to education for all can be realised. Where a Dalit cook has been hired, dominant caste parents then begin sending their children to school with lunches packed at home, or require their children to come home for lunch, in any case forbidding their children to eat food prepared by the Dalit cook. In the third stage, dominant caste parents or community members pressure the local administration to dismiss the Dalit cook, on any pretext, and hire a dominant caste cook instead.

Budgetary Allocation for SCs: Special Component Plan

37. The Government of India does have a potentially powerful mechanism for the economic empowerment of Dalits known as Special Component Plan (SCP). SCP, in the words of the Indian Planning Commission is "a policy instrument designed to ensure the fulfilment of constitutional guarantees and entitlements enjoined for the Scheduled Caste communities." The spirit of the Plan has been consistently thwarted in its application and implementation by most of the departments at the Central and States level, denying Dalits all over the country hundreds and hundreds of millions of Rupees, which are legitimately due to them, year after year. Government agencies like the Controller and Auditor General (CAG) and the SC/ST National and State Commissions, not to speak of dalit movements and Policy research organizations, have continually deplored the neglect of SCP by both the Central ministries as well as various States.

Labour Market

38. Like other sectors there is a rampant discrimination against Dalits in the labour market. The caste based labour market discrimination is conceived as²⁹:

37.1 Exclusion of Dalits from employment by 'higher caste'.

37.2 Exclusion of 'low caste' from certain types of jobs/work due to notion of pollution and purity associated with Untouchability.

37.3 Selective inclusion in employment but with unequal treatment reflected

(i) in lower wages (lower than wages given to other labourer)

(ii) in terms and conditions with respect to hours of works and other terms, and

(iii) differential behaviour towards low caste labourer /worker in work place Compulsive and forced work governed by traditional caste related obligations

Economic Exclusion and Discrimination

39. The economic exclusion is through pricing in sale, purchase and hiring activities of ranging from raw materials to finished goods³⁰. The nature and forms of land market discrimination is evident in the form of

a. denial in sale and purchase of land for agriculture and non agricultural use, which include land for agricultural production, business location and residential house

²⁹ Sukhadeo Thorat, M. Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006.

³⁰ *ibid*

- b. denial in renting of land for agricultural use
- c. denial of residential house on rent and
- d. in the event of transaction in sale and purchase of agricultural land or renting of land for agricultural use or residential house discrimination may be experienced in price paid and received by the low caste group in the exchange.

No Serious Effort for Corporate Social Responsibility

40. Unfortunately, social justice or “compensatory discrimination” programmes in India have gotten stereotyped around the theme of “reservation” in the public sector. Among these two are important: first that social justice programme are more or less equivalent to reservation and that reservation is limited to employment in the public sector as well as seats in educational institutions. Second, even more debilitating, is the pervasive idea that reservation is in some way at odds with “merit”, that we have to give up on or “relax” certain standards of merit in order to do social justice for Dalit community.

Right to Work

41. Barely four to six months after the launch of the landmark employment guarantee scheme, a nationwide study reveals that only 30% of those registering for the scheme have received job cards. Discrimination on the basis of caste, community, gender, disability and a general lack of awareness are hampering the implementation of the National Rural Employment Guarantee Scheme (NREGS), an 11-state study by the civil society organization Participatory Research in Asia (PRIA) has shown. A field survey by PRIA and its partner organizations in Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, Gujarat, Jharkhand, Kerala, Madhya Pradesh, Rajasthan, Uttar Pradesh and Uttaranchal revealed that while there was large-scale registration for jobs, less than 30% got the crucial job cards. Another major problem was low public awareness of the scheme. The survey also found village heads guilty of misusing their power, with people with ties to the *sarpanch* (village headman), *panchayats* secretary and officials appearing to have benefited more than villagers.³¹

Right to Housing

42. Dalits are being discriminated in the housing market. It is mainly related to the restrictions faced by Dalits in purchase of land for construction of residential house in predominantly high caste locality, in taking house on rent in high caste locality and self restrictions imposed by high caste in buying of land in the low caste locality for construction of houses to live.

ARTICLE 6 of ICERD

43. Article 6 of ICERD requires “effective protection and remedies” from the state parties.

Accountability of State

44. The traditionally oppressed - overwhelming majority of which are drawn from the lowest rung of the traditional social hierarchy continue to suffer on many counts. They are today the inequitable victims of the manifest professional inefficiency of the State apparatus as well as the social bias built within the democratic institutions. They are also the inequitable victims of its petty corruption and brutalised excesses, both in the urban areas as well as in the rural areas. They also find the process of legal redress against violation of their democratic rights or executive’s excesses too risky (often involving punitive terrorisation by hired musclemen in league with corrupt police men). They find the fragmented party system, and the middle class led electoral process too weak to provide political defence against the social bias of the upper -caste dominated democratic institutions.³²

³¹ See The Hindu, New Delhi, June 2, 2006, and The Hindustan Times, New Delhi, June 2, 2006

³² Aswini K. Ray, “Civil Rights Movements and Social Struggle in India,” p. 1203, *Economic and Political Weekly*, July 12, 1986.

Criminal Justice Administration System: Gaps in Implementation of Legal Remedy

45. “In theory, from the very moment an atrocity against a Dalit 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. The Seventh NCSC/ST 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%)³³ 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 less than 1 percent.

Impunity – basis in both Society at large and the State

46. 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. Protecting the rights of marginalized and vulnerable persons is probably the most overlooked and disregarded area of human rights in India. Dalits are generally marginalized by society, making them easy to ignore. A rights based approach requires development action from the international community and national governments to correct injustice and protect human rights.

ARTICLE 7 of ICERD

Under this article the States Parties are obliged to adopt immediate and effective measures in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding racial or ethnical groups.

A. Education and Teaching - Dalits and Curriculum

47. Official curriculum barely acknowledges the existence of Dalit and Adivasis communities, despite the fact that they form a significant proportion of the population especially at the district and local level in many states in the country (Kumar, 1989). On the other hand, these communities, when represented in the textbook, are portrayed largely in subservient roles in accordance with what is perceived as their traditionally low position in the social hierarchy (ibid; Nambissan, 1996 and 2000). Recent writings of Dalit intellectuals have also emphasized that the content of school knowledge excludes the culture and experiences of lower castes and Dalits and hence is alien to them. Referring to the richness and diversity of languages and experiences among producing communities by virtue of their being structured and rooted in the production process, Ilaiah observes that the linguistic skills or knowledge of the lower castes have no place in the education system (1996:56).³⁴

Cultural Barriers in Access to Education

48. Dalit families usually live in spatially segregated clusters or habitations that are located at a distance from dominant caste habitations within the larger village set-up. This residential pattern has important implications for physical and social access to education, implications which are usually ignored in favour of other considerations when attempts are made to meet qualitative targets vis-à-vis school expansion. Given the fact that norms of purity and pollution still govern social norms and relations in rural areas, it becomes essential to understand whether schools are socially accessible to Dalit children when the schools are located at traditionally prescribed distances from Dalit habitations. In many habitations the school is situated in localities inhabited by dominant castes, who are not only hostile to students belonging to lower castes or minority groups but also prevent their having physical access to the school. Members of the high-ranked caste groups and the dominant actors of the village often see education for the working and labouring castes as both a waste and a threat. The

³³ *The NCSCST – Seventh Report (2001-2002)* p.128

³⁴ Geetha B Nambissan, “Dealing with Deprivation”, Seminar, Issue 493, 2000

popular perception is that members of castes ranked low in the caste hierarchy are incapable of being educated, and, if educated, pose a threat to village hierarchies and power relations.

B. Culture - Alienation through Cultural Domination

49. The dominant cultural values and practices have played a major role in not only subjugating Dalits but also at the same time in alienating Dalits from the so-called mainstream of a civilised socio, cultural, economic and political set up. The alienation has been to such an extent that even granting them human-hood so as to enjoy certain rights has been out-rightly denied. The cultural values and practices have stemmed from the religious values and code of conduct as enshrined in Shastras. The Dalits have been forced to adopt the culture and observe the religious rites of the Hindu community. They are also made to celebrate the Hindu festivals, but they derive no benefits from this. On the contrary they are segregated and shunned because their physical contact is held by Hindus to cause pollution. There is therefore an interdict on all social intercourse with them except for unavoidable purposes. They live on the outskirts of a village and not in the midst of it. Every village has its Dalit quarters, they are attached to the village but are not a part of the village. Segregated from the rest of the Hindu society they are bound down to a code of behaviour which is appropriate to a servile state. According to this code, an Untouchable may not do anything which raises him/her above their appointed station in life. As per the prescribed low status they are neither allowed to own land nor have an independent source of livelihood and that is how they have to be dependent on others to eke out an existence for themselves.

C. Information, The Role of State, Civil Society and Media

50. A modern nation state is expected to function in a non-partisan and inclusive way. The citizens should have participation in decision-making and governance. The sense of alienation as experienced by Dalits and other marginalised communities reflect a stratified society in which caste, wealth/money and easy access to political power by the dominant caste and communities always decide the fate of the nation. The public institutions have failed to deliver goods despite their noble and tall claims. Basic services do not work well, and do not fill the disadvantaged's need for health, sanitation, water and education.

Glimpses of Atrocities on Dalits

ANDHRA PRADESH

Three Dalits were attacked and severely beaten and one of them was murdered on 17.05.06. Even after 7 months no compensation has been paid by the State to the victim's family. The case is still under investigation

A Dalit woman was brutally beaten up and locked up for two days on 17.10.04 for not casting vote in favour of the accused. Although the accused are arrested and Charge sheet filed, no compensation has been given to the victim and the case is pending in special court.

Acid was thrown on the face of a Dalit woman by her employer when she demanded for wages, even after a year the State has failed to file the Charge sheet and arrest the main accused. Only the victim's son has been rehabilitated with a job.

Dalit woman was stripped naked and beaten severely on 14.1.05 and the State did not provide justice even after 12 months. 15 Kgs of rice was given to her as immediate relief. Charge sheet has been filed and the case is pending in Special Court.

A Dalit woman lecturer was mentally tortured and harassed at work place since 2000. Despite her complaints, she is denied justice, but transferred to another College and the case is pending.

A Dalit activist was brutally murdered. The accused were arrested and later released on bail. No compensation has been given to the family. Charge Sheet is filed in the court and the case is pending.

5-year-old Dalit girl was gang raped On 04/07/05. The accused were arrested and later released on bail. She was given Rs. 50,000/- as compensation. The case is pending in the court.

BIHAR

On 15.12.04, Dalit girl, Rekha Manji, aged about 13 years was raped and killed. The family of the victim was pressurised by the State to withdraw the case.

Buchi Devi, a Dalit woman activist in village Devraj was kidnapped and murdered on 11.03.05. No charge sheet has been filed and one of the accused is out on bail. No compensation has been given to the victim's family.

Manju Devi, a Dalit woman was gang raped and killed on 17th of August 04 and her family members threatened to be eliminated if the murder case was not withdrawn. Accused persons have also filed a counter case against the husband of the deceased.

MAHARASHTRA

On 29th September 2006, a mother and her seventeen-year-old daughter were paraded naked, raped and killed. Two boys of the family were also brutally murdered, in Khairlanji near Nagpur. The whole village conspired to keep the incident unknown to the media and threatened Mr. Bhayyalal, the father and lone survivor and also a witness from revealing the incident for almost a month. The cause for the atrocity was the persistence with which the Dalit family refused to part with their two acre agriculture

land and had filed a case against the dominant caste member who had illegally encroached the land.

PUNJAB

Amar kaur, a Dalit woman sarpanch on 17.04.04 was assaulted in public and threatened, when she tried to auction the piece of land in the presence of panchyat officer, secretary, and some of the villagers. No FIR has been registered nor are the perpetrators booked for the atrocity.

RAJASTHAN

On 5 may 2004; Dalits were threatened and physically assaulted by the upper caste to vote for them during the elections. On 11 May 04, the Jats attacked Dalits with weapons, 12 Dalits were injured. No arrests have been made and the case is pending.

On October 27,2003, Bhanwar Lal was denied water from the hand pump and was physically assaulted. His father and family members were threatened with a fine of Rs. 21,000 if they did not remove the idol of Lord Hanuman from their premises. The police did nothing other then filing the FIR. The protest petition is also filed. The case is pending before the court.

UTTAR PRADESH

On 11.08.04 night, Ramakanti was threatened, raped and robbed of Rs.3000 by the accused Ganga Ram. The State wilfully neglected the investigation at the initial stages. A compensation of RS. 25,000 was given to the victim, the accused has been arrested but no trial has taken place.

On 27-28.3.2004, Manchandra, a daily wage labourer, while sleeping with his family members was looted of his belongings and his house was destroyed. When his brother and nephew tried to intervene, the accused fired at his brother who died on the spot. The accused Saheb Singh was arrested. After three months the victims' family got Rs. 1, 50,000/- as compensation.

On 25.3.06, Brahmin boys fired at Awadhesh and the bullets pierced his eyes. The doctors declared his eyes badly damaged and had to be taken out. The accused was arrested and released on bail. The victim did not receive compensation even after 9 months.

Background

General

51. The confluence of civilization, culture, language and religions presents a unique history of the land and its people in India. The cosmopolitanism that grew out of syncretism got reflected in interactions of people with different cultural and religious traditions over a long period of time in the history of India. The people having faith in almost all the religions (Hinduism, Buddhism, Jainism, Sikhism, Islam, Christianity, Zoroastrianism, Judaism) are found in this country and have left their deep imprints on the cultural and religious traditions in the country. Diverse ethnic background characterizes the people's ancestry and the impact of racial elements of almost all kinds has made people in this country of mixed racial stock. However, the obscurantism and reactionary elements in the cultural and religious tradition also exist simultaneously and have played a major role in deciding the fate of a large section of Indian society which cannot be brushed aside as a classic case of aberration. This country is home to 4635 (Four Thousand Three Hundred and sixty Five) communities³⁵. The anomalies of the so-called great traditions and the little traditions in the orthogenetic and cultural-religious histories bear a testimony to the fact that greatness of some and lowliness of many is legitimized in the name of unity in diversity.

52. India's population, as on 1 March 2001 stood at 1,028 million (532.1 million males and 496.4 million females). India is a multi-religious and multi-ethnic society. Where the percentage of different religious groups comprised of Hindu 80.5%, Muslim 13.4%, Christian 2.3%, Sikh 1.9%, other 1.8%, unspecified 0.1% (2001 census). According to the provisional results of the 2001 census, the literacy rate in the country stands at 64.84 per cent (75.26% for males and 53.67% for females).

53. The Preamble of the Indian Constitution proclaimed, "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

54. It came into full operation with effect from 26 January 1950 and has seen various amendments which show the flexibility of Indian Constitutional set up to accommodate different aspirations and newer challenges.

55. India is a Republic and the head is the President in whom all the executive powers are vested and in his/her name it is to be exercised. But the President is only a nominal or the constitutional head of the Republic; and acts only with the aid and advice of the real political executive which is the Council of Ministers headed by the Prime Minister and collectively responsible to the popular House of Parliament i.e. the Lok Sabha. In a highly pluralistic society with India's size and diversity and with many pulls of various kinds, the members in the Constituent Assembly believed that Parliamentary form of Government was the most suited for accommodating a variety of interests and building a united India.

56. The Fundamental Rights as incorporated in Part III of the Constitution are the inviolable rights of the citizens against the State. Any law or executive action depriving citizens of their freedom could be challenged in the Supreme Court or High Courts. It would be held unconstitutional and invalid unless it is covered by any of the restrictions spelled out in the Constitution itself. Directive Principles of the State Policy covers most of the socio-economic rights of the people.

³⁵ K.S. Singh, "The People of India", *Series on The Scheduled Castes*, Oxford University Press, New Delhi, 2002, p. xii

Even though it is said to be not enforceable in the Courts of Law, these principles are expected to guide the governance of the country. The Constitution of India establishes an independent judiciary with the power of judicial review. The High Courts and the Supreme Court form a single integrated judicial structure with jurisdiction over all the laws: Union, State, Civil, Criminal or Constitutional.

57. The principles of equal justice would have struck a fatal blow to the well established discriminatory practices towards the Scheduled Castes but the established Caste-based discriminatory order still continue to operate in various ways. To enunciate the principle of justice is one thing and to make it effective is another thing. It is true that the Constitution of India prohibits any forms of discrimination and India has very progressive laws and human rights redressal agencies but these bodies and laws at times are not used by the state agencies. The mindset of the supporters of untouchability has yet to change. Laws are blatantly violated; perpetrators of crimes against Dalits are often hand in glove with duty-bearers resulting in great impunity. This has proved to be a bane for Scheduled Castes, also called as Dalits.

58. In the matter of social relationships, discrimination takes the form of barriers against, bathing, eating, drinking, worshiping and having access to common properties among other things. It puts a ban on all common cycles of participation. In the use of public facilities, the spirit of discrimination manifests itself in the exclusion of the Dalits from schools, wells, temples and means of conveyance. Public administration is also deeply drenched in the spirit of discrimination against Dalits. It has affected Law Courts, Governments departments, Banks and particularly the police. Discrimination against Dalits in the matters of securing land, credit, jobs etc. exist in the most rampant form. It has also permeated into the administration of relief of rehabilitation of victims/survivors of natural disasters as has been demonstrated in Gujarat, Orissa Cyclone and Tsunami along the coastal districts of the states of Tamil Nadu, Kerala and Andhra Pradesh.

59. There is a pattern of institutional discrimination in the implementation of different welfare schemes meant for Dalits and other marginalised and excluded communities. There is gross under allotment of funds for Dalits in the Union Budget. As per the norms set by the Planning Commission and endorsed by the Prime Ministers since 1980, The Special Component Plan (now renamed as 'Scheduled Caste Sub Plan (SCSP) proportion to the population of SCs (currently 16%) has to be allocated to the SCs by all departments. But in the current year 2006-2007 about US\$4,000 million is diverted away from the SCSP in most of the departments in the Union Budget³⁶.

60. Systemic discrimination is merely another name for absence of freedom. If the rights are to be an effective guarantee of freedom, they must not be merely formed. They must be such that, whenever the occasion arises to exercise them, they should in fact be exercised. The rights, which are essential to freedom, must be such so as to secure the liberties of all, not merely of a minority. So far as the opportunity to lead a life worthy of human being is also restricted to a minority, what is commonly described as freedom would more properly be called privileges.

Caste and Descent Based Discrimination: The Characteristics and its Manifestations

Who Are Dalits?

61. What the world today knows as "Dalits" constitute about 167 million Scheduled Castes as per the Indian Constitution and also according to the Census 2001. There is a sizeable population among the Muslims and Christians (as per a rough estimate there are 42 million Muslim Dalits and Christian Dalits who count about 16 million) people in India, were till a few years ago known and publicly identified as "Untouchables". And for all official purposes, Dalits who have converted to Islam and Christianity are not treated as Scheduled Castes, whereas those who are Sikhs and also those who converted to Buddhism are treated as Scheduled Castes.

³⁶ *Union Budget 2006-2007, An Analysis by CBGA (Centre for Budget and Governance Accountability), New Delhi, 2006*

Dalits in the Caste System

62. The basic conception of social organization, which prevails among the Hindus, started with the rise of four groups or *Varnas* into which the Hindu society is believed to have become divided. These four *Varnas* were: 1) *Brahmins*, the priestly and educated class, 2) *Kshatriyas*, the military class, 3) *Vaishyas*, the trading class and 4) *Shudras*, the servant class. For quite a sometime there were merely four groups. But after sometime what were only groups (*Varnas*) before became castes (*Jatis*). And four castes multiplied into several sub-castes. In this way the modern caste system was only the evolution of the ancient *Varna* system.³⁷ According to Manu, the Hindu lawgiver, there were originally four *varnas* and four they must remain. That the untouchables were to remain, out of the Hindu social structure is clear from the name, by which he describes the untouchables. Manu speaks of them as “*Varna – Bahyas*” (those out side the *Varna* system). They must remain separate and segregated without being the part of the Hindu society. And if they are a part, they are a part but not of the whole.³⁸

63. However, by implication those who are below the pollution line have been called as *Panchamas*. Legitimized by the theory of Karma and reincarnation, the *Panchamas* deserve to be untouchables.³⁹ Untouchability with its manifold manifestation, is rooted in the notions of the purity and pollution, which is believe to have developed in the later Vedic period, when the Brahmanic literature emerged in the form of *Smritis*, *Samhitas* and the *Upanishads*. In the later Vedic period texts, the *Chandals* and the *Poulkasa* were manifested object of spite and abhorrence. They existed at the lowest ritual and social level.⁴⁰

Caste System, Human Rights and Dalits

64. 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 freedom) or fraternity but on the principles of inequality in every sphere of life. Historically the caste system has formed the social and economic framework for the life of the people in India. In it's essential form, caste as the system of social and economic governance is based on principles and customary rules that 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.

65. In this framework the concept of human rights under the Hindu social system has 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 marriage 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 is not due to her/him personally; it is owing to being born in a particular caste. Similarly, if an individual suffers from lack of rights, it is not because s/he deserves it by their merit or conduct.

66. The unequal and hierarchical assignment of rights under caste system has its basis on the specific notion of "human-hood" which is different and unique. In this particular order of hierarchy, castes are placed at the top. The 'upper castes' are given all privilege and rights as they

³⁷ B. R. Ambedkar, “Symbols of Hinduism”, *Writings and Speeches*, Vol. 3, Education Department, Government of Maharashtra, Bombay, 1987, pp. 141-142

³⁸ B. R. Ambedkar, “The House the Hindus Have Built”, *Writings and Speeches*, Vol. 5, Education Department, Government of Maharashtra, Bombay, 1989, p. 169

³⁹ T. K. Oommen, “Panchamas to Dalits: The Context and Content of Identity”, *The Times of India*, New Delhi, 11 May 1994.

⁴⁰ Vivekananda Jha, “Stages In the History of Untouchability”, *Indian Historical Review*, Vol. 2, No. 1, July 1975, pp. 28-31

are considered to be "superior social beings" worthy of all rights and privileges. Dalits being considered at the bottom 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.

Caste/Descent and Work-Based Discrimination

67. It is clear from the above characterization of caste system that Dalits who are placed at the bottom of caste hierarchy are denied basic human rights that are necessary for the development and growth of human beings. 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 rights is not associated with race or colour, but based on descent associated with social origin determined by social and religious ideology.

68. 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.

69. The religious and philosophical sanctions and societal mechanism of social ostracism against Dalits 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 *begar* (free labour), bonded labour or child labour, destruction of assets belonging to Dalits and prevention of their right to free exercise of their franchise.

70. It must be mentioned that both legal and religious sanctions were powerful engines to keep caste going. The legal sanction has been done away with by the Constitution but caste and its practices continue unabated because of the more powerful religious and philosophical sanction. Therefore untouchable status, discrimination and forced impure occupation, all for an accident of birth even today characterize the life of Dalits.

Recognising Human Rights Violations in Caste-Based Discrimination by the Indian State

71. 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. Ambedkar⁴¹, who led much of the struggle against caste and untouchability as chairman of the drafting committee of the Indian Constitution.

72. 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 of different sections to participate in decision-making on a common platform.

Rationale and Scope of the Special Provisions for Dalits

⁴¹ Dr. B.R. Ambedkar is one of the foremost scholars of the nineteenth-twentieth century. Born into a Dalit family he was the architect of providing a framework for the elimination of caste-based 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.

73. In addition to the general frame of justice and equality, the Constitution also recognized the need for distinct and special provisions related to the protection for Dalit community (scheduled castes).⁴²

74. “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 (Dalits) and STs (Adivasi)”⁴³.

Importance given to issues of Dalits and Adivasi (Tribals)

75. The spirit of the Constitution is that equality, justice and progress of the Scheduled Castes and Scheduled Tribes will be a measure of 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 judicial mechanisms of the state.

Constitutional Provisions

76. The Constitution emphasizes ‘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 at 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.

77. 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)

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

79. 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 IV, Directive Principles of State Policy)

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

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

82. Political representation was based on a compromise between Mahatma Gandhi and Ambedkar –Reservation of seats in parliament and state legislatures under Art. 330,332.

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

⁴² The Constitution of India recognises Dalit community as Scheduled Castes

⁴³ *National Commission for Schedules Castes and Scheduled Tribes*, Sixth Report (1999-2000& 2000-2001), New Delhi, p.8

Other Legislations

84. In addition some of the legislations of general nature have greater relevance to Dalit communities.

27.6 The Untouchability Offences Act, later reformulated as the Protection of Civil Rights Act (1955) and rules 1977

27.7 The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989 and rules 1995
Bonded Labour (system) Abolition Act, 1976

27.8 Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

27.9 Devadasi system Abolition Act in the states of Andhra Pradesh, Maharashtra and Karnataka.

27.10 Child Labour (Prohibition and Regulation) Act, 1986

27.11 Minimum Wages Act, 1948

27.12 Equal Remuneration Act, 1976

27.13 Land Reforms Act in different states

CERD and its position on Caste-Based Discrimination

85. Since 1948, the United Nations has been promoting and codifying human rights, with a common standard of achievement for all people and nations. Over a period of time, the concept of human rights has continuously been expanded, from first generation civil and political rights, to a range of economic, social and cultural rights, right to development and rights of indigenous people. One of the important guiding concerns of this human rights framework relates to the principles of “Non-Discrimination”. The Universal Declaration of Human Rights (UDHR) and other human rights instruments specifically refer to this principle. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in December 1965, defined the term ‘Racial Discrimination’ as “any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic which has the purpose or effects of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social and cultural or any other field of public life.”

86. However, the UDHR and also the ICERD, did not made any mention or reference to caste as a basis for discrimination. It was only in 1996 that CERD made its first reference to caste discrimination, ‘untouchability’ and Scheduled Caste under the rubric of Descent: “The Committee states that the term ‘Descent’ mentioned in Article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the Scheduled Castes and the Scheduled Tribes fall within the scope of this Convention”. It further observed, “It is noted that although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the Scheduled Castes and Scheduled Tribes, and although social and educational policies have been adopted to improve the situation of members of Scheduled Castes and Scheduled Tribes and to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures. The Committee is particularly concerned at reports that people belonging to the Scheduled Castes and Scheduled Tribes are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in school, in violation of Article 5 (f) of the Convention.”

Other UN Covenants Position on Caste-Based Discrimination

87. Though the Government of India ratified ICCPR in 1979, it was almost 20 years later in 1997 when the Committee first noted serious shortcomings in the performance of the Government to guarantee basic human rights to Dalits. It observed: “Despite measures taken by the government, members of the Scheduled Caste and Scheduled Tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and suffer disproportionately from many violations of their rights under the Covenant, *inter alia*, inter-caste

violence, bonded labour and discrimination of all kinds. It regrets that the *de facto* perpetuation of the caste system entrenches social differences and contributes to these violations. The Committee also recommended that further measures be adopted, including educational programmes at national and state levels to combat all forms of discrimination against these vulnerable groups, in accordance with Article 2, paragraph 1 and 26 of the Covenant's (*Consideration of Report by India to the Human Rights Committee, CCPR/C/79/Add. 81, August 4, 1997*).

88. In 1996 and 1997, the UN Special Rapporteur on Racism and Racial Discrimination enquired with the Indian Government about the situation of 'untouchables' in the country, requesting the relevant information to be sent to him. The Special Rapporteur's report on the result of his enquiry speaks for itself: "The report recalls that communications concerning the situation of untouchables in India were sent to the government in December 1996 and August 1997. In its reply, the government rejected all allegations that it tolerated untouchability, provided the Special Rapporteur (SR) with a list of the measures taken to curb discrimination between castes and maintained that a practice that is so old cannot be eliminated rapidly. The SR noted the discrepancy between the facts alleged and the government's reply and stated that a visit to India would permit him to evaluate the situation in cooperation with the government and the communities concerned." (E/CN.4/1998/79, paras, 53,57-59)

89. The Indian Government has till date not responded to the request by the Special Rapporteur on Racism's visit to India. The Request is pending right from 1996 till 2006.

90. When the Indian Government submitted its first report to the CEDAW Committee in 2000, the Committee raised many questions on the plight of Dalit women. Noting that Dalit women seem to be as yet an untouched sector, the Committee asked for various particulars on: The status of untouchability; the impact of the caste system on the educational status of Dalit women; atrocities inflicted on Dalit women; bonded labour; women involved in manual scavenging; living standards of women in agriculture, and minimum wages; implementation of the SC/ST Prevention of Atrocities Act, 1989.

91. The Government of India provided details to say that various measures – legal and developmental – are being taken for the improvement of Dalit women. The final comments of the Committee observed: "*The Committee is concerned with the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989. ...The committee considers that widespread poverty, such social practices as the caste system and son preference, as reflected in high incidence of violence against women, significant gender disparities and an adverse sex ratio, present major obstacles to the implementation of the Convention (CEDAW/C/2000/1/CRP.3/Add, dt. 31.04.2000; emphasis added)*".

India's Position in CERD and Other UN Bodies on Caste Based Discrimination

92. The Government of India has been arguing to the UN Human Rights bodies, including the CERD, Sub-Commission on Promotion and Protection of Human Rights, CEDAW and WCAR, that caste discrimination is not an issue relevant to the evaluation of its performance viz-a-viz the human rights conventions to which it is party. This argument is based on three main premises:

27.14 Caste is not Race: The term 'caste' does not denote race or racial grouping and even the term 'descent' in Article 1 of the CERD Convention refers solely to racial descent. Therefore, does not fall within the ambit of racism, racial discrimination or related intolerance.

27.15 Constitutional and Legislative Mechanisms are adequately been provided for: Numerous constitutional provisions and laws have been enacted and government schemes exist already within the country to promote the welfare, rights and socio-economic conditions of the Scheduled Castes. These are adequate to protect the Dalits from discrimination and to promote their socio-economic advancement

- 27.16 Use Internal Mechanisms, not External ones: There is no need to utilize international human rights mechanisms and bodies to strengthen these laws. The internal Mechanisms are sufficient.
- 27.17 Change takes Time: Change is a slow process and respective countries are doing all they can to solve the problem.

National Human Rights Commission (NHRC)

93. While the Indian states continue 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 discrimination that should engage our attention, but the fact of its persistence’.⁴⁴

The Position of Dalit Movement

94. 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 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 been strengthening mass movements 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’. It also argued that caste may not be race, but it does not mean that there is no discrimination against Dalits. By ratifying several International Human Rights Treaties, India is bound to them as well. And any attempt to take the issues related to UN bodies should not be seen as an attempt to use external means to solve an internal matter. Utilizing international human rights mechanisms can only empower their respective governments to fulfill their own constitutional and legislative obligations, thus strengthening the national integrity and renewing the nation in its striving to approach the ideals conceived in its Constitution. Moreover, laws have been reduced to mere paper tigers in this country. For more than 50 years since independence, Dalits have utilized the laws and mechanisms existing within the country to promote and protect their rights, only to find that dominant caste values, prejudices and vested interests prevalent across all levels of government and society so seriously debilitate the political will to implement and enforce these laws that they have been emasculated.

Human Rights Council and Special Rapporteur’s on Work and Descent Based Discrimination

95. It was on 19 April 2005 that the erstwhile UN Commission on Human Rights (UNCHR) adopted a resolution with a unanimous support of all the 53 Member States: “The Commission on Human Rights, taking note of resolution 2004/17 of 12 August 2004 of the Sub-Commission on the Promotion and Protection of Human Rights, approves the resolution of the Sub Commission to appoint Mr. Yozo Yokota and Ms. Chin-Sung Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent, on the basis of the three working papers submitted to the Sub-Commission on this topic (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31), the comments made during the sessions of the Sub-Commission at which those working papers were submitted and the provisions of the

⁴⁴ Report on Prevention of Atrocities Against Scheduled Castes, *National Human Rights Commission*, New Delhi, 2004 p.vii.

above-mentioned resolution, and of responses from Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organizations to a questionnaire to be elaborated and circulated by the Special Rapporteurs. The Commission also approves the request to the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-seventh session, a progress report at its fifty-eighth session and a final report at its fifty-ninth session, and the request to the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteurs with all the assistance necessary to enable them to accomplish this task.”

96. Ever since their appointment, Mr. Yozo Yokota and Ms. Chin Sung Chung have submitted a preliminary report and also the progress report to the Sub-Commission on Promotion and Protection of Human Rights in 2005 and 2006 respectively.

ARTICLE 2 of ICERD

This article focuses on a policy/measure to eliminate racial discrimination in all its forms and promoting understanding among all races and, to this end by all appropriate means and without delay to ensure adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. State parties shall focus on the following:

- ***No act or practice of racial discrimination against persons, groups of persons or institutions***
- ***All public authorities and public institutions, national and local, shall act in conformity with this obligation and not to sponsor, defend or support racial discrimination by any persons or organizations;***
- ***Review of governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;***
- ***Prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;***
- ***To encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.***

States Parties' reports on Article 2(1) of the Convention should therefore cover measures taken in the legislative, judicial and administrative area with the goal of abiding by the obligations contained in this article. The Committee's General Recommendation XIII (42), adopted on 16 March 1993, Article 2.1(d) requires States to bring to an end "racial discrimination by any persons, group or organization". It covers the private as well as the public sector.

Measures of Indian Government in accordance with Article 2

97. The Constituent Assembly debates recognized that a section of people in Indian Society had been denied certain basic rights since ancient times and had therefore remained economically, socially and educationally backward. As a result, this had created widespread disparities between them and the rest of the society and a situation had emerged which underlined the need for special measures to uplift their status. This understanding is clearly reflected in the Constitution itself where a chapter under the title "Special Provisions relating to Certain Classes" in Part-XVI has been incorporated. Special provisions have also been made for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution⁴⁵.

98. Social safeguards are contained in Article 14, 15, 17, 23, 24 and 25(2) (b) of the Constitution.

⁴⁵ **Article 14** provides that States shall not deny any person **equality before law** or equal protection of laws within the territory of India. **Article 15** operationalises the concept of equality in a manner, which specifically touches upon the conditions of the Scheduled Castes and Scheduled Tribes. It says the states **shall not discriminate** against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to - access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing *ghats*, roads and places of public resort wholly or partly out of State funds or dedicated to the use of the general public. Nothing in this article shall prevent the State from making any special provision for women and children. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

As per Article 17, untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability has been made an offence punishable in accordance with the law.” Two important legislations have been enacted to give effect to contents of this article. The Protection of Civil Rights Act, 1955 has been enacted with the objective of providing punishment for preaching and practice of untouchability, in the enforcement of any disability arising there from and for matters connected therewith. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 seeks to prevent the commission of offences against the members of Scheduled Castes and Scheduled Tribes. Article 23 prohibits trafficking in human beings and ‘*begar (free labour)*’ and forced labour in any form and contravention of this provision has been made an offence punishable in accordance with law. In pursuance of this Article, Bonded Labour System (Abolition) Act, 1976 has been enacted and a special programme for identification of bonded labourers, their liberation and rehabilitation has been in existence to operationalise its provisions. Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. There are Central and State Laws to prevent child labour practices and providing relief to those engaged as child labour. The Central law is the Child Labour (Prohibition and Regulation) Act, 1986.

99. The practice of manual scavenging has been prohibited by law under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Act bars any person to engage in or employ or promote to be engaged in or employed any other person for manually carrying human excreta or construction of a dry latrine.

Civil Rights Violations

Civil Disabilities and Discrimination against Dalits: Present Situation

100. Dalits have been worst sufferers in the exploitative social order. No sphere of life is such where equality is accorded to them in interaction with superiors in caste hierarchy. They work on land but can not claim it, perform services essential to the maintenance of society but are ranked lowest in the social hierarchy, produce consumption material but are rendered untouchables. Segregation and exploitation have been their fate. They have been denied elementary facilities available to clean castes and are condemned to live in insularity. They are born in servitude and die in penury. They continue to be peripheral and marginal incapable to claim equality with the privileged. Society at large remains exploitative, unfair and unjust to them. A 1997 report issued by the National commission for SC and ST under score the fact that untouchability was practiced in many forms through out the countries. The report describe a number of social manifestations of caste based discriminations in the 1990s: “Scheduled Castes could not sit on their Charpoys (Cot) when persons of other castes pass by; Scheduled Castes were not permitted to draw water from common wells and hand pumps; and in many tea shops and *dhabas* (eating joints) separate crockery and cutlery were used for serving the Scheduled Castes”⁴⁶.

101. Whether caste clashes are social, economic or political in nature, they are premised on the same basic principles: any attempt to alter village customs or to demand land, increased wages or political rights leads to violence and economic retaliation on the part of those most threatened by changes in the status quo.

Torture and Dalits

102. India signed the Convention against Torture in 1997, but is yet to be ratified it even 9 years later. The National Commission of Human Rights (NHRC)’s Annual Report for 2004-2005 lists several complaints of torture, custodial deaths and encounter killings from across the country by the Police and Security Forces. Human rights violations by these agencies have increasingly become a matter of concern. Involvement of Police personnel in committing offences like rape,

⁴⁶ *Report of National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1997

illegal detention and torture are being reported at regular intervals. The vulnerable situation of communities like Dalits and Adivasis becoming the victims of Police excesses have also been reported at regular intervals.

103. Merely enacting laws is of little use unless they are put into action properly. In this crucial task role of police cannot be over emphasized. The third Police Commission noted, “complaints against the police in their handling of cases arising from atrocities against Scheduled Caste often relate to refusal to register complaints, delayed arrival on the scene, half hearted action while investigating specific cases, extreme brutality in dealing with accused belonging to weaker sections, soft treatment to accused persons belonging to influential sections, making arrest or failing to make them on ulterior considerations etc.”⁴⁷

104. All the allegations against police and other public officials in their dealings with the weaker section of the society holds true even now as it was in the past. Specific examples can be cited to substantiate the role of the police in this connection. Tamil Nadu is one such state where police, the strong-arm of the state never hesitate to let loose a reign of terror against Dalits. Whether it was Thirunelveli or Sankaralinga Puram and Challichettipatti villages of Thuthukudi district police have been directly involved in committing atrocities on Dalits. The police rampage on the all Dalit villages of Kodyankulam on August 31, 1995, when caste related violence was rocking southern district in the mid 1990s was a worst case in this regard. The word Kodyankulam has since then virtually become a synonym for state terrorism, particularly against Dalits, in this part of the country. Although the Gomathinayagam Commission of Enquiry exonerated the police of charges of committing excesses, the then Director General of Police, V. Vaikunth, himself describe the Police action as “mindless violence”, and said that never in his thirty years of career he had witnessed such a “totally inhuman act on the part of my own police”. The Gomathinayagam Commission had to conclude the way it did for want of evidence as the Kodyankulam victims boycotted the enquiry. Several incidences of custodial death and rape too do not speak well of the track record of the police.⁴⁸ The Ramabai Nagar killing of Dalits by police in Mumbai in 1996, the killing of Dalit youths at Jhajjar in Haryana in 2002 and many more such cases could be cited as an example of brutality on part of the Law Enforcement agency.

Atrocities on Dalits

105. The National Human Rights Commission concerned with the growing atrocities on Dalits had commented, “...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”⁴⁹. 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.

106. The Protection of Civil Rights Act, 1955 and the Indian Penal Code, in spite of its deterrent penal provisions, proved inadequate in curbing the atrocities on the members of the SCs and STs, especially offences committed on caste grounds. On 16th August 1989, the Parliament passed another Act- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, to prevent the commission of offences of atrocities against the members of SCs and STs, to provide for Special Courts for such offences, and for the relief and rehabilitation of the victims of such offences and for matter connected there with or incidental there to. The President gave his assent to the Act on 11th September 1989 and the Act came in to force on 30th January

⁴⁷ *Report of National Police Commission*, “Police and the weaker Section of the Society”, Chapter 19, Government of India, New Delhi, 1980.

⁴⁸ *Frontline*, April 12, 2002.

⁴⁹ Report on Prevention of Atrocities Against Scheduled Castes, *National Human Rights Commission*, 2004, New Delhi, p. viii

1990.⁵⁰

107. The term atrocity has been defined for the first time in this Act. Provisions have been made for more stringent punishments for committing such offences/atrocities. There are provisions to take specific preventive and punitive measures to protect the Scheduled Castes (SCs) and Scheduled Tribes (STs) from being victimized and where atrocities are committed, to provide adequate relief and assistance to rehabilitate them. There are in all 23 Acts according to which atrocities committed on the members of the SCs and STs by non SCs and STs are punishable under this Act. Although these offences are covered under the Indian Penal Code but the offences under the SCs and STs (POA) Act, 1989 carry heavier punishments than under the IPC. This Act also provides for forfeiture of property, internment and collection of punitive fines.⁵¹

108. This Act was passed with the great deal of fanfare, to give special protection to this vulnerable section. But facts on the ground tell a different story altogether. From 1992 to the year 2005, a total of 3, 98, 644 (Three Lakhs Ninety-eight Thousand and Six Hundred Forty Four) cases of various crimes against Dalits have been registered countrywide. If we see the average break up of various crimes then we get to know that on an average: 5895 Murders, 3482 Hurt cases, 1040 Rapes, 265 Kidnapping/abduction, 53 Dacoity, 153 Robbery, 352 Arson, 1166 PCRA, 8428 POA and 12941 other offences were registered every year.⁵²

Descent-Based Discrimination and Violence against Dalit Women

CERD's General Recommendation No. XXV

109. The Committee on the Elimination of Racial Discrimination in its General Recommendation XXV on the gender-related dimensions of racial discrimination (2000) has recognised that racial discrimination in both public and private life does not affect men and women equally or in the same way, that certain forms of racial discrimination may be directed towards women specifically because of their gender, and may have a unique and specific impact on women. Hence, State party reports should include quantitative and qualitative information on the situation of women in order to ascertain factors affecting and difficulties experienced in ensuring for women the equal enjoyment, free from racial discrimination, of rights under the Convention; in other words, assessing the differential impact of racial discrimination on women as compared with men, with specific focus on vulnerable social groups.

CERD's General Recommendation No. XXIX

110. General Recommendation XXIX on descent-based discrimination (2002) further recognises the multiple discrimination faced by women of descent-based communities such as Dalit women and requests State parties to take into account in all programmes and projects planned and implemented, and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution. State parties are further obligated to take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education, and to provide disaggregated data for the situation of women affected by descent-based discrimination.

Indian Constitution: Commitment to Equality and Empowerment

111. The *Indian Constitution* explicitly indicates the commitment of the Indian State to caste and gender equality and empowerment. Article 15(1) states the right of all Indian citizen to equality and non-discrimination on grounds only of religion, race, caste, sex, place of birth, or any of them. Affirmative action (reservations) for women, children, scheduled castes and scheduled tribes, however, is allowed under Article 15(3) and (4). Article 16(2) states that no citizen shall,

⁵⁰ *Report of National Commission for SC and ST*, p. 207, Government of India, New Delhi, 1999-2000 & 2000-2001

⁵¹ *Ibid.* pp. 207-209.

⁵² "Crime in India", *National Crime Record Bureau*, Ministry of Home Affairs, 1994-2006.

on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment of office under the State. Article 17 abolishes untouchability and prohibits its practice in any form. Article 21 guarantees to all citizens the right to life and personal liberty, while Article 14 stipulates the right of all citizens to equality before the law and equal protection of the law.

112. Other laws specifically enacted to protect Indian women citizens include: the *Indian Penal Code 1860* provisions criminalising general crimes such as murder, destruction of property, physical assaults on persons, etc., as well as gender-specific crimes such as rape (sec. 376), sexual assault (sec. 354), prostitution of minors (sec. 372 & 373), and cruelty by husbands and in-laws (sec. 498A); The *Immoral Traffic (Prevention) Act 1956* criminalising the procuring of women for the purposes of prostitution work; the *Dowry Prohibition Act 1961* prohibiting the demand for dowry; and the *Protection of Women from Domestic Violence Act 2005* and *Rules 2006* providing effective protection of the rights of women victims of violence in the family.

113. Specific protection for Dalit women against descent-based discrimination and violence is provided by such laws as the *Protection of Civil Rights Act 1955* and the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989*. The latter Act provides stringent punishment for two gender-specific offences, namely a non-scheduled caste/ scheduled tribe person: assaulting or using force against any woman belonging to a scheduled caste or a scheduled tribe with intent to dishonour or outrage her modesty (sec. 3(1)(xi)); or being in a position to dominate the will of a woman belonging to a Scheduled Caste or Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed (sec. 3(1)(xii)). The *Devadasi System Abolition Acts* in the states of Andhra Pradesh, Karnataka and Maharashtra also seek to prohibit this form of religiously sanctioned prostitution, which is targeted in at least 90 percent of instances towards Dalit girls and women.

Dalit Women: Inequality, Powerlessness and Victims of Violence of Worst Kinds

114. Dalit women in India numbers 80.517 million or approximately 48% of the total Dalit population, 16% of the total female population and 8% of the total Indian population of the country.⁵³ Disaggregated data are available on the status of Dalit women's enjoyment of their rights to education, health and work participation, all of which indicate their lower levels of enjoyment of these rights as compared to non-Dalit/Adivasi women and men, and Dalit men. However, currently very little disaggregated government data exists with regard to Dalit women's experiences of descent-based discrimination and violence. What data is available is disaggregated by gender *or* by caste, but does not include both factors. The question of caste discrimination, untouchability and violence has been extensively documented, but mostly with reference to Dalits as a group and not with specific reference to Dalit women's experiences arising from the intersection of their descent and occupation-based identity with their gender identity.

115. Violence or atrocities against Dalit women is systemic and structural, occurring at three levels. At one level, violence is an inherent part of the caste system whereby it is utilised to reinforce caste norms and Dalit women are specifically *targeted* due to their 'low' caste-class-gender identity and status. That is, their identity is often known to the perpetrators of the violence, whether it be spontaneous or planned criminal acts. Their identity likewise is factored into the perpetrators' calculations of the possibility of a successful act of violence taking place with impunity. The use of Dalit women's caste names in verbal altercations, or threats leading up to or following violence is indicative of how Dalit women's caste-and-gender identity invites violence towards the women. Violence acts as a crucial social mechanism to maintain Dalit women's subordinate position to particularly by dominant caste men.⁵⁴ Dominant caste perceptions of Dalit women as 'inferior' and 'untouchable', as sexually available, as inherently criminal in nature, and

⁵³ Government of India, *National Census of India 2001*, Final Population Totals, 2004.

⁵⁴ Though it should be noted that Dalit women also face violence from dominant caste women, who benefit from, and hence are complicit in, maintaining the power of their caste, and hence also participate in perpetuating caste inequalities and violence against Dalit women.

as available for all forms of violence, especially sexual violence, contribute to their specific vulnerability to violence.⁵⁵ Hence, Dalit women are more likely to face collective and public threats or acts of social violence than dominant caste women, who tend to be subjected to violence more within the family due to strict controls over their sexuality and freedom of movement.

116. For example, a recent study on violence against Dalit women, based on interviews with 500 Dalit women and girl children survivors of violence during the period 1999 to 2004 across the states of Andhra Pradesh, Bihar, Tamil Nadu and Uttar Pradesh has revealed a range of causal factors for violence in the general community directly attributable to systemic caste-class-gender factors that ascribe Dalit women's low status in society and consequent disempowerment and exploitation. The most common causal factor for violence against Dalit women in the general community is their perceived sexual availability by dominant caste men, who target Dalit women for sexual violence that ranges from sexual harassment, to sexual assault, rape, sexual exploitation and forced prostitution. Moreover, any attempt by Dalit women to assert their fundamental right to equality with dominant castes in any sphere – social, cultural, economic, civil and political – is met with violence, while reinforcement of Dalit women's lack of or denial of access to land and other economic resources through violence points to their effective economic subordination in order to retain them as an exploitable labour force for their dominant caste employers.⁵⁶

117. The only caste-and-gender disaggregated crime reported by the Government of India is rape, with 1,089 cases reported by Dalit women in 2003. Notably, the National Human Rights Commission has stated, "the number of rapes against scheduled caste women shows an increasing trend. Mass rape is used by 'upper' caste militias as a weapon to break morale of the entire community. Rape is used as a political instrument, and these women become the targets for anger and wrath of the dominant castes."⁵⁷ Moreover, in some villages across India today, dominant castes continue to perceive their 'right to rape' Dalit women. For example, on the day of her marriage, Keerthana was warned by some of the Dalit girls in her husband's village in Coimbatore district in Tamil Nadu that Rakkamuthu Gounder, son of the Panchayat President, would come to her home at any time. At the time, she did not take their words seriously, as she was unaware of his 'right of rape' of any newly married Dalit woman in the village. However, at 11:00 p.m. on 5 November 2002, two weeks after her marriage, Rakkamuthu came to Keerthana's home while her husband was away for night shift work. He straight away came up to her and touched her body. She reacted by biting his hand and managed to escape into her house and bolt the door. When her in-laws told Rakkamuthu, "Don't bother her; if she doesn't like it, leave her alone", he became furious and shouted at them, "If she doesn't like it, should I leave her alone? I tell you, in this village who has not slept with me? And if she doesn't want, do you think she should be left alone? You dare to say this to me?" He then beat up Keerthana's in-laws, though Keerthana did not open the door all night and so escaped being sexually assaulted. She then left the village in order to avoid further violence, but did not file a police complaint as she was scared of what Rakkamuthu would do to her marital family if she did so.⁵⁸

118. Besides the extreme crime of rape, sexual assault (molestation) of women forms 23.7%, and sexual harassment 6.8%, of all reported crimes against women in general. The significance for Dalit women lies in the fact that a clear relationship appears to exist between higher work participation rates in the non-professional unorganised sector, hence higher poverty

⁵⁵ See Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India, Volume I: Study Report*, Chennai: NCDHR, NFDW & IDEAS, 2006.

⁵⁶ Ibid.

⁵⁷ National Human Rights Commission, *Report on Prevention of Atrocities against Scheduled Castes: Policy and Performance, Suggested Interventions and Initiatives for NHRC*, New Delhi: National Human Rights Commission, 2004, p.161.

⁵⁸ Case extract from Irudayam et al, *Dalit Women Speak Out: Violence against Dalit Women in India, Volume I: Study Report*, Chennai: NCDHR, NFDW & IDEAS, 2006. Note that the names of the Dalit woman and perpetrator have been changed to protect her identity.

levels and sexual crimes.⁵⁹ Given that a higher percentage of Dalit women work as both main and marginal workers (25.98%) outside the home than non-scheduled caste/scheduled tribe (SC/ST) women (18.96%)⁶⁰, they would seem to be more vulnerable to these forms of violence in public spaces from members of the general community.

119. One specific form of violence against Dalit women that fails to be recorded in official government statistics as a crime against women is the practice of the Devadasi or Jogini system of ritualised, religiously sanctioned prostitution. Thousands of mainly Dalit girls between the ages of 6 and 13 years old, particularly in the states of Andhra Pradesh, Karnataka, Maharashtra and Orissa, are dedicated to temple deities. Once dedicated, the Devadasi or Jogini girl is unable to marry and is instead forced to become a prostitute for the temple priests, dominant caste village elders or all men in the village.⁶¹ In the state of Andhra Pradesh alone, a field study conducted in 2003-2004 across 12 Jogini-prone districts in the state established the presence of approximately 25,000 Joginis in these districts. Approximately 90% were living in the poorest region of Telangana, and almost 90% belonged to the Dalit community.⁶² This situation bears testimony to the inadequate implementation of the *Andhra Pradesh Devadasis (Prohibition of Dedication) Act 1988*, with the Action Plan for 2001-02 of the Social Welfare Department, Government of Andhra Pradesh, which has identified a target of a mere 1,133 Joginis for rehabilitation into other less degrading occupations.

120. At a second level, Dalit women are specifically vulnerable to *punitive violence* when they are perceived to ‘transgress’ caste norms, such as caste endogamy or untouchability norms, or assert their rights over resources, public spaces or cultural spaces. Rights assertions by Dalit women are seen by dominant castes as an affront to their dominant caste, class and gender status and honour. In other words, the process of Dalit women’s empowerment is perceived as a challenge to caste and patriarchal structures, and allegedly provides ‘legitimate’ grounds for punitive violence committed by dominant castes.

121. However, it is the daily violence against Dalit women who assert their basic rights that is disturbingly pervasive. For example, on 25 July 2003 in Lakhimpur Kheri district, Uttar Pradesh, Suman Devi’s dominant caste Brahmin employer Swami Narayan beat her when she did not work for three days due to illness and then asked him for her back wages so that she could pay for some medicine. Being too ill and badly wounded, she lay in her hut for two days until local independent politician Tilak Kumar happened to pass through the village and the villagers took Suman Devi on a vegetable cart to meet him. Tilak Kumar and other villagers took Suman Devi to the police station. At the police station, the dominant caste Station Officer refused to file a FIR. He told Tilak Kumar and the assembled crowd, “Do you think you’ll become big leaders by taking up such a trifling matter and making a big show out of it? Come on, just go and get her some private medical treatment.” For the next three days, Tilak Kumar and his supporters held a public protest and hunger strike in protest against the police refusal to file a FIR regarding Suman Devi’s case. On the fourth day, the police lathi-charged the hunger strikers, injuring several villagers and then arrested Tilak Kumar and two other men. The police kept the three men in jail for eighteen days and confiscated all the documentary evidence they had gathered to support Suman Devi’s case. Despite the public protests, the police never registered a FIR for the attack on Suman Devi and Swami Narayan was never arrested.⁶³

⁵⁹ Centre for Women’s Development Studies, *Crimes against Women: Bondage and Beyond*, New Delhi: Centre for Women’s Development Studies, 2002, pp.24-25.

⁶⁰ Government of India, *National Census of India 1991*, Union Primary Census Abstract for SC and ST, Paper 1 of 1993; Final Population totals, Paper 2 of 1992: work participation rate taken as percentage of total population of same sex.

⁶¹ Jayshree P.M. et al (Eds), *Dalit Human Rights Violations: Atrocities against Dalits in India, Volume 1*, Chennai: NCDHR, 2000, p.197.

⁶² Andhra Pradesh Jogini Vyavastha Vyethireka Porata Sangathana, *Fieldwork Data on Joginis in Andhra Pradesh 2003-04*, 2004.

⁶³ Case Extracted from Irudayam et. al., *Dalit Women Speak Out: Violence against Dalit Women in India*, Vol. 1, Chennai, NCDHR, NFDW and IDEAS, 2006

122. A third level sees Dalit women face *compounded violence*, that is, violence simultaneously from dominant caste males/females on the basis of their low caste, class and gendered position in the broader caste system, and from Dalit men due to their low gendered position within the Dalit community. Widespread gender-discriminatory norms and attitudes – strict controls over women’s sexuality, perception of wifely fidelity and wifely duties as opposed to equal rights in marriage, socio-cultural norms of son preference, dowry, etc. – shape Dalit women’s experiences of violence in the domestic sphere of the family, multiplying the gendered harm perpetrated against them.

123. Official data suggests that around 27.4% of scheduled caste women have been beaten or physically mistreated since the age of 15 years, most (25.2%) by their husbands.⁶⁴ Domestic violence forms the single largest recorded crime against women in India –36.1% of all crimes against women, excluding dowry deaths.⁶⁵ Moreover, given that most Dalit families are very poor, the day-to-day tensions and struggles for survival and eking out a basic livelihood amidst an atmosphere of institutionalised caste oppression in all aspects of their lives, often translate into frequent violence against Dalit women within the home. In other words, the caste subjugation, disempowerment and lack of status and authority in the general community experienced by Dalit women’s husbands, marital and natal families, often results in gender violence in the family. Dalit families subconsciously assimilate this culture of violence precisely because in a hierarchically structured social system where Dalits are placed at the lowest rung in the caste hierarchy, the gender hierarchy allows for some measure of power to be expressed by disempowered Dalit men over their daughters and wives.

124. Violence against Dalit women, including threats of such acts, results in physical, sexual and/or psychological harm and suffering to the women. This violation of personal integrity reinforces their ‘low’ caste-and-gender identity and their social exclusion and isolation. Violence directed at perceivably more vulnerable members of the Dalit community frequently creates a divisive culture of fear among the community, which hinders the Dalit community’s ability to protect its women before and during violence, as well as to support and help reintegrate women back into their community after violence. Moreover, the Dalit community’s often inability to protect its women, particularly their sexual integrity, in the face of widespread impunity for violence enjoyed by the dominant caste perpetrators, serves to reinforce the socio-political dominance of the dominant castes on the one hand, and the low caste-class status and relative powerlessness of Dalit men and the Dalit community as a whole on the other hand.

125. When it comes to Dalit women’s rights to protection of the law and legal remedies for violence, deeply ingrained normative values of appropriate gender and caste roles and behavioural patterns influence government officials, police and even judges who have the power to interpret and actualise rights. Evidence exists of the *complicity of non-state and state structures in perpetuating impunity for violence against Dalit women* – that is, dominant caste groups and the police colluding to deny Dalit women their right to legal remedies for violence by taking the side of the dominant caste perpetrator, based on their common dominant caste, class and gender identity. As the United Nations Special Rapporteur on Violence against Women has noted, “constitutional and legislative provisions that have been enacted to protect women from discrimination have not proved to be an effective deterrent...” against “the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989*.”⁶⁶

126. Both the afore-mentioned government data and independent studies indicate the failure of the Indian state to act with due diligence to prevent, investigate and punish acts of

⁶⁴ Government of India, *National Family Health Survey (NFHS-2) 1998-99*, 1999, Table 3.15

⁶⁵ National Crimes Records Bureau, *Crimes in India 2003 Report*, New Delhi: National Crimes Records Bureau, 2004.

⁶⁶ UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms Radhika Coomaraswamy, Addendum 1: International, regional and national developments in the area of violence against women 1994-2003* (2003), para.984.

violence against Dalit women in both public and private life, at the hands of state or non-state actors⁶⁷.

Forced Occupation

Devadasi/Jogini

127. Tradition of Divine prostitution wherein a woman is dedicated to a deity body as a sacred body has been a part of customary practice in India for a long time. The powerful section of society brought this custom into vogue to exploit the ritual and religious pretext since the divine prostitutes ultimately become the sex objects of dominant persons or groups. The practice continues even today due to the extreme poverty of Dalits and other weaker sections of the society who under the compulsion of circumstances and exploitative mechanism allow this practice.

128. Governments of Andhra Pradesh, Karnataka, and Maharashtra enacted laws to prohibit this menace and have undertaken rehabilitation programmes for welfare of liberated Devadasis. Implementation of law as well as rehabilitation of liberated Devadasis in several states miserably failed. The practice is far from dead, the dedication ceremonies have shifted from main temples to the house of the priests or smaller temples with no publicity and fanfare⁶⁸. The laws have loopholes so it is difficult to take legal action against the offenders and the victims do not come forward to complain for the reason of social condemnation. Karnataka has not registered a single case under the Devadasi Prohibition Act against priests despite many complaints and admonitions to that effect⁶⁹. Girls belonging to 'lower' caste have continued to be dedicated by innocent and vulnerable parents with the connivance of priests⁷⁰. Devadasi system represents only one feature of sexual exploitation of Dalit women through religious and customary beliefs and practices. There are many other forms through which these women are sexually exploited and are forced to live a degraded existence. The worst part of this situation is at times these practices fail to attract penal action. As against the approximate number of Devadasis, a very small number has been identified for relief and rehabilitation. The rehabilitation is being implemented by different agencies, which often lack coordination with each other. There is no programme to educate Devadasis both about the law as well as the range of benefits available.

Manual Scavenging

129. The practice of manual scavenging is illegal and unconstitutional and a blot on the face of humanity. It is a practice that violates fundamental rights enshrined under Article 14 (right to equality), 17(right against untouchability), 21 (right to life and personal liberty) and 23 (right against exploitation) of Indian Constitution. The Parliament enacted The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 to prohibit manual scavenging. The design of this Act is against the basic principles of Natural Justice as both the executive and judiciary powers have been given to the District Commissioner/Collector who is the executive head of the state in the State. The Act also ignores the issue of human dignity mentioned in its own preamble. The Act has so far not been properly implemented because of the apathy and sinister design of the governments at Centre and States. Four states, West Bengal, Kerala, Jammu & Kashmir and Chattisgarh refused to adopt this Act. The National Human Rights Commission opined that the lack of political will and determination to end this unacceptable practice will persist in spite of laws that are in operation⁷¹. Apart from the Constitutional and other legal provisions, there are International human rights instruments and treaties to which India is a party categorically reject any forms of discrimination and promote equality among all human

⁶⁷ *Committee on the Elimination of All Forms of Discrimination against Women*, General Recommendation 19, Violence against Women, 1992, Article 1 & 2 Declaration on the Elimination of Violence against Women 1993.

⁶⁸ Singh Nagenadra Kumar, *Devine Prostitution*, 1997, p 215

⁶⁹ *Supra* note 5 p 61

⁷⁰ An explanatory study on Devdasi Rehabilitation Programme initiated by Karnataka Women's Development Corporation and SC/ST Corporation, Government of Karnataka in Northern districts of Karnataka, carried out by Joint Women's Development Programme, Bangalore (Year?)

⁷¹ *Annual Report of the National Human Rights Commission 2002-03*

beings (UDHR, ICCPR, ICSCR, CEDAW, CERD etc.). The formulation of rehabilitation work schemes by the Government of India and the constitution of the NCSK have so far not been effective.

130. Manual scavenging is manual removal of excreta (night soil) from "dry toilets", i.e., toilet without the modern flush system, especially in the Indian subcontinent. The inhuman practice of manual removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements in the basket to the dumping site is still prevalent in most part of India even to day. The manual scavengers are known with different names in different states in India

131. To one estimate there are over 1.2 million manual scavengers in India. The National Commission for Safai Karmachari (NCSK) Report noted that manual scavengers are being employed in the military engineering services and the Railways.⁷² Of these over 95% are Dalits, who are compelled to undertake this inhuman and degrading task under the garb of 'traditional occupation'. The manual scavengers are still treated as untouchables by the so-called mainstream of the Indian society. They are used, abused, maltreated, exploited, excluded, marginalized and finally die in abject poverty. There are Constitutional provisions and other laws to abolish untouchability and other form of discrimination on the basis of caste but these laws seems to be ineffective.

132. The official statistics released by the Ministry of Social Justice and Empowerment, government of India for the year 2002-03 indicates that there are as many as 676009 manual scavengers in the country. These are spread over 21 States and Union Territories. The highest number is in Uttar Pradesh (1, 49,202) followed by Madhya Pradesh (80,072) and Maharashtra (64,785). Delhi alone has a population of 17,420 manual scavengers. According to National Commission for Safai Karmacharis, many states, including Uttar Pradesh and Rajasthan are yet to adopt the Act and some like Kerala, Nagaland and Pondichery assert that they are is no need to adopt the Act despite the statistics showing the existence of manual scavenging in these states.

133. The creation of National Commission of Safai Karamchari (NCSK) and National Commission for Scheduled Castes and Scheduled Tribes (NCSC&ST), statutory bodies, has not helped in eradication of pernicious practice of cleaning the filth by people belonging to the Dalit community.

134. Despite the commitment made in the Act and also a commitment by the present government, the practise of manual scavenging will live past 2007. In 2004, the government had resolved to end the practice before 2007, after the Planning Commission drew up a comprehensive plan. The Ministry of Housing and Urban Poverty Alleviation was entrusted with the task. With just a month to go, the task is far from achieved. "The government cannot meet the deadline. Not enough has been done in that direction," said Santosh Chaudhary, chairperson, National Commission for Safai Karamcharis. She added that despite spending Rs 750 crore on the rehabilitation of manual scavengers the problem persists. Chaudhary said the problem exists in most states, including the Nand Nagri area of Delhi. She had suggested a meeting of all chief ministers to be held on the matter, a suggestion that has been agreed to but will only be implemented next year, long after the deadline has passed. Bezwada Wilson who refused to be a manual scavenger like his parents and formed the Safai Karamchari Andolan (SKA) says: "At the current speed, the target cannot be achieved even by 2010." The SKA approached the Supreme Court in 2003 for a ban on manual scavenging. Ironically, there already is a law in place—the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act. It was passed 13 years ago, but the government continues to struggle with the problem.⁷³

⁷² Report of the NCSK for the year 1997-98 Dated 31-1-2000

⁷³ Jatin Gandhi, "Manual Scavenging to live past 2007", *Hindustan Times*, New Delhi, 25 November, 2006

Child Labour

135. The National Sample Survey Organization (NSSO) Report of the year 1999-2000, estimated 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.

136. 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.

137. Study by VV Giri National Labour Institute in 1998, estimated that 90% of those employed in the 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 per day they were being paid Rs.20 per 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 per day".

138. 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.

139. 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 hands in glove with the contractors and there is no monitoring of legal enforcement of wage or safety standards whatsoever.

Bonded Labour

140. Bonded labour in India, a manifestation of caste and descent-based discrimination is abolished 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"⁷⁴.

141. "It is estimated that there are 40 million bonded labourers in India and Dalits constitute a majority of them."⁷⁵ 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.⁷⁶ High incidence of bonded labour is established in the states of Andhra Pradesh, Bihar, Karnataka, Tamil Nadu, Maharashtra, Orissa, Punjab, Rajasthan and Madhya Pradesh.

142. 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.⁷⁷

⁷⁴ Report of Prevention of Atrocities against SCs and STs, *National Human Rights Commission*, New Delhi, 2004, p.10

⁷⁵ Smita Narula, "Broken People-Caste violence against India's untouchables", *Human Rights Watch*, New York, 1999, p.139

⁷⁶ *Special Report of the National Commission for SCs and STs*, "Causes and Remedies", p.14

⁷⁷ "Forced Labour in the 21st century", *Anti slavery/ICFTU Report*, p.8-9

143. 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.

144. 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.

145. 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.⁷⁸

146. 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, and cotton seeds.

147. 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.⁷⁹ . “In order to eliminate bonded labour the Indian government will have to confront the powerful local elites and the caste system”⁸⁰

⁷⁸ Report on Prevention of Atrocities against SCs & STs, *NHRC*, New Delhi, 2004, p.71.

⁷⁹ Report on Prevention of Atrocities against SCs & STs, *NHRC*, New Delhi, 2004, p.68.

⁸⁰ “Forced labour in the 21st century”, *Anti Slavery/ICFTU Report*, p.9

ARTICLE 3 of ICERD

Article 3 is an expression of international solidarity of the States Parties to the Convention with people living under racial segregation and apartheid. This article and the guidelines referring to it reflected the conviction that it was not possible to condemn the most brutal practice of racism, which was apartheid, and at the same time cooperate with a regime that maintained it as its national policy.

At its 1125th meeting, held on 17 August 1995, the Committee adopted General Recommendation XIX (47). This reiterated that under the terms of Article 3, States Parties undertook to prohibit and eradicate practices of racial segregation and apartheid. The reference to apartheid may have been directed exclusively at South Africa, "but the article as adopted prohibits all forms of racial segregation in all countries". It added, "The obligation to eradicate the consequences of such practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State". It observed, "While conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities, residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatised and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds."

In consequence, "the Committee affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States Parties to monitor all trends, which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports. "

Residential Segregation

148. The study on untouchability by Action Aid⁸¹ 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. "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 Ambedkar⁸²

149. 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.

⁸¹ Ghanshyam Shah et. al (Ed.), *Untouchability in Rural India*, Sage Publication, New Delhi, 2006

⁸² "Hidden Apartheid", *ANHAD*, New Delhi, 2003, p.27

150. 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 neighbour-hoods, when located within the village in exceptional cases are also subject to severe sanctions.

151. 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’.

152. In disaster relief programmes spatial separation is insisted upon by the dominant castes as seen even during the Tsunami. Immediately after the disaster, Dalits in many places were not allowed to stay in the same camps as the fisher community. On 26.12.2004, the Dalits who were given shelter along with the fishermen in a community hall in Melavanagiri of Sreekazhi Taluk were driven away from there. Even in the transport buses, which were operated as part of relief operations by the Tamil Nadu Government, Dalits were not allowed to travel along with other dominant caste people. Consequently, about 210 Dalits had to walk about 21 kilometer to reach Mayiladuthurai. Similar kinds of situation existed in Tharangambadi Taluk also where Dalits were not even given food for three days. When Dalits approached the local Government Officials for relief, their plea were not given due consideration. It was only after the Media reports about massive discrimination against Dalits that the Government of Tamil Nadu belatedly focused its attention on the Dalits. 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.⁸³

Discriminatory Restrictions on Public Behaviour

153. 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.

154. 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.

⁸³ National Public Hearing on Discrimination against Dalits in Tsunami Relief and Rehabilitation, Human Rights Forum for Dalit Liberation-Tamil Nadu, Dalit Mannurimai Kootamaippu and National Campaign on Dalit Human Rights, Chennai, 30 August, 2005

155. 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.

156. 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 can 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.

Discrimination in Accessing Common Property Resources

157. The Common Property Resources (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 majority of them are landless, and these CPRs 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.

158. 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.

ARTICLE 4 of ICERD

Article 4 is of paramount importance for the implementation of the Convention, as it contains imperative provisions obliging States Parties to adopt legislation to criminalize and punish the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence against any race or group of persons of another colour or ethnic origin, and assistance in such activities. States Parties must take legislative action to comply with their obligation under this article, irrespective of the actual existence of the prohibited activities or organizations. The Committee considers that Article 4 aims at prevention rather than cure. After the Committee has found that the legislation of a number of States Parties did not include the provisions envisaged in Article 4(a) and (b), it adopted its General Recommendation 1 of 24th February 1972, which was subsequently incorporated in the general guidelines.

In addition, the Committee is of the opinion that for a full implementation of Article 4, it is not sufficient to incorporate or transform the Convention as part of domestic law of the ratifying State, without enacting the necessary legislation ordained by Article 4. The article should not be interpreted as being self-executing. This reasoning led to the adoption of decision 3(VII) of 4 May 1973, which is also incorporated in the general guidelines. It was reaffirmed in a decision of 20 August 1985, in which the Committee recommended that "those States Parties whose legislation does not satisfy the provisions of Article 4(a) and (b) of the Convention take the necessary steps with a view to satisfying the mandatory requirement of that article".

In the aforesaid General Recommendation XV (42), the Committee pointed out that "Article 4(a) requires States Parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts". It recalled that Article 4(a) also penalized the financing of racist activities, which, in its opinion, included all the aforementioned activities, in other words all activities based on ethnic or racial differences. The Committee asked States Parties to ensure that their national legislation and the application thereof, satisfied this requirement. The mandatory requirements of Article 4(a) and (b) are still far from universally implemented, because of inadequate legislation and/or the weakness of the measures for its enforcement.

Caste Oppression Faced by Dalits

159. The nation seems to have reneged on its promise of abolishing the practice of untouchability and establishment of an egalitarian society. As a matter of fact several centuries of uninterrupted and ritualistic adherence to the values of caste by the people, and nurturing of these values by the social, religious, cultural and political systems has left the untouchables victims of oppressive inequalities. In other words, the caste system, through a series of orthogenetic modifications, created an environment in which the human cravings for freedom, equality, respect and dignity lay deeply buried under the weight of a tradition that sought to actively rob the human personality of its capacities departing of from that tradition.⁸⁴

State Reluctance in Implementation of the Special Legislations

160. The States in general have shown no keenness or enthusiasm to implement various provisions of the Special Legislations. The impression thus conveyed is that either the problem of untouchability does not exist or its incidence is so negligible that it is not worthy of much attention. This clearly shows the inability or perhaps the unwillingness of the State government to come to grips with the practice of untouchability, particularly in its most suitable forms at various

⁸⁴ Dinesh Khosla, *Myth and Reality of the Protection of Civil Rights Law*, Hindustan Publishing Corporation, Delhi, 1987, pp. 6-7

levels in society⁸⁵.

161. As per the NHRC Report, Punjab and West Bengal have not taken any administrative measures for the implementation of the Act. West Bengal government has claimed that untouchability is not practiced in the state. This indicates the lack of seriousness on the part of the state with regard to the implementation of the Act. Several major States, such as Assam, Bihar, Uttar Pradesh, Rajasthan, etc have not constituted special courts under the Act. Madhya Pradesh has even winded up the special courts, which it had set up because of small number of cases⁸⁶.

162. The declining number of cases under Protection of Civil Rights Act does not represent a marked reduction in the practice of untouchability. Rather, it is a reflection on the ineffectiveness of the law- a conclusion, which tallies with the view, expressed by the National Commission for Scheduled Castes/ Scheduled Tribes in its Report⁸⁷.

163. Role of Police in increasing the impunity: In the four years of Dalit Human Rights Monitoring process (1999-2003), Sakshi-Human Rights Watch observed⁸⁸ that in 84% of Dalit Human Rights violations, police either refused to register cases or inappropriate sections were used in registering cases. In 11% of cases, the implementing authorities themselves are violating the laws directly by neglecting their duties. Even in the registered cases (16%), charge sheets were filed only in 4.9% of cases. In all only 16 out of 100 cases are registered by the police. And out of the 16 cases that see the portals of court and judicial process only 0.15 cases end up in some form of conviction! The rate of justice to the victims of atrocities is 0.15% in Andhra Pradesh. Sakshi has identified the following gaps, which have denied justice to the Dalit victims.

- Refusal to register cases
- Correct sections are not used in First Information Report (FIR)
- Not arresting accused
- Charge sheet filing is delayed.
- Closing the cases as false cases.
- Not examining all witnesses during the investigation as well as trial
- Trial period is delayed inordinately
- Prosecution is not paying much attention in raising these concerns
- Most of the victims don't get compensation and TA/DA
- Inadequacy of the Government Administration in taking decisions

164. The State Police Department, Andhra Pradesh in response to the query raised by the Chief Justice of the High Court of AP on the PIL filed by Sakshi Human Rights Watch⁸⁹ admitted and gave a list of 14,452 cases that were delayed in filing charge sheet beyond the stipulated period of 30 days as per the SC/ST POA Act. Out of which 3281 cases were not charge sheeted due to delay in getting approval, legal opinion and superior's order; 1464 cases were delayed because of 'more Witnesses' in the case; 1873 cases were delayed due to delay in obtaining caste certificates; 2934 cases were delayed as there was delay in the collection of Documents & evidence; 1212 cases due to delay in receipt of Wound Certificates, Medical Certificates & Post-mortem Report; 1006 cases due to apprehension and absconding of the accused; 662 cases due to delay in Tracing and examining the witnesses/ victim; 613 cases due to delay in Busy schedule of officers/ work pressure; 169 cases due to the transfer of the officer; 78 cases because cases investigated by the CID/CBID and 48 cases because CD files were not available. These facts are yet another admission to the gross negligence of the state machinery, especially the police, in causing the impunity.

165. The High Court of Andhra Pradesh in an interim order for the Writ Petition on

⁸⁵ ibid

⁸⁶ Report on Prevention of Atrocities Against Scheduled Castes, *National Human Rights Commission of India* 2004, p 21

⁸⁷ Sixth Report, p 207

⁸⁸ Writ Petition Filed by Sakshi-Human Rights Watch on the non-implementation of the SC/ST Prevention of Atrocities Act in AP High Court, WP No. 1019 of 2006.

⁸⁹ Writ Petition WP No. 1019 of 2006, High Court of Andhra Pradesh, filed by Sakshi Human Rights Watch, Response by the State Police Department in Annexure R-2/1

effective implementation of the SC/ST POA made the following observations – “the statistics furnished by the Director General of Police shows that 1 case registered under this Act (SC/ST POA) is pending investigation for the last almost six years, 4 cases pending investigation for last five years, 18 cases are pending investigation for over four years, 31 cases are pending investigation for over three yeasts. 190 cases are pending investigation for almost two years and 805 cases are pending investigation for last about one year.” This delay and subsequent negligence is apparent not in investigation but also in the areas of arresting of the perpetrators as well as in the disposal of the claims for relief and rehabilitation. A similar delay is seen in the disposal of cases in the judiciary and this results in massive delay and therefore denial of justice to the victims of Dalit atrocities.

166. The Public Hearing carried out by the National Campaign on Dalit Human Rights brought out

167. Under reporting of Atrocities Act cases is a very common phenomenon and therefore the decline in the number of registered cases does not provide a true picture of the incidence of atrocities. Studies carried out by an NGO have shown that 36% of atrocities cases were not registered under Atrocities Act and 84.4 % of these cases where the Act was applied, the cases were registered under wrong provisions with a view to conceal actual and violent nature of the incidents⁹⁰. The non-registration of cases, apart from reflecting caste bias and corruption, has also been attributed to the pressure on the police to keep reported crime rates low in their jurisdiction.

168. The progress of investigation of cases by the police indicates that number of charge sheeted cases was 53.04% of the total number of cases while 22.54% of cases were closed after investigation and number of cases pending with police at the end of the year 2000 constituted 24.42%.⁹¹ It is evident from the Report that only 7.83% of the total cases were disposed of during the year and only 11.4% of the disposed off cases ended up in conviction.

169. Under the law a centrally sponsored scheme provides assistance for strengthening the enforcement machinery and judicial administration; publicity; relief and rehabilitation of affected persons. It is evident that even in respect of such a non-contentious matter as payment of compensation to Dalit victims according to their entitlement, the subtle bias and lack of sensitivity operates even at the highest level, both bureaucratic and political. The government’s apathy is reflected in not providing other assistance and entitlements such as travelling allowance, daily allowance and reimbursement of medical expenditure to victims and witnesses. Therefore, the legal framework of protection against atrocities is neither able to ensure punishment to the offenders nor payment of compensation and relief to victims.

⁹⁰ “Broken People, Caste Violence against India’s untouchables”, *Human Rights Watch*, 1999, p 194

⁹¹ *Seventh Report of the Ministry of Social justice and Empowerment for the year 2000*, p. 8

ARTICLE 5 of ICERD

Article 5 is of pivotal importance to the Convention. This article contains a long list of rights and freedoms in the enjoyment of which racial discrimination shall be prohibited and eliminated. Note should be taken that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list. In addition to the rights set forth in the Universal Declaration of Human Rights, the list contains certain rights not expressly contained in the Universal Declaration, such as the right to inherit and the right of access to any place or service intended for use by the general public. Furthermore, the Convention specifically lists among the rights, in regard to which racial discrimination is prohibited, the right to work, the right to join trade unions and the right to housing. Most of the rights mentioned in Article 5 have been elaborated in the Covenants.

The States Parties are recommended to report about the non-discriminatory implementation of each of the rights and freedoms referred to in Article 5 of the Convention one by one.

Measures of Indian Government in accordance with Article 5

170. The provisions of Articles 23, 24 and 46 form part of economic safeguards for Scheduled Castes and the Scheduled Tribes. Article 46 provides that State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, Scheduled Castes/Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. It is in pursuance of this Article that special programmes for extending educational opportunities to Scheduled Castes and Scheduled Tribes have been taken up. Institutional arrangements for their development, including earmarking of specific percentage of funds from the budget for various development activities in the form of a Special Component Plan for Scheduled Castes and Tribal Sub-plan for Scheduled Tribes have also been in operation for a long time.

171. Article 15(4) empowers the State to make special provisions for advancement of any socially and economically backward classes or citizens and for Scheduled Castes/ Scheduled Tribes. This provision has enabled the State to reserve seats for Scheduled Castes/Scheduled Tribes in educational institutions including technical, engineering and medical colleges. Article 29(1) provides that “Any section of the citizens residing in the territory of India or any part thereof, having a distinct language, script or culture of its own shall have the right to conserve the same”. Article 350(a) provides for adequate facilities for instructions in the mother tongue at the primary stage of education for children belonging to linguistic minority groups.

172. Article 16, which provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any or all of them, has made a very special provision which permits Parliament to make any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. It is through this provision that reservations in appointments and promotions for Scheduled Castes and Scheduled Tribe and for OBCs in the matter of recruitment have been made. Under Article 16(4) (a), this benefit of reservation in the matter of promotion has been extended to Scheduled Castes and Scheduled Tribes to overrule the judgment of the Supreme Court. Article 16(4)(b) has further made provisions to permit backlog vacancies as a separate category in any year for determining the ceiling of 50% reservation on total number of vacancies that year. Article 335 provides that the reservation provisions shall be made taking into consideration efficiency of administration. Through a specific amendment to the Constitution, the State has been empowered to make any relaxation for qualifying mark in any examination or lowering the standards of evaluation for enforcing reservation in matters of promotion to any class or classes of service or posts in

connection with the affairs of the Union or of the State.

173. Article 338 of the Constitution provides for a National Commission for Scheduled Castes and Scheduled Tribes and specifies the functions it would discharge and the annual report it is required to present to the President of India.

Dalit Rights in Local Governance⁹²

Political Participation viz a viz the Denial to Participate Freely

174. The new forces in the post-independence period which were beginning to produce economic and political systems no longer depended entirely on caste. New forms of domination in which caste and class forces came together were noted in which power remained in the hands of the “higher castes” and oppression of the “lower castes” continued.

175. The granting of reservations to Dalits within the new Panchayats established by the 73rd constitutional amendment in 1993 is one of the most significant changes introduced in recent decades. Apart from seats for Dalits in every Panchayat based on their population, the posts of Sarpanch (Village head) together with 1/3 of the seats for Dalit women have been reserved. These provisions have the potential of throwing up a new leadership among Dalits who can play a seminal role in participation and decision-making in the new Panchayats. It has opened the doors of the political arena for emergent Dalit leaders including Dalit women to enter democratic politics and introduce change at the local level. It was considered as the stepping-stone in field of people's participation⁹³.

176. In states where a more inclusive pattern of economic development has helped Dalits to improve their economic status it has provided them the potential to revolt against the traditional order and at least initiate a process of reordering relationships within the Panchayats. Traditionally Dalits have owned little land and have depended upon the landowning class in the village to provide them employment leading to a *culture of dependency* upon them⁹⁴.

177. In most of the States, Dalits have realized the importance of Panchayats and are making efforts to improve their position within these institutions. What is required is a concerted effort on the part of the State to improve the educational attainments, economic position and understanding of the functioning of local government on the part of Dalits so that they are able to participate as equal citizens.

178. 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.

179. Many violent incidents are reported from across the country when Dalits try to exercise their legitimate and rightful claim to representation, participation or leadership. For almost a decade from 1996, the government had not been able to hold Panchayat elections in four Panchayats of Pappappatti, Nattarmangalam, Keeripatti in Madurai and Kottakkachiyendal of Virudhunagar districts in Tamil Nadu because the dominant caste communities prevented any

⁹² Cases reported here are primarily taken from *Panchayat Raj Update*, a monthly news bulletin brought out by Institute of Social Sciences, New Delhi during 2005.

⁹³ Narendra Kumar and Monoj Roy (Ed.) “Dalit Leadership in Panchayats: A Comparative Study of four states” *PRIA*, New Delhi, 2006

⁹⁴ Sudha Pai, “Pradhanis in the New Panchayats: A Study from Meerut District” in Kiran Saxena (ed.) *Women and Politics*, Gyan Publishing House, New Delhi, 2000

Dalit to contest, 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 tried to prevent Pookodi another dalit who was standing with the support of the local Dalit organizations 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 15 Dalit families who dared to vote for a Dalit candidate P.Poonkodi, the unsuccessful candidate who was put up by Dalit organizations.

180. 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 sub-inspector of police, Mr. Vikram Singh, communicated the decision to her.

181. Direct intimidation and other kinds of pressure tactics are always used by the dominant caste Hindus to deny any meaningful participation of Dalits in panchayats. The husband of an honest and bold panchayat president — of village Kamrej in Bhavnagar District in Gujarat, the first Dalit woman to hold such a post — committed suicide because he could not persuade his wife to resign from her post. The Dalit woman panchayat president had refused to follow dictates of caste Hindus of the village. Consequently, she was not allowed to enter the panchayat office and her family was subjected to constant harassment.⁹⁵

182. Another case is that of Savitaben, elected sarpanch of Saddha Gram panchayat in Himmatnagar *taluka* of Sabarkantha district, Gujarat, in 1995. Savitaben took up development activities such as constructing roads, water pipelines, tanks and community halls. She also helped handicapped people and other needy families to get access to benefits from various government schemes. All this made her popular among villagers but other *panchayat* members, especially those from the upper castes, accused⁹⁶ her of misusing her powers and started to humiliate her. These *panchayat* members managed to oust her from office through a no-confidence vote. On contesting elections again, despite threats from *panchayat* members, Savitaben was re-elected by a thumping majority. But this was not the end of her ordeal. After six months *panchayat* members once again suspended her on the grounds of incompetence.

Land Rights

183. Denial of land rights to Dalits is directly linked to caste system and its pernicious influence resulting into gross human rights violations of worst kinds in multiple forms. 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”.⁹⁷

184. It is indeed a sad commentary on land reforms and the egalitarian policies of the Government that five decades after independence, the Dalits are still forced to work as landless labourers, bonded labourers and attached labourers and are denied ownership rights to land. Violence against Dalit women is also linked to the denial of land rights as in majority of the land disputes; the Dalit women are made targets of violence to silence their male counterparts.

185. Landlessness among Dalits is a common feature in the Indian rural economy. At an all India level, the 1999-2000 NSS⁹⁸ data illustrates that around 10 percent of the SC households are landless as compared to 13.34 percent in 1992 and 19.10 percent in 1982. Though it is apparent that landlessness is decreasing, but the rate of decrease is marginal. On the other hand, 6.15

⁹⁵ Umakant, “Limited Democracy”, *Down to Earth*, New Delhi, 30 June 2004

⁹⁶ Ibid

⁹⁷ Smita Narula, “Broken People-caste Violence against India’s Untouchables”, *Human Rights Watch*, 1999, p.27

⁹⁸ *National Sample Survey*, Government of India

percent of the Non Dalit households were found to be landless in 1999-2000, as compared to 10.53 in 1992.

The Non- Implementation of Land Reforms Policy: A Violation of Dalit Human Rights

186. The State wise analysis of the landlessness brings to the fore that in 1999-2000, the highest numbers of SC landless households were found in Bihar followed by Gujarat, Maharashtra, Tamil Nadu and Punjab respectively. Landlessness among the Non SC/STs was low both at all India level and at the State level as compared to the SC and the ST households. In 1999-2000, at the state level, landlessness among the Non SC/ST households was the highest in the States of Maharashtra (around 12 percent) followed by Punjab (9.85 percent), Tamil Nadu (9.35 percent), and Gujarat (9.05 percent). It is a historical fact that in Punjab Dalit have not been allowed to own land, as there was a Law, which prohibited Dalits ownership of land.

187. It is also interesting to note that in 1999-2000, the percentage of Dalit 'landless plus near-landless' households were more concentrated in the developed States like Punjab, Kerala and Haryana, followed by some underdeveloped States like Bihar and Tamil Nadu.

188. According to the Report of the National Commission for Scheduled Castes and Scheduled Tribes⁹⁹, as on 30 September 1996 about 5.213 million acres of land were distributed at all-India level. Of these about 1.8 million acres were distributed to SC, and 2.67 million acres to non-SC/ST persons. A total of 5.121 million beneficiaries have been so far covered, of which 1.84 million were SC, and 2.55 million non-SC/ST. The land distributed per beneficiaries comes to 0.977 acre, which was less compared to 1.047 acres for non-SC/ST. Of the total land distributed to SC households, however, West Bengal alone accounted for about 20 percent, followed by UP. In term of share in beneficiaries also West Bengal also accounted nearly 43 percent of total beneficiaries followed by U.P. (13%), A.P. (12%) and Bihar (12.4%).

189. Dalits and Adivasis have been greatly let down in the land distribution schemes as well as appropriation struggles. Right from 1948 up till 1970's, the Zamindari Abolition Act, and various Tenancy Acts, the land has actually been transferred from Kings, Jagirdars, Enamdars, Zamindars etc., to farmers and tillers of the land. This extent alone is around 34.9 million acres. But only a meagre 0.5% of this land has reached to the hands of Dalits and Adivasis.

190. Under the new regime of liberalized economy, Dalits are further being alienated from land. This has been happening mainly because large tracts of lands are being provided to MNCs and big projects funded by the World Bank at throw away prices without taking into consideration the interest of the small and marginal farmers, majority of whom happen to be Dalit and other disadvantaged sections of Indian society. This has also led to large-scale displacement of Dalit and Adivasi families at various places within the country. The Special Economic Zones (SEZs) which are being pursued with a missionary zeal by different State Governments is nothing but reincarnation of Zamindari system and is taking away the large tracts of cultivable land from poor people most of whom happens to be Dalits and other marginalized sections of Indian society.

191. 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 disability 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"¹⁰⁰

192. 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

⁹⁹ 1995-96, Government of India

¹⁰⁰ Report on Prevention of atrocities against Scheduled Castes, *NHRC*, 2004, p.85

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.¹⁰¹

Right to Education for Dalit Children

193. The Constitution of India clearly embodies several significant pledges to promote the rights of children. This was affirmed further by the National Policy for Children, 1974. Eighty Sixth Amendment of the Constitution, 2002 promises free and compulsory elementary education of good quality of eight years for every child of the age group of 6-14 years as Fundamental Right.

State Provisions of Education for Dalit Children

194. State provision of education for SC and ST are contained in Articles 15 (4), 45 and 46 of the Indian Constitution. Article 15 (4) underscores the states' basic commitment to positive discrimination in favour of the socially and educationally backward classes and or SC/ST. Art. 45 declares that the states' endeavour to provide free and compulsory education for all children until they complete the age of 14 years. Art 46 expresses the specific aim to promote with special care the educational and economic interests of SC/ST.

Dalit Children Population

195. According to census 2001 the country had a child population of 205 million in the age group of 6 to 14. Of these children the number of Dalit children in the same age group is 35.6 million, about one in every six children.

National Drop-Out Rate of Dalit Children

196. The enrolment of Dalit children has increased over the years, revealing the increased interest in education and mobility. "Enrolment of SC and ST boys and girls at primary stage has reached an astonishing 92% during 1999-2000".¹⁰² But the real problem is an alarming drop-out rate among Dalit students. The national drop-out rate among Dalit children is 36.6 % at primary, 59.4 % at middle and 73.1 % at secondary level of education.¹⁰³

Sarva Shiksha Abhiyan (Education for All)¹⁰⁴

197. The Sarva Shiksha Abhiyan has special focus on the educational development of children belonging to Scheduled Castes and Scheduled Tribes. Every activity under the project must identify the benefits that will accrue to children from these communities. Incentives in the programme will have a sharper focus on children from these communities. The participation of Dalits and Adivasi in the affairs of the school will be especially encouraged to ensure ownership. Unfortunately, the programme could not achieve the expected results in the past in terms of education of Dalit Children because of deep-rooted discriminatory practices at various levels.

198. Some excerpts from the latest survey on "Out of School" are given here to highlight present status of drop out rates in the context of SSA¹⁰⁵. Universalisation of elementary education through the Sarva Shiksha Abhiyan has not percolated to the marginal social groups (SCs/STs/OBCs and Muslims) and a sizeable section (nearly 40%) of disabled children. Besides, the maximum overall dropout rate (20%) is after the completion of class V.

199. In an exhaustive survey, based on data collected from 87,874 households and

¹⁰¹ *Planning Commission of India*

¹⁰² *Report, National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1999-2000 & 2000-2001, pp. 151-183

¹⁰³ *Ibid.* p. 177

¹⁰⁴ "Sarva Shiksha Abhiyan", *Ministry of Human Resource Development*, Dept. of Elementary Education & Literacy, Government of India.

¹⁰⁵ Akshaya Mukul, "Sarva Shiksha Gains not Universal", *Times of India*, New Delhi, 27 January, 2006

conducted by IMRB and commissioned by HRD ministry, it has been found that nearly 7% of children in the age group of 6-13 are out of school.

200. In real terms, this means that 1.34 crore out of 19.4 crore children in this age category have not been to school. Though among all social groups the estimated percentage of children out of school is higher in rural areas compared to urban areas, Muslims top the list in both the settings at close to 10%. 'Other' category comprising upper castes and the well heeled has the least number (nearly 4%) of out-of-school children.

201. Among SCs, while the national average of out-of-school children is 8.17%, states like Delhi (nearly 26%), Jharkhand, Bihar (both over 21%), Nagaland and Chhattisgarh and a few others have contributed to this mess in a big way.

Discrimination by Teachers

202. 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.¹⁰⁶ 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.¹⁰⁷

Dalits and Higher Education

203. As far as higher education is concerned, the enrollment of Dalit students at the graduate, post-graduate, and professional/Ph.D research levels was abysmally low. By 2001, 3.4% of the Dalit men over the age of 15 and only 1% of the Dalit women over the age of 15 had a post-secondary education of any kind. For Dalit men this was less than half of the percentage of non-Dalit men, while the Dalit women's percentage was less than a quarter of the percentage of non-Dalit women. Despite the steady growth in higher-level educational infrastructure since Independence, the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) stated in its report for 1996-97 and 1997-98 that "it has been observed that the enrolment of the SC and ST in general, technical and non technical is not satisfactory. This situation is alarming in technical and professional courses where most of the SC\ST seats remain unfilled." Many universities do not even follow the University Grant Commission (UGC) guidelines regarding both the relaxation of admission standards and the facilities to be provided to the SC&ST students. In the same report, the National Commission indicated how important it was that the universities and professional institutions strictly follow the various guidelines, which the UGC has issued from time to time.¹⁰⁸

204. The National Commission for Scheduled Castes and Scheduled Tribes in its last report observed that fifty-seven years of freedom is an occasion for some serious introspection, especially with regard to the mass education sector. In spite of a commendable expansion of facilities, the curse of illiteracy and deprivation has not been wiped out. Although the participation of Dalits has improved in the last five decades, their unequal development in a hierarchical social order continues to be reflected in the indicators of the educational status of various communities. That the educational status of non-Dalits has progressed at a faster pace than the Dalits' status, clearly shows the bias of the planners and implementers in bypassing the various policy guidelines framed for purpose of giving an impetus to improving the educational status of the weaker sections of Indian society.¹⁰⁹

¹⁰⁶ B.K. Anitha, *Village, Caste and Education*, Rawat Publications, Jaipur, 2000

¹⁰⁷ 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.

¹⁰⁸ Umakant, "Dalits and Education", *Dalit International Newsletter*, June 2006

¹⁰⁹ *Report of National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1999-2000 & 2000-2001

The Right to Public Health, Medical Care, Social Security, and Social Services

Denial of Access to Basic Services

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

206. In 1998-99 at least 56% of Dalit 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 Dalits is closely linked with poverty, low educational status and also discrimination in access to health services

207. In spite of the importance on maternal health care placed in the Public Health Planning in India, the goal of providing professional health care during pregnancy and delivery is far from being achieved. While a few States, notably Kerala and Tamil Nadu are nearing complete coverage in many aspects of maternal care, the situation is quite poor in States like Uttar Pradesh, Bihar and Rajasthan; Orissa seems to have improved recently and risen over the latter States. Since maternal health care is provided free of cost by the primary health care network involving community health centres, primary health centres and sub-centres; all sections should get this care. Yet the coverage is lower for the scheduled groups and the deprivation is worse for Dalit women.

208. The Action Aid study¹¹⁰ explored Dalits' access to basic public services that may not be directly related to the State. As is evident from this study, 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.

209. 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.

210. In over one-thirds (about 35.8%) of the villages surveyed, Dalits were denied entry into village shops. This usually meant that 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.

Caste Discrimination and Food Security Programmes

211. The right to food is considered a fundamental human right under Indian Constitution

¹¹⁰ Ghanshyam Shah et. al. (Ed.), *Untouchability in Rural India*, Sage Publication, New Delhi, 2006

and International human rights instrument. But when it comes to the dalit children it is severely violated in different forms and ways. Considering high drop out rate in primary education the Supreme Court of India directed the Union government to provide Mid Day Meals Scheme (MMS) so students may be retained and the right to education for all can be realised. The mid-day meal 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 have fallen from 22638260 in 2003-04 to 22004919 in 2004-05 causing concern in the context of the discrimination reported.¹¹¹

212. The physical setting of the MMS is important, the locality in which that space is situated is equally if not more significant. The physical access – location of the MMS in terms of caste geography – we note that Rajasthan and Tamil Nadu have very low percentages of villages in which the MMS is held in a Dalit locality: 12% in Rajasthan and 19% in Tamil Nadu. Most midday meals in these states are held in dominant caste localities.

213. In UP, Rajasthan and Tamil Nadu, then, the vast majority of Dalit children must enter an area of heightened vulnerability, tension and threat, in order to avail themselves of the midday meal or its dry grain equivalent. Access for Dalit children is thus conditional, and hostage to the fluctuating state of caste relations in the village or region. A pattern of incidents documented in the study, to be discussed later, demonstrate how Dalit children's access to the MMS, already tenuous because it is held in the dominant caste locality, is then cut off when dominant castes feel the need to demonstratively reassert their hegemony.

214. In hiring practices, Rajasthan is consistently the least likely to employ Dalits, with 8% of respondent villages having a Dalit cook, and not a single respondent village having a Dalit MMS organizer. Tamil Nadu hires proportionally more Dalits, while still keeping them firmly in the minority, with 31% of respondent villages having Dalit cooks, and 27% having Dalit organizers.

215. In Uttar Pradesh, measurable indicators point to an extremely low level of Dalit participatory empowerment and ownership of the pre-MMS dry grain distribution system. In 94% of respondent villages in UP, the distribution organizer is dominant caste; Dalit organizers are found in only 4% of respondent villages (the remaining 2% have Scheduled Tribe organizers). The issue of hiring cooks, of course, does not arise where dry grain is distributed in lieu of a proper, cooked, midday meal.

Opposition to Dalit Cooks

216. “Opposition to Dalit cooks” is actually a blanket term describing several different patterns of specific acts of caste discrimination and exclusion observed in the study. The patterns can be grouped into five, which take place at different points during the process of MMS institution and continuance. First, when local administrators are putting the MMS into place, dominant caste community members intervene to block the hiring of Dalit cooks, favoring dominant caste cooks instead. Where a Dalit cook has been hired, dominant caste parents then begin sending their children to school with lunches packed at home, or require their children to come home for lunch, in any case forbidding their children to eat food prepared by the Dalit cook. In the third stage, dominant caste parents or community members pressure the local administration to dismiss the Dalit cook, on any pretext, and hire a dominant caste cook instead. Where this is ineffective, or sometimes without the intervening step, the dominant caste parents campaign to shut down the MMS in the village school altogether. Finally, some dominant caste parents react to the hiring and keeping of a Dalit cook by withdrawing their children from the school, and sometimes admitting them in a different school where the cook is not Dalit.

Public Distribution System

¹¹¹ “Citizens Report on Governance and Development 2006”, *Social Watch*, Pearson Education-Longman, Delhi, 2006

217. The Indian Government's Targeted Public Distribution System (TPDS, or, often, simply PDS) is reputed to be the largest system of controlled food distribution for the poor in the world. At the village level, the system is operated through government-recognized "Fair Price Shops", or PDS shops, run by local, government-recognized PDS dealers.

218. As with the MMS, *physical access, participatory empowerment/ownership* and Dalits' *community-level access* are the factors according to which the survey¹¹² evaluates caste discrimination and exclusion in the PDS. Two measurable indicators are employed to gauge Dalit *physical access* to the PDS: existence and number of functioning PDS shops in the village, and location in terms of caste geography. First, are there PDS shops operating in the village, and second, are these shops placed in dominant caste localities, Dalit quarters, or elsewhere?

219. Dalits' *participatory empowerment* and *ownership* of the PDS is measured by the percentage, out of all PDS shops in respondent villages, of PDS shops owned by Dalits.

220. A second factor conditioning Dalit access to the benefits of the PDS is the location in which the shops are physically situated. As a five state average, 17% of villages have PDS shops in Dalit colonies, while 70% (more than four times the former) have PDS shops located in dominant caste localities, and 13% of villages have PDS shops located elsewhere. Rajasthan has the highest proportion of PDS shops held in dominant caste localities at 91%, followed by Uttar Pradesh at 82%, Bihar at 76%, Tamil Nadu at 53%, and Andhra Pradesh with 30 percent¹¹³

221. In terms of Dalits' *community access* to the PDS, four forms of discriminatory practices are reported – discrimination in quantity, discrimination in price, caste-based favouritism by the PDS dealer, and practices of "untouchability" by the PDS dealer – in varying degrees of currency

222. One classic "untouchability" practice is the dominant caste dropping of goods (water, food, money) from above into cupped Dalit hands below, so as to avoid the possibility of "polluting" contact between the "upper" and "lower". This remains in evidence, but other "untouchability" practices, such as dominant caste dealers hanging *purdah* before dealing with Musaher Dalits in Bihar, also emerge in the survey data. As PDS dealers are government actors, the practice by more than one quarter of PDS dealers of "untouchability" in the course of their official duty – in blatant defiance of the Anti-untouchability Act of 1955, the Constitution of India and numerous pieces of legislation since – has serious legal implications for the government.

223. The MMS and PDS are arguably the strongest available tools with which poor and marginalized populations in India can at present actualise their Right to Food. Whether they are operated well or poorly can – indeed *does* – make the difference between sustenance and preventable starvation for Dalits children and adults suffering from chronic poverty. While the problem is nationwide, its degree varies considerably from state to state.

Employment

224. The Indian state has recognized backwardness and deprivation suffered by these Dalit groups as back as 1950 and developed policies for the economic, social and political empowerment of these communities. The government's approach towards Dalits draws primarily from the provisions in constitution.

¹¹² With regard to the PDS, Uttar Pradesh and Bihar *have* implemented the scheme on a par with the other states, unlike in the MMS. Therefore all five states in the survey are considered together.

¹¹³ Only Andhra and Tamil Nadu have significant percentages of PDS shops held in "other places", at 22% and 31%, respectively. In these states, researchers understood "other place" to include the localities of Other Backward Castes (OBCs) instead of only caste-neutral places. Therefore, the percentages of PDS shops held in dominant caste (by which we mean all castes in a position of dominance over Dalits, including OBCs) localities in Andhra and Tamil Nadu may be considerably higher than they appear in our data.

225. The government has used two fold strategies, namely (a) Remedial measures and safeguards against discrimination in multiple sphere and (b) developmental and empowering measures particularly in economic spheres. The measures and safeguards against discrimination in the form of reservation policy are however, confined to state run and state supported sectors and the private sector namely agriculture, private industry and cooperative sector where more than 90% of Dalit workers engaged, are excluded and therefore remained unprotected from possible discrimination. In the absence of legal safeguards and reservation policy in the private sectors the state has used “general programmes” for economic, educational and social empowerment of Dalits. The focus has been to improve the private ownership of fixed capital assets like agricultural land, ownership of non-land capital assets, human resource capabilities, and access to social and basic services like housing, health, drinking water, electricity and others. The strategy for improving or building the private ownership of capital assets and human resources capabilities has been primarily undertaken as part of anti-poverty and other economic and social programmes for the poor, by targeting or fixing specific informal quotas for Dalits households in the case of divisible schemes.

226. With these policy measures of social and economic empowerment, it was expected that the access of these social groups to capital assets would improve through increase in proportion of land owning (self-employed) cultivator among Dalits. Priority in the distribution of surplus land under ceiling, government land and other land should bring a shift in the occupational status from wage labour to self-employed cultivating households. The supply of credit for land development and inputs should also make marginal and small farmers viable self-employed cultivators. Similarly it was expected that with supports for non-farm economic activities, the proportion of self-employed household/person in business in rural and urban area would improve. With expected increase in the proportion of self-employed in agriculture and non-agricultural, there should be corresponding decline in the proportion of wage labour households¹¹⁴. But unfortunately it could not work to the expectation of the policy makers because of deliberate poor implementation.

Lower Access to Income Earning and Capital Assets

227. The Dalits have been suffering from a high degree of discrimination when we consider variables such as access to land, capital assets, employment, education and income etc. In 1999-2000, in rural India, the unemployment rate of Dalit males and females was 1.4 percent and 16.9 respectively. Interestingly, the unemployment rates for both the Dalit males and females were higher than those for the Non Dalits/ Adivasis.

228. In 1999-2000, although the disparity levels in rural unemployment rates between the Dalits and the Non Dalits/ Adivasis males were very low for CDS; Dalit males were found to be more unemployed than the Non Dalits/ Adivasis. The Dalit females, on the other hand, were found to be more unemployed than their male counterparts. The unemployment rate for the Dalit males was found to be very high (more than 5 percent) for the States of Kerala, Tamil Nadu and West Bengal and the lowest for the States of Punjab, Rajasthan and Gujarat for CDS. The unemployment rate of the Dalit females was found to be the highest in Kerala and the lowest in Uttar Pradesh. In the urban areas, the Dalit males were found to be more unemployed than the Non Dalit/ Adivasis males.

Discrimination in Wage Earnings

229. There is massive economic inequality within the social groups. The wage rate is also determined by caste-based economic discrimination in rural areas. The differences in the magnitude of wage labour among the Dalits and the Non Dalits and their land ownership backgrounds and disparities in wage rates in agriculture and non-agricultural employments still

¹¹⁴ Differences in level of conception among Socio and Economic Groups – 1999 – 2000, NSS 55th Round, July 1999-June 2000, *National Sample Survey Organisation*, Ministry of Statistics and Programme Implementation, Government of India, September 2001.

persist in India.

230. For a sustained, anthropocentric, and holistic development of the Dalit labour force, State intervention in the form of affirmative actions in various markets such as land, labour, capital, products and social services (like education and health etc) is necessary. It must be recognized that the Dalits face multiple forms of discrimination in all factor markets. If the magnitude of wage labour among the Dalits is to be reduced and discrimination in employment, wages and occupation is to be overcome, the policies of improving the access to physical capital assets, human capital and market intervention are necessary.

231. The farm and non-farm casual labour and salaried workers experienced various types of discriminations in employment which includes discrimination in hiring and wage payment. At least one fifth of the respondents reported preference of upper caste employer for the persons belonging to their own caste or 'Higher Caste', which lead to exclusion of 'low caste' labourer from hiring in farm and non- farm work. The caste sympathy towards own caste people turnout to be the main reason for preference of labourer of their own caste or 'high caste'¹¹⁵.

232. The denial in hiring by 'high caste' take various forms such as exclusion in any work, in some season and in some specific work. Dalit labourers faced exclusion in some measure, in some types of work in agriculture which include work related to processing of crops and in cutting of some crops. In the case of non agricultural work, Dalit labourers faced exclusion to some extent in some types which mainly include work related to social ceremony, followed by house construction and work in restaurant. In case of inside housework of 'high caste' persons, the Dalit labour faced complete exclusion.

233. Exclusion in employment in any work, or denial in some seasons, or selectively in some types of works in agricultural and non agricultural operation or household work inside house of 'high caste' bring losses in employment and generate lower level of employment among Dalits as compared with 'higher caste' worker. It is a clear denial of right to life with dignity and right to equality enshrined in the Constitution of India as well as in International human rights instruments.

Reservation in Education and Public Sector Employment

234. Observing the century's old and accumulated social, economic, political and educational deprivation, the Constitution of India made specific provisions for the protection of Dalits (SCs) and the other weaker sections from any form of discrimination. While the Constitution enjoins upon the State to make effective provisions for securing the right to education, it was not until very recently (2002) that the right to free and compulsory education of children up to 14 years of age was incorporated as a fundamental right through the 93rd Constitutional amendment. Several policy instruments employed by the State in the post-independent India towards promoting education among the SCs have met with some measure of success.

235. Subject to Art 15(4) permits the state to make any special provision for (a) Socially and Educationally backward classes of citizen, (b) SCs and (c) STs.

236. Thus the Indian government approach towards these groups has been primarily shaped by the provisions in the Constitution, which guarantees equality before the law, and empowers the state to make special provisions to promote the educational and economic interest of Dalits and Adivasis and to protect them from discrimination in multiple spheres.

237. Now the reservation policy is confined to a tiny state run and state supported sectors

¹¹⁵ Labour Bureau, *Ministry of Labour*, Government of India, (1998) "Rural Labour Enquiry, Report on General Characteristics of Rural Labour Households, 50th Round of NSS, 1993-94, Shimla / Chandigarh,

and the vast private sector where more than 90 percent of the Dalits/ Adivasis population /workers engaged are excluded and therefore remained unprotected from possible discrimination.

238. Privatization has further marginalized the weaker sections by reducing the scope available in public sector, since the public sector itself is being disinvested. The significant fact is that according to 1984 Industrial Act, 18 sectors were reserved as public sector enterprises. Over the years, these have been also converted into private sector and now only half a dozen of these remain as public sector. This has directly and definitively given a death blow to the Adivasis and Dalits in terms of job opportunities.

239. Article 15(4) and 16(4) of the Constitution enabled both the state and central governments to reserve seats in public services for SCs and STs and enshrine equality of opportunity in matters of public employment: “Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class or citizens, which, in the opinion of the State, is not adequately represented in the services under the State.” Equal opportunity and equality of results can be achieved only by reservation. At the central level some of the services are excluded from the reservation and these prominently include defence and judiciary.

240. As per article 335: “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or State,” as the limitation of Art.16 (4) The main objective of Art.16 is to create a constitutional right to equality of opportunity and employment in public offices. According to the articles 335 and 46 of the Constitution, Art.46 speaks about the promotion of educational and economic interests of SCs, STs and other weaker sections. The state shall promote with special care the educational and economic interests of the weaker sections of the paper, and in particular, of the SCs, STs and shall project them from social injustice and all forms of exploitation.

Half Hearted Implementation of Reservation in Employment in Public Sectors

241. Reservation policy has never been fully implemented from the time of its conception and much has been achieved in actual terms. This is disregarding the fact that SCs as per the 2001 Census constitute about 16.5 percent of the total population in India and thereupon too, they have been provided with 15 percent reservation. Yet, the implementation of the reservation policy for Dalits has been below par.

242. The inferences drawn from different statistical analysis clearly bring out the following. Firstly, the data evidently supports the proposition that the reduction of jobs in the Government sector for the Dalits is faster than that for the Non Dalits. Secondly, reduction in the absolute average number of employment for the Dalits in the different Groups of jobs after 1991 amply suggests that the National Employment Plan (NEP) has had adverse impacts on the job market, particularly, in the Government sector jobs. Thirdly, the percentage share of Dalit population to total employment in Group ‘A’ and ‘B’ jobs falls short of the stipulated 15 percent mark. However, for Group ‘C’ and Group ‘D’, the SC population is fairly represented. Fourthly, in 2003, 6.7 percent of Dalits were employed in Group ‘A’ and Group ‘B’ jobs, while 93.3 percent of Dalits were employed in Group ‘C’ and Group ‘D’ types of jobs. Fifthly, from 1960s to the 1980s, approximately a half of the SC population was concentrated in Group ‘D’ type of jobs while the other half was engaged in Group ‘C’ occupations. Finally, the percentage share of Dalits over the periods under analysis has declined for Group ‘D’ jobs and conversely, has increased for Group ‘C’ jobs¹¹⁶.

¹¹⁶ 55th Round of NSS, 1999-00, Shimla / Chandigarh.

Indian Institute of Dalit Studies “Rural Labour - Magnitude and Characteristics” Chapter VIII Scheduled caste: A profile 2004 Documentation on Status of Scheduled Caste.

243. Therefore, it becomes visibly discernible that firstly, after the inception of the NEP, though the overall employment in public sector banks has reduced for all social groups, but the Dalits seem to have been severely impacted. Secondly, due to the shrinkage of employment in the public sector banks, the Non Dalits have bifurcated to the private sectors while the Dalits still fall on the thresholds of unemployment and thirdly, though the Annual Report of the Ministry of Finance (1990) mentioned about launching a special drive to clear the backlog of jobs as on March 1990 in all classes of employees, it failed to address the question so as to how the percentage share of the Dalits in officer and clerical categories fell much below the stipulated quota.

244. Although, there has been a marked improvement in the overall representation of the Dalits in Government services, but still in 2003, a gap of about 3 percent in Group 'A' jobs and a gap of 1.5 percent were evident. Since the representation of the Dalits fell below the stipulated quota of 15 percent there is a need to implement a special drive to fill up the posts.

245. The notions of purity and pollution, social stigmas and forms of ostracisms linked with several caste-based occupations such as scavenging and sweeping discourage the Non-Dalits from participating in these occupations. This explains the higher concentration of the Dalits in lowest level jobs.

246. The fact that the reservation policy has been one of the cornerstones of Dalit empowerment cannot be negated. But still the Dalits have been unable to reach the levels of development as is visible for the Non-Dalits. Reservation policy has never been fully implemented from the time of its conception and much has been achieved in actual terms.

Budgetary Allocation for SCs: Special Component Plan Massive Injustice and Loss of Opportunities for Dalits

247. Analogous to the "The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989", the Government of India does have a potentially powerful mechanism for the economic empowerment of Dalits. The mechanism is the Special Component Plan (SCP) for Dalits. SCP, in the words of the Indian Planning Commission is "a policy instrument designed to ensure the fulfilment of constitutional guarantees and entitlements enjoined for the Scheduled Caste communities."

The Concept of Budgetary Allocation

248. The SCP, initiated during the Indian Government's 6th Five Year Plan (1980-85), envisaged a radical redefinition of planning and budgeting for Dalits. It was based on the realization by the Government of India that decades of planning and hundreds of millions of Rupees spent in the name of "Welfare of SCs & STs" had not brought any substantial changes in the Socio-economic lives of Dalits. Hence the SCP was brought in as a radically reworked strategy of dalit welfare and empowerment.

27.18 *"The Sixth Five Year Plan marked a shift in the approach to the development of the SCs. The SCP, launched for the SCs, was expected to facilitate easy convergence and pooling of resources from all the other development sectors in proportion to the population of SCs and monitoring of various development programmes for the benefit of SCs¹¹⁷"*

249. The programme was made obligatory for all the State Governments and all their departments as well as all Central Government Ministries. And in 1986, a scheme of Special Central Assistance of 100% grant to the States for the implementation of SCP was also initiated.

250. The main elements of the philosophy of the SCP, as regularly stressed by the Ministry of Social justice and Empowerment of the Government of India, are Proportionality, Convergence, Universal Application and Auto-Decision making.

¹¹⁷ Report of the Steering Committee on Empowerment of the SCs, OBCs and Minorities, *Tenth Five Year Plan* (Government of India)

Proportionality

251. According to SCP, funds allocated for the welfare of Dalits out of the total annual plan outlay, should be at least proportional to their population percentage at the national and States level. This means that as Dalits constitute 16.5% of the Indian population, at least 16.5% of the outlay of the Central Budget should be allocated as SCP funds. Similarly in a State like Tamil Nadu, where Dalits constitute 19% of the State population, at least 19% of the plan outlay of the State Budget should be allocated as SCP funds.

Convergence

252. In contrast to the earlier practice of numerous schemes by different departments and ministries, rarely leading to any significant impact, SCP envisages an approach whereby holistic programmes, in accordance with specific historic needs and priorities of Dalits, would be evolved and sufficient funds allocated for the programmes. The targets fixed under SCP are to be desegregated into district-wise and sector-wise targets. At the district level, the district Collectors are responsible for coordinating the implementation of the schemes under SCP.

Universal Application

253. As per SCP, no State Government Department and no Central Ministry or Department can claim exemption regarding the implementation of SCP. SCP also makes it clear that no mere notional allocations of funds, based on the unacceptable logic of indivisibility of projects, are allowed. Every department /ministry must initiate concrete steps to evolve proper programmes under SCP, as per specific Government Orders (G.Os). Separate budget heads have to be shown in the Budget Link Book, clearly mentioning the receipts-expenditures details of SCP, ensuring prevention of any diversion, under-utilization or mis-utilization of funds earmarked for Dalits.

254. “An important operational principle of SCP is that in all sectors of plan programmes, outlays for development SCs should be incorporated and no distinction can be drawn between the so called “indivisible and divisible” sectors, as the outlays are allowable in relation to the needs of scheduled castes¹¹⁸”

Auto-Decision-Making

255. SCP visualises also that Dalits themselves (and those that legitimately represent them) should have the final say in terms of the implementation of SCP. SCP demands that at both Central and State levels, the department concerned with Scheduled Castes Welfare, such as the Scheduled Castes Development Corporations should act as the nodal agency for the formulation, implementation and monitoring of SCP.

The Betrayal

256. Unfortunately, just as with the SC/ST Act, SCP too remains a hope vastly betrayed – by a combination of bureaucratic indifference and resistance, Casteist perceptions and a lack of political will. The spirit of the Plan has been consistently thwarted in its application and implementation by most of the departments at the Central and States level, denying Dalits all over the country hundreds and hundreds millions of Rupees, which are legitimately due to them, year after year.

257. Government agencies like the Controller and Auditor General (CAG) and the SC/ST National and State Commissions, not to speak of dalit movements and Policy research organizations, have continually deplored the neglect of SCP by both the Central ministries as well as various States.

258. The Ministry of Welfare of Scheduled Castes and Scheduled Tribes, Government of India, speaking in the context of the 9th Five Year Plan mentioned, “It is disheartening to note that

¹¹⁸ *Adidravida and Tribal Welfare Department, Govt of Tamil Nadu, 2003*

out of the total 62 Union ministries / departments, only 11 had actually formulated SCP so far.”

259. As per proportional allocation 16% of the total budget should have been allocated instead the money was 4 percent of the total budget. Even the allotted amount has been lapsing. Controller and Auditor General (CAG), in its review of the Special Central Assistance by the Ministry of Social Justice and Empowerment, discovered persistently large unspent provisions during all the three years, it studied¹¹⁹. The Ministry surrendered Rs.5945.30 millions in 1997-98, Rs.5090.70 millions in 1998-99 and Rs.1452.00 millions in 1999-2000 on the last day of the financial year, without assigning reasons for the surrender, even though the Ministry was well aware of the scheme-wise savings early enough¹²⁰.

260. The Steering Committee on Empowerment of SCs, OBCs and Minorities, 10th Five Year Plan, claimed, “Often such unspent SCA funds were diverted to other purposes, leaving the earmarked / intended purposes unattended.”

261. Faulty implementation of SCP at the level of the different States of India too has been well researched and documented. For example, “Social Watch – Tamil Nadu”, a Public Policy Research-cum-advocacy Centre, along with the Tamil Nadu Dalit Legislators Forum, has consistently documented and lobbied against, over the last decade, the anti-dalit approaches in the implementation of SCP in the State of Tamil Nadu¹²¹.

262. The injustice continues year after year and in State after State and ministry after ministry, in spite of the constant demands of both public and private agencies concerned about the economic empowerment of Dalits. Finally recourse to legal remedies to the injustices to Dalits under SCP is being explored.

Labour Market

263. Like other sectors there is a rampant discrimination against Dalits in the labour market. The caste based labour market discrimination is conceived as¹²²:

27.19 Exclusion of Dalits from employment by ‘higher caste’.

27.20 Exclusion of ‘low caste’ from certain types of jobs/work due to notion of pollution and purity associated with Untouchability.

27.21 Selective inclusion in employment but with unequal treatment reflected

(i) in lower wages (lower than wages given to other labourer)

(ii) in terms and conditions with respect to hours of works and other terms, and

(iii) differential behaviour towards low caste labourer /worker in work place

Compulsive and forced work governed by traditional caste related obligations

Agricultural Sector

Hiring Practices of Farm Agricultural Labour as Primary Activity

264. The ‘higher caste’ wage labourers manage to get significantly more days of employment as compared to Dalit wage labourers. A relatively high rate of employment for the casual wage labourers from ‘High Caste’ compared with the Low Caste particularly Dalits reflects the discriminatory working nature of the labour market. It reveals employees choice towards the labourer of his or her own caste persons. Since the casual farm wage labourers are involved in manual work which required a normal working skill and which is hold by casual labourers of all caste group in normal course through work experience, there is clear reason to believe that differences in employment rate between the ‘Higher Caste’ and ‘lower caste’ wage labourers are on account of caste preference in hiring by the High Caste employers.

¹¹⁹ *Controller and Auditor General CAG Report No. 1 of 2001 (Civil)*

¹²⁰ *ibid*

¹²¹ “SCP – Dalit Hopes Betrayed?” *Social Watch –Tamil Nadu*, 2003

¹²² Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006.

Agricultural Wage Rates

265. In all, the average wages per day received by Dalit wageworkers was Rs. 5 less than the all-caste wage rate (Rs. 33) as well as of wage rate of higher caste (Rs.34)¹²³.

Intervals of Wage Payment

266. The results indicate that the Scheduled Caste wage labourers followed by the Scheduled Tribes wage labourers suffered in term late payment of wages. The terms of payment in term of time interval are much less favourable to these two groups as compared with their counter part from OBC and Higher Caste.

Non-Agricultural Sector

267. The average days of employment obtained by per person in the non-farm casual work is work out to 124 days with a considerable variations across social groups. Highest employment is observed for 'higher caste' category labourer (290 days), followed by 189 days for Scheduled Caste, 105 days for Other Back ward Caste and 81 days for Scheduled Tribe Casual labourer. Thus it apperaed that high caste labourer managed to get higher level of employment compared with other caste groups in non fram sector. However the participation of SC casual labourers is realtively high.

268. Coming to daily wage earning the average wage earned by casual labour in the non-farm sector is estimated at 48 rupees at aggregate level, but the daily wage of high caste casual wage labourers turn out to be Rs 77 as compared to Rs 58 for Scheduled Caste, Rs 45 Other Backward Caste and Rs 37 for Scheduled Tribes.

