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Human Rights Abuses of Dalits in India

by Bina B. Hanchinamani*

Despite living in a country whose rich civil rights history has inspired freedom movements around the world, many of India's 160 million Dalits, or "Untouchables," still suffer from egregious caste discrimination. In addition to being targets of physical and sexual violence, Dalits are often required to eat and drink from separate containers in restaurants, attend separate religious services, walk miles to get water, and work in degrading conditions. Even following the recent earthquake in western India, local leaders divided aid recipients into caste groups and diverted the aid from Dalits to higher caste members. Although Indian law contains extensive protections against such caste discrimination, the government still fails to enforce its domestic and international obligations to ensure Dalit rights.

Who are the Dalits?

Dalits, literally meaning "broken people" or "oppressed" in Hindi, are the lowest members of the Hindu caste system in India. The caste system is a Hindu hierarchical class structure with roots in India dating back thousands of years. In descending order, the caste system is comprised of Brahmins (priests), Ksatriyas (warriors), Vaisyas (farmers), Shudras (laborer-artisans), and the Dalits, who are considered so polluted they are beyond caste. Traditionally, caste, determined by birth, defined whom one could marry and the occupation one could pursue.

The origin of the caste system is highly debated among scholars. The notion of Indian class divisions first appeared in the Vedas, the ancient spiritual texts upon which Hinduism is based. According to the Vedas, a social order emerged at creation from the body of Purusha, or primitive man: Brahmins from his head; Ksatriyas from his arms; Vaisyas from his thighs; and Shudras from his feet. All members of Purusha's body represented the necessary parts of a functioning society. How the Vedic social order evolved into the more rigid Indian caste system is unclear. Some scholars believe Brahmins manipulated the Vedic texts to gain power. Others contend that around 1500 B.C., Aryan invaders institutionalized the caste system to subdue the indigenous population of India. In either instance, the notion of untouchability emerged at some point in the development of the caste system.

Historically, the caste system entailed a life of degradation for Dalits. For instance, Dalits undertook occupations that the rest of Indian society found ritually polluting, such as handling carcasses, disposing of human waste (also known as the practice of manual scavenging), sweeping streets, or cobbling (considered degrading because of its association with feet and leather). Dalits also received ill treatment from members of higher castes, particularly from Brahmins. For example, Brahmins would have to bathe if a Dalit's shadow fell on them, would not eat food prepared by Dalits, and would not drink from the same wells as Dalits. Dalit women often were forced to serve as sexual servants to upper caste men. If Dalits attempted to defy the caste system, they received cruel punishments such as being forced to parade naked through village streets, and being beaten, raped, tortured, hanged, and burned.

The Present State of Dalits

Although Article 17 of the Indian Constitution banned untouchability in 1950, Dalits still suffer widespread discrimination and mistreatment, particularly in villages and rural communities. Local law enforcement personnel often refuse to document, investigate, and respond adequately to Dalit complaints. Upper caste members often threaten and assault Dalits who dare protest against the atrocities.

Examples of ongoing discrimination against Dalits include the continued practices of traditional segregation between upper castes and Dalits. In places throughout India, Dalits must bring their own utensils to eat or drink in restaurants so as not to pollute the utensils of high caste members. In many areas, Dalits may not drink from the same wells as upper caste members do, and may not enter temples where high caste Hindus worship. Despite the system of quotas for government employment, Dalits rarely rise above traditional Dalit occupations. The existence of quotas often fuels upper caste disdain for Dalits. In the private sector, even educated Dalits struggle to succeed.

Although Indian laws are now supposed to protect Dalits from degradation, the reality of Dalits' lives has scarcely changed. In many communities, upper caste members still expect Dalits to perform their traditional occupations on demand and without pay. For instance, the Indian newsmagazine *The Week* reported the situation of a Dalit in Gujarat who gave up the profession of cobbling to become

a farm hand. Despite his career change, upper caste members still expected the former cobbler to repair shoes for free at any moment of the day. When Dalits refuse to comply with such upper caste demands, they face violence or social boycotts that involve practices such as refusing to sell groceries to Dalits or to hire Dalit workers.

