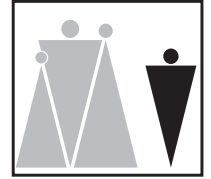


DISCRIMINATION

Briefing Note for the Regional Consultations on UPR II



Article 15 of the Indian Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, the Constitution goes beyond providing a mere declaration of equality that would assume all persons are similarly placed and can progress through provisioning of same approaches, programmes and policies. It also recognises that people are socially and economically unequal, or differentially situated, and as a consequence the need for addressing specific areas of inequalities, or obstacles and disadvantages relating to specific population groups.

Therefore under the Constitution, the Indian state is not only obliged to prohibit discrimination, but is also required to take proactive steps or affirmative action to overcome historic disadvantages and barriers. Nevertheless, despite numerous legal provisions, discrimination is still visibly blatant in many areas, examples of which are listed below.

CASTE- BASED DISCRIMINATION

The Indian Constitution outlaws caste-based discrimination as well as the practice of “untouchability”, and puts in place affirmative action schemes for “Scheduled Castes”. However, Dalits continue to suffer social and institutional deprivations.

Employment: Government policy of reservations in services broadly envisages representation of Dalits in proportion to their population in public services. However, many of the sectors, which were the traditional domains of the government, are now being taken over by the private sector, where there is no reservation. In practice, more than 75% of Dalit workers are still connected with land: 25% as marginal and small farmers and 50% as landless labourers. In urban areas, Dalits work mainly in the unorganized sector. Out of the total Dalit population, the number of Dalits in services falling in the domain of reservations does not exceed a mere 0.8%.¹

Access to education: Poor access to primary education coupled with social discrimination against Dalit children in schools, leaves many of them illiterate with high levels of drop out rates. One of the major reasons for high drop out rates among Dalits are stigmatization of their identity. Moreover, with privatization of education and elite institutions raising their fee structure, accessing affirmative action guarantees becomes problematic.

Denial of health services: The infant mortality rate for Dalit children is as high as 66.4 per thousand live births as compared to 48.9 per thousand for children from “other social groups”. 18.5% Dalit children fall under the category “severely undernourished” in comparison to 11% among other children.

Denial of access to safe drinking water: More than 20% of Dalits do not have access to safe drinking water and only 10% of Dalit households have access to sanitation (as compared to 27% for non-Dalit households). The vast majority of Dalits depend on the “goodwill” of upper-caste community members for access to water from community wells.

¹ Dr Anand Teltumbde, Globalisation and the Dalits
Available at: <http://www.ambedkar.org/research/GLOBALISATIONANDTHEDALITS.pdf>

Denial of adequate housing: Dalits face systematic discrimination regarding the right to adequate housing, which is a primary reason for their deprivation of other opportunities. People are still reluctant to rent out a house to Dalits merely because of their identity even if they are economically capable and well educated.

Atrocities against Dalits: Certain kinds of violence are traditionally reserved for Dalit women: extreme filthy verbal abuse and sexual epithets, naked parading, pulling out of teeth, tongue and nails, and violence, including murder. Dalit women are also threatened by rape as part of collective violence by higher castes. In rural areas, Dalits are disenfranchised, beaten, abused and even sometimes killed for voting or contesting elections.² There are also weaknesses in the implementation of the SCST (Prevention of Atrocities) Act, which retains a shockingly low conviction rate.³

Problems faced by Dalit Human Rights Defenders (DHRDs): DHRDs face many forms of discrimination, including: (i) insults and assaults to DHRD in public place by using caste based abusive words, (ii) death threats for taking up Dalit atrocity cases and for supporting victims to access justice, (iii) direct and indirect destruction/blocking pathways on the property of DHRDs, (iv) implicating DHRDs in false cases and filing counter cases against them, and (v) physical assault, torture, illegal detention, and other forms of harassment.

VIOLENCE AND DISCRIMINATION AGAINST WOMEN

Despite the overarching mandate of equality and non-discrimination contained in the Indian Constitution, and regardless of the enactment of women specific laws, discrimination against women is systemic and shapes all structures of the state and the society. The impact of social values on all institutions and the workplace, inadequate laws, poor implementation of laws, and the absence of effective interventions to tackle the roots of discrimination against women, shapes women's realities, impacting women on the margins most. Reference must be made to Dalits, tribals, women in unorganized and informal labour, women from minority communities, women with disability, poor migrant women, lesbian, transgender and bisexual women, and women living in conflict areas.

The main areas of critical concern under discrimination against women are: (1) Violence against women (in public and private spheres); (2) None or little protection of women in employment, particularly in the unorganized sector where the majority of women are employed; (3) Neglect of and poor access to education and housing; (4) Neglect of healthcare, including sexual and reproductive rights; (5) Discrimination and denial of economic security, including in relation to wages, inheritance, and recognition of unpaid labour; (5) Trafficking; and (6) non-existent or skeletal support services for women.

While family and community violence affects all women, especially in the form of domestic violence, including sexual violence, the violence against marginalized women is aggravated and comes with least legal protection. In particular, caste based atrocities against Dalit women, 'witch hunting' or the targeting of mainly single women from SC/ST and OBC communities in rural areas to divest them of the land and productive resources, violence against lesbian, transgender and bisexual women are areas that merit special attention. Context specific violence against women is also inadequately protected in law – as for instance, sexual violence targeting women of the other community in communal and sectarian riots, targeting of women for sexual choices, or inter-caste/ inter-community marriages (for example in western U.P and Haryana, where the khap panchayats have opposed law against honour killings).⁴ It should be noted with concern that more than 1000 honour killings take place in India every year.⁵

Gender specific violence against women is also widespread in areas of armed conflict.