Employment and Income Losses due to Exclusion in Hiring

269. Exclusion of employment in any work, or denial in some seasons, or selectively in some types of works in agricultural and non-agricultural operation or household work inside house leads to lower level of employment as compared with 'higher caste' workers. Thus the lower employment that we have observed in the earlier sections may be attributed to loss of employment due to denial of employment to workers of Scheduled Caste in various manners.

Market, Goods, and Services

Economic Exclusion and Discrimination

270. Persons belonging to Dalit community are being encouraged to move from wage labourers to owners of the activity by the schemes of the government, in both farm and non-farm activity. The 'high caste' people do not openly oppose their entry, but do it indirectly through economic exclusion. The economic exclusion is through pricing in sale, purchase and hiring activities of ranging from raw materials to finished goods¹²⁴.

271. The nature and forms of land market discrimination is evident in the form of

- denial in sale and purchase of land for agriculture and non agricultural use, which include land for agricultural production, business location and residential house
- denial in renting of land for agricultural use
- denial of residential house on rent and
- in the event of transaction in sale and purchase of agricultural land or renting of land for agricultural use or residential house discrimination may be experienced in price paid and received by the low caste group in the exchange.

272. Dalits, who are in the farm activity, face problems of paying higher for purchase / hiring of inputs such as seeds, fertilizers, hiring of machinery, irrigation facility, etc. Similarly they face problems of receiving less remuneration for hiring of machinery, etc., to higher caste people. The case is true for persons belonging to scheduled caste and scheduled tribe, who are in

¹²³ *ibid*

¹²⁴ *ibid*

the non-farm activity also. This attitude discourages the marginalized people from entering such activities.

273. Beside the price factor the low caste persons seem to face other difficulties in the purchase of land which include land made available at a far-off place, low quality of land, lack of access to irrigation. However, the major difficulty relates to the denial of land, which have common boarder with the land belonging to high castes.

Discrimination in Consumer Market: Sale and Purchase

274. The Report¹²⁵ presents the results related to the discrimination faced by the Scheduled Caste persons in sale and purchase of farm and non-farm consumer good and other goods. Discrimination in the form of denial of purchases of farm products by high castes from the scheduled caste sellers is visible in some cases mainly due to caste considerations.

275. This is particularly widespread in case of vegetables and milk products and where the low caste identity of seller is known. The high caste generally prefers to buy from the sellers of their own caste and higher caste the items like milk, vegetable and fruits. The denial to buy such items by the high caste buyer from low caste sellers was mainly due to the notion of pollution and purity. The traditional and classical notion of purity and impurity associated with untouchable persons still influences the economic behaviour of high caste persons which discouraged them from buying or entering into exchange of consumer good particularly the vegetable, milk an from the 'low caste' sellers.

276. Faced with restrictions from the high caste buyers on the purchases of goods offered for sale by Dalit sellers, they try to use the alternative market avenues to sale their products where their caste identity is hidden.

277. The Dalit business persons engaged in non-farm business also reported difficulties in purchase of goods and materials, one of them being higher prices for the good and material that they buy. Traces of discriminations are visible in location of shop, choice of shops by high caste customers and choice of customers by 'high caste' sellers.

Capital Market

Banks and Financial Institutions (tend to Exclude) Dalits in Priority Sector Lending

278. One of the important objectives of nationalization of banks was to spread out of banks to the remote area and make provision for credit at affordable / low interest rates. The rationale behind this objective is availability of concession rate credit at their doorstep would help the cultivators to adopt new technologies, combat uncertainties in the livelihood process. Access to credit can be viewed as a function of access to property rights, education, information, social relations, etc. It is a notion that by virtue of their caste characteristics the low caste households are being deprived of access to credit, as they do not possess the pre-conditions also.

279. According to NSSO, only 31 percent of agricultural labour households in India, across all castes, depend on institutional sources for credit. The ratio is also true in case of Other Backward Caste and High Castes (32 and 34 per cent respectively)¹²⁶. The ratio is only 25 percent in case of Scheduled Caste households. The average amount of loan obtained non-Institutional sources by agricultural labour of scheduled caste group is higher (Rs.4207) than high caste

¹²⁵ Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006

¹²⁶ *Indebtedness among Agricultural And Other Labour Households In Rural India: Some Preliminary Analysis*; Paper Presented At Seminar Titled "Rural Credit In Orissa"; Organized By Sambalpur University, Orissa, 25-26 February 2006.

households (Rs.3905). In case of Institutional sources, the average amount of loan obtained by SC households is lower (Rs.6703) than the average amount in case of OBC (Rs.8999) and high caste households (Rs.11868). The case is true for Other Labour households also with an average loan amount of Rs.7059 of SC households as compared to Rs.16656 of OBC and Rs.18878 of high caste households. There are two important inferences from above mentioned facts¹²⁷. First, access to Institutional credit is less for the SC households as compared to OBC and high caste households. This reflected through low share of SC households as well as average loan amount also being comparatively low. Second, if the access to Institutional loans were to increase for the SC households, as a result the average loan size would also increase.

Aspects of Economic Exclusion and Discrimination

280. Differences in prices received or charged from 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 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 notions of pollution and purity, the untouchables also face discrimination and exclusion in use of public economic services like water, electricity, health services and other services.

Discrimination in other Factor Markets- Irrigation and Agriculture (land)

281. The discriminatory treatment to Dalits is not just confined to the labour 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 Dalits generally face in the course of their participation in various factor markets.

282. It has been well documented that land is a source of constant conflict and atrocities on 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.

Access to Employment in Private Sector Anti-Discrimination Legislation

283. There is a crucial conceptual distinction between a non-discrimination principle and affirmative action. Non-discrimination is, if you like, a more passive principle. It suggests that people refrain from discriminating against others on the basis of caste or caste-like characteristic. It suggests that no one should be the object of discrimination simply because of who they are, in terms of these characteristics. There ought to be no normative quarrel with this principle. Affirmative action, seeks to move beyond a narrow conception of non-discrimination towards equalising results with respect to various groups. Proponents of affirmative action in India do not always strictly insist on equalising results, but they do demand a measure of fairness that goes beyond non-discrimination. Reservations for them represent such a measure of fairness.

No Serious Effort for Corporate Social Responsibility

284. Unfortunately, social justice or "compensatory discrimination" programmes in India have gotten stereotyped around the theme of "reservation" in the public sector. And so much of a complex has been built up around the subject that there are major assumptions, which everyone takes for granted, but which are mistaken and need to be overcome. Among these two are important: first that social justice programme are more or less equivalent to reservation and that reservation is limited to employment in the public sector as well as seats in educational

¹²⁷ Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006

institutions. Second, even more debilitating, is the pervasive idea that reservation is in some way at odds with "merit", that we have to give up on or "relax" certain standards of merit in order to do social justice for Dalit community.

285. Today, as privatisation is frightening Government employees, Dalits are also worried about loss of the one area they have seen as a haven for employment. One result is that the idea of "reservation in the private sector" has been brought forward by a number of Dalit political leaders. The issue of reservation in the corporate sector does not depend on the degree of disinvestment. Regardless of whether existing public sector companies are "privatised" or not, it is still true that the corporate sector is a growing and dynamic sector in India, and the question of who runs it and is employed in it is a crucial one.

286. Compensatory discrimination efforts, or social justice programmes, need not be limited to education and the public sector. In fact, today as India is "going global" faster than many sections of the society want, it is important to realise that a truly modern society requires the conscious creation of opportunities for all of its citizens, and a truly competitive society cannot afford to waste any talent. This means that social justice programmes are not only in the interest of Dalits, but in the interests of the nation as a whole - and they require policies that take account of every sector in a modern and growing economy.

The Right to Work

287. The Right to Work is not listed as a Fundamental Right in the Constitution of India. It is under the Directive Principles of State Policy that Article 39 and Article 41 emphasize a responsibility on the State to provide that citizens, both men and women should have adequate means of livelihood and also includes that "the State, shall within the limits of its economic capacity and development, make effective provision for securing Right to Work ..." Keeping these Directives under consideration there have been many attempts by the Government over the years in this regard. But Right to Work could never acquire an enforceable character. It is mainly because of mounting pressure from the civil society organizations and movement that a National Rural Employment Guarantee Act, 2005 as a law has come into being. Under this any person who is above the age of 18 and resides in rural areas is entitled to apply for work. Any applicant is entitled to work within 15 days, for as many days as he/she has applied, subject to a limit of 100 days per household per year. Work is to be provided within a radius of 5 kilometers of the applicant's residence, if it is beyond 5 kilometers, travel allowance has to be paid. Workers are entitled to the statutory minimum wage applicable to agricultural labourers in the state, unless and until the Central Government notifies a different wage rate. There are provisions for timely payment of wages within a weeks time; unemployment allowance; worksite facilities as clean drinking water, emergency health care etc.; participation of women to ensure one third of beneficiaries to be women; penalties for contravening with the provisions of this Act; implementation of this Act to be monitored by a State Employment Guarantee Council; the Act to be enforceable initially in 200 districts, and is to be extended to the whole of rural India within five years.¹²⁸

288. However, barely four to six months after the launch of the landmark job guarantee scheme, a nationwide study reveals that only 30% of those registered for the scheme have received job cards. Discrimination on the basis of caste, community, gender, disability and a general lack of awareness are hampering the implementation of the National Rural Employment Guarantee Scheme (NREGS), an 11-state study by the civil society organisation Participatory Research in Asia (PRIA) has shown. A field survey by PRIA and its partner organisations in Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, Gujarat, Jharkhand, Kerala, Madhya Pradesh, Rajasthan, Uttar Pradesh and Uttaranchal revealed that while there was large-scale registration for jobs, less than 30% got the crucial job cards. Another major problem was low public awareness of the scheme -- in Sitapur district of Uttar Pradesh, for instance, only 7% of

¹²⁸ The National Rural Employment Guarantee Act, 2005, *Ministry of Law and Justice*, Government of India, New Delhi, 7 September 2005

respondents had proper information about the scheme. A gender bias was also apparent in the implementation of the scheme since women wishing to register for jobs faced much opposition. And in Sabarkantha district in Gujarat, the old and physically challenged were not even provided with registration forms. The survey also found village heads guilty of misusing their power, with people with ties to the *sarpanch* (village headman), *panchayats* secretary and officials appearing to have benefited more than villagers. In Rajasthan, elected *panchayats* functionaries are either ignorant or kept out of the exercise for the scheme's execution, despite the Rajasthan government's claim of having achieved decentralization of democracy.¹²⁹

289. It has also come to the light that seven months after one of India's most ambitious social welfare schemes, the National Rural Employment Guarantee Scheme (NREGS) was launched, less than a third of the funding to states for the current fiscal year have been utilised. According to a review of the programme by the rural development ministry, average utilisation across the country is just 29%. Only three states -- Punjab, Orissa and Andhra Pradesh -- have spent more than half the money released by the Centre under the NREGS in the year 2006-2007, says the ministry. The first meeting of the NREGA review council identified several gaps in implementation of the Act, including lack of awareness among beneficiaries and meagre provisions for administrative expenses. Overburdened administrative machinery, weak redressal system and a host of other lacuna have been identified in the way this scheme is implemented.¹³⁰

The Right to Housing

Discrimination in Renting, Sale, and Construction of Residential Houses by Dalits

290. Dalits are being discriminated in the housing market. The questions mainly relate to the restrictions faced by Dalits in purchase of land for construction of residential house in predominantly high caste locality, in taking house on rent in high caste locality and self restrictions imposed by high caste in buying of land in the low caste locality for construction of houses to live. The discriminations faced by low caste in each of these housing transactions is quite evident and of high order in the three sample villages.

291. Permitting the scheduled Caste persons to buy house for stay in high caste locality, or to rent the house to them in the high caste locality, or alternatively to buy land by high caste person in low caste locality and to take a house on rent in their locality for stay (by high caste), means breaking the traditional residential segregation in housing which is ubiquitous feature of caste-wise residential pattern of rural area.

292. The results indicated that about 64 percent of the respondent corroborated that the 'high caste' persons do not prefer to buy land to build houses in low caste locality and only 7 percent present reported the willingness of high caste to buy land for houses in 'low caste' locality¹³¹.

293. In response to the question related to the reasons, about 90 percent of the Dalit respondent reported the belief in caste prejudice and hence the unwillingness of the 'high caste' to share housing with the 'low caste' untouchables and to break the residential segregation as one of the main reasons. Only 5 percent indicated the price related reasons¹³².

Atrocities induced Displacement and Dalits in the Slums

294. Among the total population in the slums, Dalits and Muslims together account for 55% of the total population¹³³. In terms of accessibility and availability of services, the most deprived among the people in the slum in this regard are the Dalits. Education of children in the

¹²⁹ See *The Hindu*, New Delhi, June 2, 2006, and *The Hindustan Times*, New Delhi, June 2, 2006

¹³⁰ See *The Telegraph*, Kolkata, September 19, 2006 and *The Indian Express*, New Delhi, September 28, 2006

¹³¹ Sukhadeo Thorat, et.al., op.cit

¹³² ibid

¹³³ Antony Margaret and G. Maheswaran, *Social Segregation and Slum of Delhi*, Indian Social Institute, New Delhi 2001

slums is another major issue where drop-outs at an early age, and problem of lack of governmental initiative¹³⁴ were highlighted. Also it was established in a study on the educational situation of Dalit children in Delhi's slums that drop out of Dalit children is directly linked to the familial and personal factors. The most prominent observation is that there exists direct relationship between income expenditure gap and drop-out, followed by housing and environmental conditions. Another major factor was the frequent shifting of parents' work place, followed by weak parental and home support to the children¹³⁵. Chaug identifies that an overemphasis on child labour distorts the actual reasons for non-attendance. In the case of Dalits she says it is the school, family and community sub system responsible for drop-out among Dalits. It is important read this with another finding¹³⁶ that only 14.86 percent of dalit families were found to be capable of managing the income expenditure gap by their own.

295. Increased atrocities against Dalits and the general decline in rural sector associated to structural changes attached to globalization gave a new dimension in understanding dalit migration to cities. A people centric approach would easily suggest how the states in India have failed to ensure the constitutional rights to life, livelihoods and dignified life to the Dalits in the Indian villages. In the context of large scale slum demolitions, the role of state as a neutral agency faces severe criticism across the ranks, since the state agencies does these demolitions unpublicised, unplanned and using heavy violence and without respecting any dialogical practices in a democratic system.

296. Urban Dalits' identity formation on the basis of different strategies of resistance has been highlighted in various studies¹³⁷. Few urban studies have established that marginalization was common in meaning to all Dalits across the country and that the urban experience is different from the rural in terms of agencies of oppression. Dalit youths and activists were mostly critical of the 'upper caste' social behaviour in the slums and accused that while the police unduly hold the Dalits responsible for offences; their attitude to upper caste people was entirely different. In some places the men folk were restricting the movement (sometimes not allowing girls to go to school) fearing the rising cases of kidnapping of women. Men in the slums in this social reality act as protective insiders to secure the dignity and safety of the women by restricting their movements.

¹³⁴ Chaug Sunita, *Why children drop out? Case study of a Metropolitan Slum*, Book well, New Delhi, 2004

¹³⁵ Ibid

¹³⁶ Bijulal, M.V, *City Slum and the Marginalised: Dalits and Muslims in Delhi Slums*, Indian Social Institute, New Delhi, 2004

¹³⁷ S. Anandi, *Contending Identities: Dalits and Secular Politics in Madras Slums*, Indian Social Institute, New Delhi, 1995

ARTICLE 6 of ICERD

The Committee held the opinion that legislative provisions in the State Party are necessary fully to comply with Article 6. The important element here is that Article 6 requires "effective protection and remedies".

It has to be underlined that the scope of Article 6 covers all persons, "everyone", under the jurisdiction of the State Party, nationals as well as non-nationals. This article further refers not only to the functions of tribunals, but also to those of other State organs, and that in addition to access to tribunals, it contains the provision of guaranteeing to protected persons the claim to just and adequate reparation or satisfaction.

Accountability of State

297. The traditionally oppressed - the overwhelming majority of which are drawn from the lowest rung of the traditional social hierarchy continue to suffer on many counts. They are today the inequitable victims of the manifested professional inefficiency of the State apparatus as well as the social bias built within the democratic institutions. They are also the inequitable victims of petty corruption and brutalised excesses, both in the urban areas as well as in the rural areas. They also find the process of legal redressal against violation of their democratic rights or executive's excesses too risky (often involving punitive terrorisation by hired musclemen in league with corrupt police men). They find the fragmented party system, and the middle class led electoral process too weak to provide political defence against the social bias of the upper -caste dominated democratic institutions.¹³⁸

298. The Universal Declaration of Human Rights adopted in 1948 found similar provisions in the Indian Constitution. But, as a matter of fact, the socio-economic base of the Indian Political system has acted as a great barrier for establishment of an egalitarian society. Despite the constitutional mandate for uplift and against exploitation, Dalits are still at the receiving end and also have been the victims of worst kind of crimes against humanity. The noble ideas in the form of rules and regulations for providing a better deal to the unfortunate social out-castes have remained only on paper. Crime against Dalits does not seem to disturb the nation's conscience. Occasionally, sympathies do come at times but have not been able to overpower the monster which strikes at its will at regular intervals against Dalits in various forms. In the Indian village republic there is no place for democracy, equality, liberty and fraternity. Infact the Indian village is a negation of republic. The republic is an empire of the Hindus over the untouchables. The untouchables have no rights because they are outside the village republic. For them there is no equal right and justice.¹³⁹

299. Effective implementation of any legislation requires administrative rigours; and more than that social and political will. In the absence of this the real objectives of legislations are bound to be forsaken. Dr. B.R. Ambedkar had rightly emphasised, "rights are protected not merely by law, but also by the moral and social conscience of the society".¹⁴⁰ The practice of untouchability, economic backwardness and non-implementation of land reforms has been the prime factors responsible for human rights violations of Dalits.

Criminal Justice Administration System: Gaps in Implementation of Legal Remedy

300. "In theory, from the very moment an atrocity against a Dalit 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

¹³⁸ Aswini K. Ray, "Civil Rights Movements and Social Struggle in India", *Economic and Political Weekly*, July 12, 1986, p. 1203

¹³⁹ B. R. Ambedkar, *Writings and Speeches*, Vol. 5, Education Department, Government of Maharashtra, Bombay, 1989, p. 25

¹⁴⁰ *Ibid*, p. 99

Sakshi, Human Rights Watch, AP less than 5% ultimately reached the court.¹⁴¹

301. 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:

302. The NCSC/ST 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.

303. 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.¹⁴²

304. The NCSC/ST study of 1000 cases of atrocities against SCs and STs in 1990 found that there were some “disquieting features” about the high acquittal rates.¹⁴³ The third NCSC/ST report for 1996 reported a conviction rate of 15.49% and acquittal rate of 84.51%¹⁴⁴. The sixth NCSC/ST reports (1999-2000 & 2000-2001) that 89% of the cases resulted in acquittals of the dominant caste accused.¹⁴⁵

305. The seventh NCSC/ST 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%)¹⁴⁶ 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%.

306. “By and large the police Station House Officers does 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”¹⁴⁷

307. 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.¹⁴⁸

308. Five grounds for justifying judgments against Dalits are reported in Dalits and the Law published by Human Rights Law Network (HRLN)¹⁴⁹.

- Difference of opinion on section 18 of the SC/ST (POA) on Non-granting of bail: The

¹⁴¹ “Dalit Human Rights Monitor, 2000-2003”, *Sakshi, Human Rights Watch*, AP, Secunderabad, October 2003.

¹⁴² *The NCSC/ST, Seventh Report 2001-2002*, p.128

¹⁴³ Atrocities on Scheduled castes and tribes: causes and remedies, *NCSC/ST Report, April 1990*, p.24.

¹⁴⁴ *The NCSC/ST – Third Report, 1996*, New Delhi, pp.211-213

¹⁴⁵ Girish Agrawal and Colin Gonsalves, *Dalits and the Law*, Human Rights Law Network, New Delhi, 2005, p.13

¹⁴⁶ *The NCSC/ST – Seventh Report (2001-2002)*, p.128,

¹⁴⁷ ‘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.

¹⁴⁸ Justice Delivery Systems and Dalits: Analysis of Special Courts Judgements, *Sakshi-Human Rights Watch*, AP, December 2005, Secunderabad. p.20

¹⁴⁹ Girish Agrawal and Colin Gonsalves, *Dalits and the Law*, Human Rights Law Network, New Delhi, 2005

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 (DSP) or higher 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.

