

Caste-Based Discrimination: Position of the Government of India and Response

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India is a party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). According to Article 1 of the Convention: « *In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, **descent**, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.* »

The Government of India (GOI) has been arguing that caste-based discrimination does not fall within the ambit of the Convention and therefore is not an issue relevant to the evaluation of its performance vis-à-vis the human rights conventions to which it is party. This argument is based on the following premises:

Main argument

The term “descent” was inserted in the draft ICERD in 1965 by an Indian delegate. However, the GOI has taken a clear stand that the term does not include caste. In parallel, there has been a gradual acknowledgement in international forums that caste-based discrimination and untouchability are still widely prevalent in India, despite its legal abolishment: “It may be noted that it is not the position of the Government of India that there is no caste-based discrimination in India. This is clearly not the case.”¹ The GOI has stated that it was willing to discuss caste-based discrimination at other forums.

Response: *The position of the GOI is surprising given the critical role it has played in addressing discrimination and exploitation in other countries. For example, it was one of the first to decry apartheid in Africa and was actively engaged in the formulation of the CERD. Documents² report that in October 1965, Mr. K.C. Pant, introducing India's amendment to the draft CERD suggested the addition of the term “descent” and even mentioned that Article 1, para. 2 would apply to the scheduled castes stating “that certain groups though of the same racial stock and ethnic origin as their fellow citizens had for centuries been relegated by the caste system to a miserable and downtrodden condition”³.*

Caste is not “race”

The GOI has, from the beginning, rejected any discussion on caste issues before the Committee on the Elimination of Racial Discrimination arguing that caste is “not based on race” though it is perpetuated through descent. It considers that all people in India belong to the same racial stock and caste issues are ‘intra-racial and intra-cultural’ and cannot be debated under racial discrimination. The argument went as far as to say that “the only reason India wants caste kept off the agenda of anti-racism is that it is a needless detraction from the issue of racism”⁴. There was a country wide debate before and during the World Conference against Racism held in Durban (2001) against caste being raised at the Durban process. In the latest engagement with the Working Group on the Universal Periodic Review in May 2008, on a question on India's position on the scope of ICERD on caste and racial discrimination, India responded that “*the position on ICERD is unchanged and caste based discrimination cannot be considered a form of racial discrimination*”. (para 74)⁵

Response: *The Committee on the Elimination of Racial Discrimination (CERD) has clearly rejected this argument in 1996: “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 scheduled tribes fall within the scope of the Convention.”⁶*

“Descent” is related only to “race”

The GOI does not agree with CERD's confirmation that “descent” in Article 1 of the Convention does not solely refer to “race” and has a meaning and application which complements the other prohibited grounds of discrimination. The committee reaffirmed that discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status, which nullify or impair their equal enjoyment of human rights. However, the Indian position remains that the word ‘descent’ in the

¹ Draft Reply to CERD's concluding observations, Permanent Mission of India, Geneva to the UN office, June 2006.

² Egon Schwelb in article on CERD in International and Comparative Law Quarterly, Vol 15, page 996.

³ Amendments to draft CERD by India, 1965.

⁴ Draft Reply to CERD's concluding observations, Permanent Mission of India, Geneva, June 2007.

⁵ A/HRC/8/26, page 15, 23 May 2008. He suggests that the word descent includes the notion of caste as also used side by side in the Indian Constitution.

⁶ CERD/C/304/Add.13, para. 14, 17 September 1996.

Convention has to be understood in the context of apartheid and racism that were the prime concerns at the time ICERD was drafted. India further argues that the meaning of the term “descent” as meant originally in the context of ICERD is only related to race. It does not recognize the other meanings that have emerged from the interpretations given by the Committee since 1996.

The caste system is unique to India and has a long history

The GOI frequently states that the “caste system” is unique to India and cannot be compared with other forms of discrimination. Linked to this argument is also the rationale that the system has been in vogue for almost 3000 years and is deeply entrenched in society. Hence, one should not expect it to change within a short while.

***Response:** The caste system is not unique to India. Through extensive work, experts and UN Special Rapporteurs, have identified and listed out caste and analogous forms of discrimination in other parts of South Asia, Africa, Middle East and some parts of Europe (primarily with the diaspora communities). Moreover, it is important to remember that victims of caste-based discrimination have been waiting for centuries, as their protests are recorded from as early as 5th century BC through conversion to Buddhism. This argument also puts to question the intent and effort behind the constitutional promises and provisions that have abolished caste-based untouchability sixty years ago, prohibited any form of discrimination and assured positive provisions to Dalit and Adivasi communities.*

India has elaborate mechanisms to address caste-based discrimination

To any query on caste-based discrimination and violence, India responds by putting forth a list of constitutional, legislative and affirmative action policies that have been introduced from the time of independence. The GOI reiterates the fact that “the Constitution of India has abolished untouchability and that there are explicit and elaborate provisions to address caste-based discrimination, including reservations. There is also a full-fledged Ministry to look after action in this area. The government has made proportionate budget allocations under the Scheduled Caste Sub Plan for the all-round development of Dalits”.

***Response:** Prof. Yozo Yokota and Prof. Asbjørn Eide in their well researched working paper on work and descent based discrimination state: “In India, some of the longest-standing and most extensive affirmative action measures ever developed have been applied to this problem. However, concerns persist about the effectiveness and impact of these measures.”⁷ The same conclusion is also reflected in the concluding observations of different treaty bodies seeking information about the implementation and effectiveness of legal provisions in place in India.*

For more than 60 years, Dalits have used laws and mechanisms existing within the country to try to promote and protect their rights. Unfortunately, “dominant caste” values, prejudices and vested interests prevalent across all levels of government and society have seriously debilitated the political will to implement and enforce these laws, which have been emasculated and reduced to the status of mere paper tigers.

The Durban debate

During the World Conference against Racism in Durban, Justice K. Ramaswamy, member of the National Human Rights Commission, dissented from the Indian position and stated: “...this conference provides a singular opportunity to the international community to deal openly and courageously with the vexed issue of discrimination and inequality as they exist all over the world, in all of their variety, including the forms of discrimination that persist in India and all other countries. In such a context, it is not so much the nomenclature of the form of discrimination that must engage our attention, but the fact of its persistence that must cause concern....”

The government representative Omar Abdullah contradicted him and reiterated that caste was not an appropriate subject for discussion at the Conference.

CONCLUSION

One of the premises of the GOI's arguments is that caste-based discrimination is an internal problem or a “family matter.” This argument sounds familiar. The dominant caste majority made the same argument when Ambedkar used the Round Table Conference as a platform to ensure that Depressed Classes would not be second-class citizens in an Independent India. It is largely because Ambedkar intervened on behalf of the Dalits before the Round Table Conference and other similar forums, that India today has a democratic Constitution that guarantees fundamental rights such as universal suffrage and equality to all, regardless of caste. Ambedkar showed that boundaries for solutions to the problem of caste-based discrimination are not to be drawn around the village, district, state or nation. Therefore, seeking to raise the problem of caste-based discrimination at the United Nations is not to seek an external solution. It is rather a constitutional, lawful and democratic means by which Dalits and other similarly discriminated communities hope to strengthen national laws, which until now have failed to protect them against discrimination. Using international human rights mechanisms can only empower governments to fulfill their Constitutional and legislative obligations.

⁷ E/CN.E/CN.4/Sub.2/2004/31, 5 July 2004.