Dalit children are subjected to human rights abuses as well. These children are common victims of bonded labor practices, even though bonded labor is outlawed in India. When Dalit families become indebted to moneylenders to pay for emergency health services or daily sustenance needs, Dalit children are often forced to work off these debts. Due to the purposefully low wages these children are paid, they can rarely ever earn enough money to pay back their debts and break free from their labor obligations. Additionally, Dalit girls are often selected for the practice of *devadasi*, or marriage to temple deities. As part of *devadasi*, these girls must serve in the temple and perform sexual services for temple workers.

Dalits also are the targets of hate crimes and violence. According to the National Commission for Scheduled Castes and Scheduled Tribes, a total of 98,349 cases of crimes against lower castes were reported between 1994 and 1996, including 1,660 murders and 2,814 rapes. These figures do not include offenses that Dalits did not report for fear of reprisal. Human rights organizations and newspapers tell countless stories of Dalits who have been beaten, unlawfully detained, tortured, raped, killed, and had their homes

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burned in caste violence, while state officials failed to bring the perpetrators to justice.

Domestic Law Regarding Dalits

Several provisions in Indian law, if enforced, offer a wealth of protections for the Dalit community against both state and private persecutors. Article 17 of the Indian Constitution officially makes the practice of untouchability a punishable offense; Article 14 requires the State to grant equal protection of the laws to any person within the territory of India; and Article 15 prohibits discrimination based on religion, caste, gender, or place of birth.

Under Article 15, the State has the right to enact special protections, such as affirmative action programs, to address the condition of “scheduled castes.” The term “scheduled castes” refers to a list of underprivileged castes, such as Dalits, originally recognized by the British government in 1935 as being eligible for government protections. Article 16 specifically grants the State the power to reserve government employment placements for members of castes that are not adequately represented in particular fields. In accordance with this constitutional power, the Indian government created an affirmative action program admitting Dalits to schools and universities at lower admissions standards, granting Dalits 22.5 percent of all government jobs, and reserving 85 of the 545 seats in Parliament for Dalits.

Indian law also addresses the discriminatory actions of private actors. For instance, Article 15 of the Constitution explicitly states that no person shall be denied “access to shops, public restaurants, hotels and places of public enter-

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tainment” or “the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.” Several other areas of India’s domestic law theoretically both protect Dalits from caste discrimination and help to promote the socioeconomic status of Dalits. For instance, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993 (1993 Act) prohibits the employment of manual scavengers in the interest of human dignity and public health. Additionally, the 1993 Act bans the use of dry latrines, which require manual scavengers to remove human waste. The 1993 Act applies to the states of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, and West Bengal, and if enforced, has potential to end the degrading and exploitative practice of manual scavenging.

The Scheduled Castes and Schedules Tribes Prevention of Atrocities Act of 1989 (1989 Act) also provides a wide range of protections for Dalits. This document outlaws offenses such as forcing Dalits to “drink or eat any inedible or obnoxious substance,” to remove their clothes or parade around naked, or to become bonded laborers. The 1989 Act also protects



Children from a rural Dalit village near Chennai.

Dalits from false lawsuits, sexual exploitation, and interference with their voting and property rights. Violators of the 1989 Act are subject to fees and imprisonment, while repeat offenders are supposed to serve at least one year for each offense. The 1989 Act also requires states to set up Special Courts to adjudicate Scheduled Caste offenses. In addition, the Act provides punishment for public servants who fail to enforce the protections set forth in the Act. The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules of 1995 further delineate procedures for state governments to take toward investigation, prosecution, and punishment pursuant to the 1989 Act.

International Law and the Treatment of Dalits

In addition to India’s domestic protections against the mistreatment of Dalits, several provisions of international law also address the condition of Dalits. These international provisions establish obligations for India to meet in terms of securing Dalit rights.

First, as a UN Member State, India is bound to the provisions in the Universal Declaration of Human Rights (UDHR). The first two articles of the UDHR state that “all human beings are born free and equal in dignity and rights” and that the human rights protected in the UDHR belong to everyone “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The UDHR protects the following rights: the right to “life, liberty, and security of person” (Article 3); the right to be free from torture or cruel, inhuman or degrading treatment or punishment (Article 5); the right of equality before the law (Article 7); the right to effective remedy for the violation of fundamental rights (Article 8); the right to fair and public hearings (Article 10); and the right to be free from “arbitrary interference with... privacy, family, home or correspondence” and attacks upon a person’s “honour and reputation” (Article 12). Because India has still failed to protect Dalits against discrimination, degradation, and violence, India is violating its obligations under the UDHR.