309. The NCSC/ST 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.¹⁵⁰

310. The poor representation of members from the Scheduled castes in the judiciary has also been noted by the NCSC/ST.¹⁵¹

Gaps in Operationalising Constitutional Values and Goals of Equality & Fraternity

311. 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.

Impunity – basis in both Society at large and the State

312. 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.

313. Protecting the rights of marginalized and vulnerable persons is probably the most overlooked and disregarded area of human rights in India. Dalits are generally marginalized by society, making them easy to ignore. A right-based approach to development is a framework that allows poor and marginalized people to demand as a 'right' the basic conditions that allow them to live in dignity. A rights based approach requires development action from the international community and national governments to correct injustice and protect human rights. It is different to 'charity' as the recipients are entitled to demand what is asked. Human Rights are inalienable and universal, i.e. they cannot be taken away and they belong to everyone.

¹⁵⁰ *The NCSC/ST – Seventh Report (2001-2002)* p.129

¹⁵¹ *The NCSC/ST – Fourth Report, 1996-97 & 1997-98*, New Delhi, p.15

ARTICLE 7 of ICERD

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

A. Education and Teaching

Dalits and Curriculum

314. Education is an important mean of reducing ignorance and inequality in society. It helps the individual to raise his/her social status in various ways. Knowledge, skills, values, and attitudes acquired through education helps one to lead a desired quality of life. Knowledge must be made available to all. As Dr. Ambedkar, the great Dalit leader and chief architect of the Indian Constitution had said, "In the complex world man lives at his peril and he must find his way in it without losing his freedom. There can, under these circumstances, be no freedom that is worthwhile unless the mind is trained to use its freedom. Deprive a man of knowledge and you will make him inevitably the slave of those more fortunate than himself . . . deprivation of knowledge is denial of the power to use liberty for great ends. An ignorant man may be free . . . but he cannot employ his freedom so as to give him assurance of happiness"¹⁵².

315. It is in this context that curriculum gains an important place in the over all policy framework for providing education to all which could lead to acquire the knowledge, skills and a sense of equity and also develop the scientific temper. The exercise for designing the National Curriculum Framework (NCF) was initiated around the year 1998 and then again in July 2004 to develop the National Curriculum Framework 2005. The second initiative was basically taken to remove the distortions which had been made part of the Curriculum Framework released in the year 2000. It is important in this regard to look at these initiatives in an unbiased way and assess whether the new initiatives could lead to creation of egalitarianism and also develop scientific temper.

316. Curricular and pedagogic concerns in the NCF, however, fail to be adequately informed by an understanding of the specific context of educational deprivation, particularly where the economically and socially vulnerable communities such as Dalits and Adivasis are concerned. For instance, it is important to recognize that these communities were historically deprived of education because of the position of Dalits as untouchables in the caste system that these factors may continue to be relevant to the educational experiences of these communities today has largely been ignored.¹⁵³

317. The transaction of the conventional curriculum in rural schools is a far cry from one that 'encourages exploration, problem-solving... participatory... interactive group learning...' and so on (NCERT, 2000:11). A recent study by Bodh (DPEP, 1999) of schools in villages of Madhya Pradesh and Rajasthan (a number of them predominantly inhabited by lower castes and Adivasis) reveals that curriculum transaction continues to be primarily textbook based, directed by the teacher and dominated by rote learning. The boundaries between school and community knowledge are rigidly drawn with the textbook serving as the only source of 'legitimate knowledge'. Teachers rarely relate to the knowledge base of children.¹⁵⁴

¹⁵² B.R. Ambedkar, *Writings and Speeches*, Vol. 3, Government of Maharashtra, Mumbai, 1987, p. 39

¹⁵³ Geetha B Nambissan, "Dealing with Deprivation", *Seminar*, Issue, 493, 2000

¹⁵⁴ Ibid

318. The authority of teacher is unquestioned and children usually ask no questions even to clarify their doubts. Children listen to the teacher, copy lessons, memorize them and answer questions (DPEP, 1999). In single and two teacher schools that predominate in the more backward regions, the situation is compounded as teachers are confronted with teaching children of many grades together, a situation that their training least prepares them for. They evolve their own coping strategies such as huddling children of two or more grades into one classroom, keeping pupils busy with writing work, and using punishment to maintain discipline. Learning becomes a casualty in the process.¹⁵⁵

319. The NCF 2000 drew sharp criticism and many saw it as an attempt to destroy the secular fabric of the nation. The NCF 2005 was aimed at detoxifying the textbooks and at the same time to inculcate the principles of justice, social, economic and political, liberty, equality of status and of opportunity. But so far all the intended goals have not been operationalised on the ground. The NCF 2005 is confused, with no direction and systematic approach. It avoids the harsh reality on the ground and the ideological erosion that outfits and organizations that are antithetical to the Indian Constitution have successfully made over the past two decades that was also the periods when the Indian state chose to withdraw from its basic constitutional mandate of providing good quality, free and compulsory education to all. What can the NCF 2005 do to ensure equity in access across class, caste community and gender of a curricular framework? The error in fundamentals in the NCF 2005 apart from those outlines above also mean that inequities due to caste, class, community and gender are not treated as violations of basic human rights and dignity but cloaked in syrupy phases such as minority sensibilities etc. This is downright dangerous for a rational national curriculum. For instance in the five major concerns outlined in the forward to the NCF 2005 (pg vi) not one reflects the non-negotiable Constitutional right of every Indian to have access to quality education based on the principles of egalitarianism, non-discrimination and therefore, democracy. The distinct approach that hopes to convert itself into national policy appears to be to offer the disadvantaged poorest of India's poor sops and comforts but not the basis inalienable right to a good, free and quality education.¹⁵⁶

320. Official curriculum barely acknowledges the existence of Dalit and Adivasis communities, despite the fact that they form a significant proportion of the population especially at the district and local level in many states in the country (Kumar, 1989). On the other hand, these communities, when represented in the textbook, are portrayed largely in subservient roles in accordance with what is perceived as their traditionally low position in the social hierarchy (ibid; Nambissan, 1996 and 2000). Recent writings of Dalit intellectuals have also emphasized that the content of school knowledge excludes the culture and experiences of lower castes and Dalits and hence is alien to them. Referring to the richness and diversity of languages and experiences among producing communities by virtue of their being structured and rooted in the production process, Ilaiah observes that the linguistic skills or knowledge of the lower castes have no place in the education system (1996:56).¹⁵⁷

321. How could one go from here especially with a focus on equity and justice? This is a question that must be answered if the egalitarianism and other noble goals as set in our Constitution are to be realized in actual practice and made available to all.

Cultural Barriers in Access to Education

322. The dominant culture of discrimination and exclusion as prevalent in society is also reflected in having access to education by Dalits. Dalit families usually live in spatially segregated clusters or habitations that are located at a distance from dominant caste habitations within the larger village set-up. This residential pattern has important implications for physical and social access to education, implications which are usually ignored in favour of other

¹⁵⁵ Ibid

¹⁵⁶ Teesta Setalvad's Address to Central Advisory Board on Education, September 8, 2005, *The South Asian*, a web portal, September 8, 2005.

¹⁵⁷ Geetha B Nambissan, op.cit

considerations when attempts are made to meet qualitative targets vis-à-vis school expansion. Given the fact that norms of purity and pollution still govern social norms and relations in rural areas, it becomes essential to understand whether schools are socially accessible to Dalit children when the schools are located at traditionally prescribed distances from Dalit habitations. In many habitations the school is situated in localities inhabited by dominant castes, who are not only hostile to students belonging to lower castes or minority groups but also prevent their having physical access to the school. Putting the relationship between caste status and educational access into perspective, it has been observed that there are conditions in which the right to education for members of the socially marginal and low ranked caste members remains contested. Members of the high-ranked caste groups and the dominant actors of the village often see education for the working and labouring castes as both a waste and a threat. The popular perception is that members of castes ranked low in the caste hierarchy are incapable of being educated, and, if educated, pose a threat to village hierarchies and power relations. A study done in 1998 (People's Report on Basic Education: PROBE) highlighted the continuing caste discrimination in the heart of Delhi, where some teachers go so far as to pass on disparaging remarks about the accessibility of government schools to Dalit children. As one of them bluntly put it: "What is the point of teaching Dalit children? Just teach them how to beat drums, that is good enough."¹⁵⁸

323. Studies of education and caste show that Dalits are less likely to send children to schools. The influence of caste on school enrolment encompasses both sociological factors such as the role of cultural norms, and historical influences such as colonial and post-colonial policy towards education in India. Collectively, these non-economic factors might exert an important role on current schooling decisions, even after controlling for the economic factors that affects them. A recent study revealed that while there was a latent demand for education among Dalits, which was almost as strong as the Hindu demand, enrolment rates for children from this community were lower than that for Hindus because Dalits were not as well- endowed as Hindus with "enrolment-friendly" factors. In conjunction, the physical and psychological disincentives that inhibit Dalit school enrolment needs also to be both recognised and eliminated. Discrimination in schools against Dalit children is an important disincentive for these children to enrol at school.¹⁵⁹

324. It is also important that sending children to school depends on attitudes towards education: of the children; of their parents; and of their wider communities. But an equally important finding is that the size of the religion or caste effect depends upon non-community circumstances in which children are placed. Under favourable circumstances, the size of community effect is negligible. Under less-favourable circumstances however, the size of the community effect is considerable. In summary therefore Vidya, Veda and Varna are profoundly and fundamentally inter-linked. While economic and regional factors may mediate their interactions, recognition of these inter-linkages has significant implications for education policy in particular, and more widely, for development policy in India.¹⁶⁰

B. Culture

Alienation through Cultural Domination

325. The dominant cultural values and practices have played a major role in not only subjugating Dalits but also at the same time in alienating Dalits from the so-called mainstream of a civilised socio, cultural, economic and political set up. The alienation has been to such an extent that even granting them human-hood so as to enjoy certain rights has been out-rightly denied. The cultural values and practices have stemmed from the religious values and code of conduct as enshrined in Shastras. The Dalits have been forced to adopt the culture and observe the religious rites of the Hindu community. They are also made to celebrate the Hindu festivals, but they derive no benefits from this. On the contrary they are segregated and shunned because their physical

¹⁵⁸ Umakant, "Dalits and Education", *Dalit International Newsletter*, June 2006, p. 10

¹⁵⁹ Vani K Borooah and Sriya Iyer, Vidya, Veda, and Varna, "The influence of Religion and Caste on Education in Rural India", *The Journal of Development Studies*, Vol. 41, 2005, p. 1369-1404

¹⁶⁰ Ibid

contact is held by Hindus to cause pollution. There is therefore an interdict on all social intercourse with them except for unavoidable purposes. They live on the outskirts of a village and not in the midst of it. Every village has its Dalit quarters, they are attached to the village but are not a part of the village. Segregated from the rest of the Hindu society they are bound down to a code of behaviour which is appropriate to a servile state. According to this code, an Untouchable may not do anything which raises him/her above their appointed station in life. As per the prescribed low status they are neither allowed to own land nor have an independent source of livelihood and that is how they have to be dependent on others to eke out an existence for themselves. It is an offence for a member of the untouchable community to acquire wealth, such as land or cattle; to put on a clean dress, wear shoes, and put on watch or gold ornaments; to sit on a chair in the presence of a Hindu; to ride on a horse or a palanquin through the village; to speak a cultured language. A Dalit should not take to such services, which would give him/her authority and power over Caste Hindus. They must be humble and must not ask for more than their lot under this code. It is true that some of the Dalits have risen above the low status prescribed by this customary code of conduct and have also acquired high places, but the majority of them are still socially & culturally in the most servile position and economically in abject poverty.

C. Information

Information, the Role of State, Civil Society and Media

326. A modern nation state is expected to function in a non-partisan and inclusive way. The citizens should have participation in decision-making and governance. To enable them to do that, they need to be ensured an easy and less cumbersome access to information. The civil society and media must ensure an accountable and transparent system, open procedure and culture of governance. The sense of alienation as experienced by Dalits and other marginalized communities reflect a stratified society in which caste, wealth/money and easy access to political power by the dominant caste and communities always decide the fate of the nation. The public institutions have failed to deliver goods despite their noble and tall claims. Basic services do not work well, and do not fill the disadvantaged's need for health, sanitation, water and education.

327. The media plays a significant role not only in moulding the public opinion but also at the same time in sensitising and spreading awareness about various social evils. As far as reporting of Dalits and other vulnerable sections of society are concerned, it is highly under-reported. The media in this country is owned and dominated by big industrial houses belonging to upper strata of society. There is no representation of Dalits in the media world. News related to human rights violation of Dalits never finds the space it deserves. Large-scale massacres only seem to have a news value for the Newspapers. Media has also failed to inform and educate people about various constitutional provisions meant for protection of human rights of the disadvantaged sections of Indian society. It is no wonder then that media has served the interest of the status quo its caste Hindu forces. One may claim that a new breed of journalists have reported various gross violation of human rights through media but mere reporting is not enough. The media must play a revolutionary role for socio, cultural, economic transformation. A near impossible task in the time of make - belief world of status-quoism, commercialisation and consumerism. The caste Hindu controlled media has thoroughly failed to give space and voice to the disadvantaged sections of Indian society. Even after more than 50 years of independence and democratic rule, the exploitation and atrocities on Dalits have increased manifold. Even now, despite the constitutional mandate, untouchability is prevalent and atrocities of worst kinds are committed must shake up the concerns of humanity.

Lack of Access to Information

328. Lack of access to information has always hindered the effective functioning of a democratic system which is based on the principles of Liberty, Equality and Fraternity and which aims to create an egalitarian society. The right to information is implicit in the Constitution of India which establishes a representative democracy with inalienable rights for the citizens of the country. But in actual practise the right to information has been denied by resorting to arguments which were used in the name of maintaining official secrecy and security of the nation. With

developments of grassroots movements, judicial recognition of the right to know and some amount of international pressure that it was in July 2000, The Freedom of Information Bill 2000 was introduced in the Parliament. Finally it was adopted as Right to Information Act 2005. Several state governments have also passed their own laws in this regard in recent years.

329. However, there is a variance between the demands made by people's movements and the laws as they have been finally made. An attempt is also being made to curtail it further by not making available the Official's noting on the file for which the information is sought. This move has already created a kind of stalemate and once again the matter is pending in the Indian Parliament. It must be emphasised here that easy access to information is a most important requirement to make the State function in an effective way. Right to information has to be ensured under all kinds of circumstances without any bureaucratic or legal obstacles. The essence of right to information is directly linked to participation in governance, access to quality education, access to social capital to nurture the spirit of togetherness, solidarity, harmony and values of public good.

330. The State as an effective and powerful institution has undoubtedly failed in its duty of creating awareness and togetherness among various sections of society. The institution of Panchayati Raj and other similar democratic forums which were supposed to integrate the downtrodden into the social and national mainstream has remained the hegemonistic organ of dominant caste Hindu groups. The empowerment of Dalits and other weaker sections of society, however noble they may be, remains a pipe dream. The lopsided development and various loopholes in the welfare programmes have not led to trickle down effect on vast majority of people. Crores are spent in the name of rural development and even Special Component Plans for Dalits whose funds are neither allocated or if allocated disproportionately are even diverted for other things, but ineffective implementation has proved to be a bane in this regard. Non-implementation of land reforms and subsequent land ceiling continue to remain a source of conflict among the landowning castes and agricultural labourers, who mostly happen to be Dalits. Successive political parties in power over the years have provided conscious support to various obscurantist upper caste groups and factions to maintain hegemony in society as well as control over the State machineries and also to browbeat any challenge to their supremacy from any quarter.

RECOMENDATIONS

International

Committee for the Elimination of Racial Discrimination (CERD)

CERD must approach the State Party to incorporate the General Recommendation No. XXIX into their National Policy Framework of Governance with a special focus on the following:

1. Resolutely implement legislation and other measures already in force;
2. Educate the general public on the importance of affirmative action programmes to address the situation of victims of descent-based discrimination;
3. Conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of descent-based communities, including a gender perspective;
4. Take into account, in all programmes and projects planned and implemented and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination, sexual exploitation and forced prostitution;
5. Take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education;
6. Provide disaggregated data for the situation of women affected by descent-based discrimination;
7. Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment;
8. Secure for everyone the right of access on an equal and non-discriminatory basis to any place or service intended for use by the general public;
9. Take measures against any dissemination of ideas of caste superiority and inferiority or which attempt to justify violence, hatred or discrimination against descent-based communities;
10. Take strict measures against any incitement to discrimination or violence against the communities, including through the Internet;
11. Take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination;
12. Organize training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities;
13. Take steps to identify areas prone to descent-based violence in order to prevent the recurrence of such violence;
14. Take substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization;
15. Work with intergovernmental organizations, including international financial institutions, to ensure that development or assistance projects which they support take into account the economic and social situation of members of descent-based communities;
16. Take special measures to promote the employment of members of affected communities in the public and private sectors;
17. Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;
18. Take measures against public bodies, private companies and other associations that investigate the descent background of applicants for employment;
19. Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;
20. Ensure equal access to health care and social security services for members of descent-based communities;
21. Take measures to address the special vulnerability of children of descent-based communities to exploitative child labour;

22. Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination;
23. Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;
24. Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;
25. Take immediate measures to abolish the practice of manual scavenging and to introduce rehabilitation measures for their livelihood;
26. Promote a monitoring mechanism with the representatives from Dalit community to ensure promotional measures and implementation of all legislation, schemes and other programmes.

Other UN Bodies

27. 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.
28. The UN agencies working in India should incorporate CERD General Recommendation XXIX into all UN bodies working in India (UNDP, UNICEF, UNIFEM, WHO, ILO).
29. 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.
30. UN agencies working in India should implement affirmative action measures in order to proportionately employ Dalits including women in all development agencies.
31. 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.
32. 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.
33. 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.

National Commissions

34. 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 States governments, Public Sector Units, Financial Institutions, and they have powers to undertake corrective measures, including action taking on erring officials is vested in them¹⁶¹.
35. Ensure that the Commissions present substantive annual reports and the Government place them before the Parliament within three months for discussion and action.
36. 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.
37. 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.

Union/ State Governments Bodies

¹⁶¹ The National Commission for SC/ST has made these recommendations in their many reports to the government.

Legislative

38. Indian Parliament to adopt the **Optional Protocol of ICERD** to make it effective to tackle the various aspects of non-implementation of the acts specific to discrimination and violence related to discrimination.
39. 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.
40. 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.
41. Ensure land and livelihood rights of Dalits living in scheduled areas in the Forest Bill.

Executive

42. 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.
43. 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.
44. 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.
45. Identify atrocity and discrimination prone areas and take up special measures for early identification, prevention and peace building.

Judiciary

46. 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.
47. 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.
48. Promote the usage of Section 4 of SC/ST (POA) Act to bring to book erring officials to increase greater accountability in the system.

Special Legislations

49. 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.
50. 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.
51. 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.

Earnest Implementation of Special Component Plan

52. The mandated 16% (according to the proportion of Scheduled Castes to the total population of the country) 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.
53. Any unspent money under SCP must be allowed to carry over and not be diverted or lapsed in the following year.
54. 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.
55. Union government should ensure that states come up with a need-based plan for the SCP before the release of budgets.

Protect Rights of Dalit Children

56. Ensure strict enforcement of Child Labour (Prohibition and Regulation) Act, 1986, with comprehensive measures to enumerate disaggregated data, and special vulnerability of Dalit children.
57. 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.
58. 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.

Ensure Rights of Dalit Women

59. 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.
60. 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.
61. 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.

Reservation

62. Ensure implementation of Reservation Policy in the institutions of higher education both among faculty and students.
63. 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 introduced¹⁶²
64. 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 reiterates its recommendation to consider provision of reservation in appointments of judges to the High Courts and Supreme Court of India”¹⁶³
65. Extend Reservation to Private sector and it should apply to multiple spheres, namely private employment, market, private capital market, agricultural land, private education

¹⁶² NCSC/ST Seventh Report, 2001-02, New Delhi, p.65

¹⁶³ NCSC/ST Seventh Report, 2001-02, New Delhi, p.66

- and housing, access to inputs and services, products and consumer-goods
66. Reservation in private sector should include legal safeguards of equal opportunities and non-discrimination. It should be in proportion to population and put in place adequate monitoring mechanisms.
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