

Statement prepared for the Eighth Session of Minority Rights Forum
on
Minorities and the exercise of Police powers
Session III

Prepared by

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Honorable Madam /Sir, Excellence's, Distinguished delegates, ladies and gentlemen,

It is a privilege and an honour to be here and have this interactive dialogue with you on the situation of minorities and exercise of police powers.

Now with this, I would like to present the issues of 260 millions Dalits in Asia who are traditionally regarded as untouchables (outcastes). They continue to be discriminated and serious crimes are committed against them ranging from verbal abuse on caste name, physical assault, murders, rapes, arson, social and economic boycotts, naked parading, burnt alive, mass killings, mass rapes, gang rapes, forcing to drink urine and eat human excreta etc¹. Over the years newer forms of crimes are emerging.

Constitutional and legal measures have been put in place specifically for the protection of Dalit communities in **India and Nepal**. The Constitutions of **Bangladesh, Pakistan and Sri Lanka** recognize that all persons are equal before law and shall not be discriminated. The Constitution of India provides a rights-based framework grounded in principles of liberty, equality and fraternity. Constitutional rights include the right to non-discrimination on the basis of caste; a ban on the practice of 'Untouchability', (Article 17). Special laws have been enacted for Dalits in India to protect their right to security of life namely, The Protection of Civil Rights Act 1976 and also The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989². In Nepal the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 seeks to protect Nepali citizens from caste and untouchability related crimes. However, legislation largely remain ineffective in their implementation and Dalits continue to suffer caste-based discrimination and violence in all spheres of life. On Affirmative action for disadvantaged or vulnerable groups who faced intergenerational discrimination or exclusion within the society or culture has not focused on bringing policies towards prevention and protection of minorities. Women belonging to the minority community are not recognised as a separate entity and youth and children are largely ignored.

Dear Madam/Sir,

I would like to point out strongly that in Asia, caste biases are deeply embedded in the criminal justice administrative system and the enforcement agencies particularly the police. In our experience, the police exhibit their caste biases clearly in perpetrating or colluding in atrocities against Dalits. For example, in India more than 60% of the victims of torture belong to Dalit and religious minorities. Custodial torture and deaths, encounter deaths, raids on Dalit colonies after inter-caste clashes, false arrest of Dalits. Dalits are particularly vulnerable to arrest under draconian security laws. Dalit activists are also accused of being "terrorists," "threats to national security," and "habitual offenders," and frequently charged under the National Security Act, 1980. Dalit women are particularly vulnerable to sexual assault and rape during police raids as a means of exerting pressure on their male family

¹ Given the large extent of under-reporting atrocities, total 5,52,351 atrocities committed against SCs and 86374 atrocities committed against STs during 1995 -2010 (NCRB Reports).

² In India as per National Crime Records Bureau (NCRB) data, a total of 1, 88,991 crimes against Dalit's were registered from 2011 to 2014. At the end of 2014, the pendency percentage is 85.5% and the conviction rate is only 4%. Acts of violence have risen not just in terms of numbers, but also in intensity.

members to surrender, give false evidence, retract their complaints, or silence their protests regarding police mistreatment.

Recently, in the state of Uttar Pradesh at Greater Noida district, India very near to the capital of India, Dalit families including two women were stripped naked by the police officials in front of police station after they insisted to register FIR for alleged robbery. A study on “Alleged Cases of Police Atrocities against Kuruvan Community (Scheduled Caste notified as Habitual Offenders)” in the state of Tamil Nadu highlighted that the members of the Kuruvar (SC) community, men, women and children are subjected to systematic, continuing, ruthless treatment in the hands of the police. Indiscriminate arrests by police have led to the unnecessary detention of large number of Dalits in prisons. According to prison statistics in 2013, Dalits make up 22% of prisoners, almost one in four. The Government of India has not refrained from committing and supporting discriminatory acts against Dalits, and has failed to implement measures to end caste discrimination.

Endorsing the draft recommendations, I will conclude, dear Sir / Madam, by suggesting the inclusion of the following considerations and recommendations in the final document:

- a) Give recognition to caste afflicted minorities by inserting “caste” or “caste-based” in relevant paragraphs such as 27, 42 and 55.
- b) Formulate positive affirmative action to promote, prevent and protect the rights of Dalits in Asia. Affirmative action could be used as strategic management tools to provide ‘equal’ opportunities for caste minorities.
- c) Ensure that caste afflicted minorities are identified and formally recognized. Once identified and recognized. Data disaggregation would be helpful in recognizing the variables according to age, sex, caste, location, etc. for targeted interventions including in enforcement agencies.
- d) Design and enact special preventive legislations to prevent and protect the violence against caste afflicted minorities. For this evidence based approach to the legislation shall be undertaken by the state and draw on reliable evidence in the preparation of legislation. This includes data and research on the scope, prevalence and incidence of all forms of violence against minorities, on the causes and consequences of such violence, and on lessons learned and good practices from other countries in preventing and addressing violence. Such an evidence-based approach ensures that the development and design of legislation is well informed and can enhance the quality and potential future effectiveness of legislation.

Where legislations are already in place ensuring strict implementation, monitoring and review of the affirmative action programs in respect of prevention, promotion and protection of rights.

- e) Develop legislation on violence against women belonging to caste minorities from a human rights perspective. Existing legislation addressing violence against women should be assessed in light of international standards, particularly human rights and criminal justice, in order to enact amendments or new legislation in accordance with such standards. These laws should address violence against women as a form of gender-based discrimination, and a violation of women’s human rights; make clear that violence against women is unacceptable and that eliminating it is a public responsibility; ensure that complainants of violence are not “revictimized” through the legal process.
- f) Formulate special investigation and accountability mechanisms, which shall provide prompt response to every request for assistance and protection to caste minorities and specially women and monitor strict execution of investigation mechanisms.
- g) Ensure coordination among entities (such as the judiciary, police, prosecutors, advocacy groups, civil society organizations providing support to complainants/survivors), at all levels of

government and between government and civil society, to ensure thorough and gender-sensitive implementation of legislations on violence against minorities and specially women.

- h) In order to ensure that officials charged with implementing the law against minorities fully adhere to their responsibilities, there is a need for legislation to provide for penalties for non-compliance.
- i) Ensure regular and institutionalized gender-sensitivity training and capacity-building on violence against caste minorities and specific to women belonging to caste minority for public officials and such training and capacity-building be developed and carried out in close consultation with non-governmental organizations.
- j) Ensure a national action plan or strategy for caste minorities, which should contain a set of activities with benchmarks and indicators, to ensure a framework exists for a comprehensive and coordinated approach for the prevention and protection of minorities.
- k) Ensuring appropriate budgetary allocations by creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or requesting the allocation of funding for a specific activity, for example, the creation of a specialized investigating office; and/or allocating a specific budget to non-governmental organizations for a specified range of activities.
- l) Ensure careful and regular monitoring which is critical to ensure that policies or legislation are implemented effectively and does not have any adverse unanticipated effects. Monitoring is most effective when conducted by the Government in collaboration with non-governmental organizations, and with the involvement of complainants/survivors of violence, in order to ensure that evaluations are reflective of how the law is experienced on the ground.
- m) Ensure statistical data be gathered at regular intervals on the causes, consequences and frequency of all forms of violence against minorities, and on the effectiveness of measures to prevent, punish and eradicate violence and that such statistical data be disaggregated by sex, race, age, ethnicity and other relevant characteristics.

Thank you very much.