Second, India has also failed to meet its obligations under the International Covenant on Civil and Political Rights

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(ICCPR), which it ratified on April 10, 1979. Not only does the ICCPR protect against discrimination of “any kind” including discrimination based on “social origin,” but it also protects against torture, degrading treatment, arbitrary arrest, detention, and promotes equality in the courts and equal protection of the law. In Article 2(1), State Parties to the ICCPR pledged to “respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.” Article 2(2) requires States “to adopt such legislative or other measures as may be necessary to give effect to the rights” in the ICCPR. Although India’s domestic laws address many of the rights articulated in the ICCPR, these rights are often not enforced with regard to Dalits. In failing to “respect and ensure” Dalit rights, India is violating its legal obligations under the ICCPR.

The Human Rights Committee (HRC) was established through the ICCPR to monitor State Party compliance. Although India did not sign the Optional Protocol to the ICCPR, and the HRC does not have jurisdiction to review human rights complaints made by individual Dalits, the HRC does have the power to comment on India’s ICCPR obligations as a whole. In 1997, the HRC found that India was violating its obligations under the ICCPR through its treatment of Dalits because, despite the existence of legislation to protect them, Dalits still “endure severe social discrimination” and face “inter-caste violence, bonded labour, and discrimination of all kinds.” The HRC further recommended that India adopt measures such as educational programs at the national and state levels to combat discrimination.

Third, India continues to violate its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which it ratified on December 3, 1968. CERD’s protections extend beyond state discrimination and require States Parties to “prohibit and bring to an end, by all appropriate means, including legislation, as required by circumstances, racial discrimination by any persons, group or organization,” as stated in Article 2(1)(d). While Indian domestic law is designed to protect Dalits, the fact that Dalits often do not benefit from these laws demonstrates India’s failures under CERD. Compliance is monitored by the Committee on the Elimination of Racial Discrimination (CERD Committee), which reviews periodic reports written by States Parties, conducts hearings, and issues comments on inter-state and individual complaints. Although Indian Dalits cannot bring individual complaints to the CERD Committee because India did not submit to such jurisdiction under CERD, India is still subject to the reporting powers of the CERD Committee. In its 1996 report, the CERD Committee specifically found that Dalits fell within the scope of CERD because its jurisdiction under Article 1 extends beyond “race” to cover “descent.” The CERD Committee found that India allowed Dalits to be discriminated against and allowed those violating Dalits’ rights to operate with impunity.

Fourth, India has failed to protect Dalit workers in accordance with its obligations under the International Labor Organization Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal



Dalit woman carrying water to her home.

Photo courtesy of Sarah C. Aird

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and Semi-Tribal Populations in Independent Countries (Convention 107), which it ratified on September 29, 1958. Under Convention 107, India is obligated to protect the “institutions, persons, property and labour” of members of tribal or semi-tribal populations. Although Convention 107 does not explicitly define the term “tribal,” in Article 1(2), it defines “semi-tribal” as “groups and persons, who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.” Article 1 further states that Convention 107 applies to tribal and semi-tribal populations that “are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions. . . .” A sizable population of Dalits are actually misclassified members of indigenous groups. As such, Article 15 of Convention 107 specifically provides for their protection against labor discrimination, including access to employment, equal pay for work of equal value, industrial hygiene, and prevention of employment injuries.

Finally, Dalit children who are forced into bonded labor, or the practice of *devadasi*, are protected under the provisions in the Convention of the Rights of the Child of 1989 (CRC), which India ratified on December 11, 1992. In Article 32, the CRC protects against “economic exploitation” and the performance of “any work that is likely to be hazardous... or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Both the practices of child bonded labor and the practice of *devadasi* violate India’s obligations under the CRC.

Although India is obligated under several international instruments to uphold Dalit rights, there is little enforcement power to ensure that India meets its obligations under international law. Most of the international enforcement mechanisms for Dalits involve making recommendations to the Indian government and publicizing its failures to uphold international obligations in order to shame India into

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Submission of Cases to the Inter-American Court

If the State has failed to take the measures recommended in the preliminary report issued by the Commission, the case will automatically be submitted to the Court pursuant to Article 44 of the new Regulations. The only exception provided for in the Regulations is if, by an absolute majority, the Commission votes not to send the case to the Court. The Court took the following factors into consideration in this decision: the position of the petitioner; the nature and gravity of the violation; the necessity of further developing or clarifying jurisprudence of the Inter-American human rights system; the effect the decision will have on the domestic legal regimes of the Member States; and the quality of evidence available in the case. Should the Commission decide not to submit the case, or if the responding state has not accepted the contentious jurisdiction of the Court, then the Commission will publish a report containing its final conclusions and recommendations.

Evidence from Witnesses and Experts

According to Article 63 of the new Regulations, either party in a case may present witnesses or experts to testify at a hearing before the Commission. The party relying on such evidence will have to make a formal request for the testimony to be heard, after which the Commission will decide whether to accept the testimony. Only in extraordinary cases will a witness be allowed to testify when the opposing party has not been notified prior to the hearing of the testimony. In those cases, every effort will be made to guarantee fair proceedings. One of the more noticeable changes in the new Regulations concerns the distribution of the costs of producing evidence or testimony for a hearing before the Commission. According to Article 67 of the new Regulations, the party requesting the production of evidence at the hearing will be responsible for paying the costs associated therewith. ☹

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compliance. Because India considers international intervention into such matters to be an unlawful interference with sovereign domestic affairs, enforcement of international law is slow and often has minimal influence on India.

Domestic Movements to Improve Dalit Living Conditions

In response to India's failure to ensure Dalit rights, NGOs throughout India seek to relieve the plight of Dalits through lobbying and education campaigns. Activists like Martin Macwan, Convenor of the National Campaign for Dalit Human Rights and recipient of the 2000 Robert F. Kennedy Award for Human Rights, continue to rally on behalf of Dalits to educate the domestic and international community about Dalit conditions. Other organizations such as the International Campaign on Dalit Human Rights, Ambedkar Centre for Justice and Peace, and the Center for Justice and Peace in South Asia, all work to represent Dalits in the domestic and international arena.

Due to the efforts of these domestic human rights organizations, the UN plans to address the condition of Dalits in the August 2001 session of the Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission). The Sub-Commission passed a resolution in its 52nd session, titled "Discrimination Based on Work and Descent," denouncing caste discrimination as a violation of human rights law and mandating preparation of a working paper for the August 2001 meeting. In September 2001, the UN will also address the situation of Dalits at "The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance" (Conference) in South Africa. In February 2001, Indian External Affairs Minister Jaswant Singh denounced efforts to address Dalit rights during the Conference by saying, "there has regrettably been an attempt by some to dilute the focus of this conference by broadening its scope to bring all forms of discrimination within its ambit. An attempt is being made to ascribe racial connotations to caste. We must ensure that the conference does not lose sight of its focus on racism . . . racism should not be confused with discrimination in general." Contrary to India's attempts to distinguish caste discrimination from the evils of racial discrimination, both caste and racial discrimination involve

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invidious distinctions used to oppress a group of people on the basis of arbitrary characteristics. The effects of both types of discrimination are equally destructive; therefore, the Conference is rightfully charged with the task of examining racism along with other types of xenophobia and intolerance. The provisional agenda of the Conference includes examining sources of intolerance, victims of intolerance, preventative measures against intolerance, redress for intolerance, and strategies for achieving full tolerance. The efforts of the UN and the Conference are significant steps in drawing international attention to the plight of India's Dalit community.

Conclusion

Although India has made measurable progress in terms of the protections afforded to Dalits since independence, Dalits still suffer invidious discrimination and mistreatment at the hands of upper caste members and law enforcement officials. Such mistreatment is inexcusable under both India's domestic laws and its obligations under international law. Although the Indian government denies the problem of mistreatment of Dalits and points to extensive legal protections evidencing compliance with international standards, the numerous reports of violence and discrimination indicate that Dalits remain India's "broken people." Until the atrocities against Dalits end, the international community ought to continue to publicize the conditions of India's disenfranchised population and encourage India to live up to the standards established in its domestic laws and international obligations. ☹

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