2 Broken People: Caste Violence Against India's "Untouchables".

Available at: <http://www.unhcr.org/refworld/docid/3ae6a83f0.html>

3 <http://idsn.org/country-information/india/scst-poa-act-1989/>

4 <http://news.rediff.com/report/2010/jul/12/khap-panchayat-body-opposes-law-against-honour-killings.htm>

5 http://articles.timesofindia.indiatimes.com/2010-07-04/india/28273812_1_honour-killings-marriages-heinous-crime

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

In India, 698 ethnic groups are recognized as “Scheduled Tribes”, and are considered to be the countries’ indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population according to the 2001 Census. There are, however, many more ethnic groups that could qualify for Scheduled Tribe status but are not officially recognized. In addition, seventy-five tribal communities have been identified as “primitive tribal groups” (PTG) in different states. The largest concentrations of indigenous peoples are found in the eight states of north-east India and the so-called “central tribal belt” stretching from Gujarat and Rajasthan to West Bengal. India has several laws and constitutional provisions, which recognize indigenous peoples’ rights to land and self-governance. However, these laws have numerous shortcomings and their implementation is far from satisfactory.

In practice, indigenous peoples face many challenges and their rights are frequently violated: (i) they are denied control over their development based on their own values, needs and priorities; (ii) they are politically under-represented and lack access to social and other services; and (iii) they are often marginalized when it comes to projects affecting their lands and have been victims of forced displacement as a result of ventures such as the exploitation of natural resources.

Indigenous peoples are the worst victims of “development” induced displacement of very large scale and gravity. Many of their human rights are grossly violated in the process. There is no effective consultation with the communities, let alone concurrence, before such “development” projects are forced on inhabitants resident of the region from time immemorial. Such displacements always lead to destruction of livelihood of the displaced. There is an unprecedented plunder of natural resources in tribal areas, often without even mining licenses as is revealed by the Lokayatha’s report in the District of Bellary, Karnataka. In 2009, a *Minority Rights International* Report revealed that indigenous or tribal communities are among the poorest in India, barely enjoy basic socio-economic rights, and face entrenched and endemic discrimination.⁶

Indigenous women are particularly vulnerable. On the one hand, they face hardship within their own communities, often ruled by customary patriarchal structures. For example, although indigenous women very much depend on community lands for survival, the ownership and management of these resources is often controlled solely by men or laws and policies that deny women’s participation. On the other hand, since many tribal areas are highly militarised, indigenous women face severe forms of discrimination and violence by army officials.

The government of India’s stated position in the UN (ECOSOC and Human Rights Council, as well as in extending support to the adoption of the UN Declaration on the Rights of Indigenous Peoples) is that it considered the entire population, including tribal people, at its independence and their successors as *indigenous*. This would put India in a unique position as the only country in the world populated entirely by indigenous peoples. This position of India is problematic because it amounts to a denial of the existence of distinct indigenous peoples within its territories and is also, in itself, an expression of discrimination to the indigenous peoples of the country.

DISCRIMINATION AGAINST RELIGIOUS, ETHNIC AND LINGUISTIC MINORITIES

According to the *Sachar Committee* report, the status of Indian Muslims lies even below to that of Scheduled Castes and Tribes. Religious minorities in India have historically been deprived of equal opportunities of living and development. Systemic prejudice and bias have consolidated in large measure due to a pervasive culture of impunity. This culture allows perpetrators of violence, hate speech and discrimination to continue holding positions in the administration and has made the struggle for minority rights even more challenging.

6 <http://www.unhcr.org/refworld/country,,MRGI,,IND,,4c33311631,0.html>

This is coupled with a spate of communal violence that keeps erupting every few years. The *Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*, which seeks to outlaw communal violence, is being opposed by the Hindu right wing. The reason for this opposition is that it is a task, in a chain of command responsibility, those in the police and bureaucracy who fail to protect minority lives and property.

Similarly, Christians have also suffered communal violence in the past, and there have been instances where they have been forced to convert. They, a smaller minority, have been deprived of their livelihoods and homes. India was placed on the United States Commission on International Religious Freedom (USCIRF) watch-list of countries with violations of freedom of religion.⁷

Struggling against impunity of the perpetrators of communal violence and ensuring that the Constitutional and international principles of diversity are incorporated in structures and institutions of governance and education are the tasks ahead.

DISCRIMINATION ON THE BASIS OF DISABILITY

There are more than 70 million disabled people in India. Despite the existence of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* and the ratification in 2007 of the United Nations Convention on Rights of Persons with Disabilities, disabled people continue to face severe forms of discrimination across the country.

Most of India's disabled people remain confined in their homes, as any attempt on their part to travel or enter buildings, parks, shops, etc. can be unsafe and humiliating. Not having equal access to public places, they remain unseen, unheard and unaccounted for. Access to education, employment and public spaces remain key areas of concern.

Aside from these themes, there are other critical areas where discrimination is blatant in India. For example:

- **HIV/AIDS stigmatisation**
- **Discrimination against sexual minorities** (including on grounds of sexual orientation and gender identity)

RELATED UPR I RECOMMENDATIONS, 2008

There are constitutional and statutory guarantees which enable access to justice. These include:

- Recommendation n° 5: Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg).
- Recommendation n° 6: Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil).
- Recommendation n° 8: Share best practices in the promotion and protection of human rights taking into account the multi-religious, multicultural and multi-ethnic nature of Indian society (Mauritius).
- Recommendation n° 11: Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico).
- Recommendation n° 13: Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy).

- Recommendation n° 16: Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia).
- Recommendation n° 17: Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia).
- Recommendation n° 18: Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multilingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia)