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INDIA REPORT

Swadhikar - National Campaign on Dalit Human Rights-NCDHR

## Benchmarking the Draft UN Principles and Guidelines on the Elimination of (Caste) Discrimination based on Work and Descent



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**Benchmarking the Draft UN Principles and  
Guidelines on the Elimination of (Caste)  
Discrimination based on Work and Descent**

**INDIA REPORT**

**Swadhikar - National Campaign on Dalit Human Rights-NCDHR**

**New Delhi, 2014**

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*Dr. Krishna Bahadur Bhattachan, Central Department of Sociology and Anthropology, Tribhuvan University*

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*Thanks are given to all the researchers who compiled this India Report.*

*Dr.*

*Special thanks are given to Prof. Smita Narula and Mr. N.Paul Divakar for writing forewords to this report.*

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## Preface

***“Dalit women presented shocking and heart-breaking testimonies  
about the violence perpetrated against them and the impunity which followed.”***

These words in the Final Report of “UN Study on Discrimination based on Work and Descent” (2009), brought out by Mr. Yozo Yokota and Ms. Chin-Sung Chung, Special Rapporteurs of the UN Sub-Commission on the Promotion and Protection of Human Rights pursuant to Sub-Commission resolution 2006/14, poignantly portray the depth and extent of caste based discrimination and violence perpetrated against Dalit women. The gravity of this issue necessitated the inclusion in this Final Report of a highly valuable document for human rights policy-makers, academics and activists, entitled “The Draft UN Guidelines for the Effective Elimination of Discrimination based on Work and Descent – A Comprehensive Legal Framework to Eliminate Caste Discrimination Globally”, which was published by the Human Rights Council on 18 May 2009 (A/HRC/11/CRP.3).

The Study on Benchmarking the Draft UN Principles and Guidelines on the Eradication of Discrimination based on Work and Descent focuses on India, and is based on the above UN Draft Principles and Guidelines and in conjunction with existing international human rights principles and obligations. It proposes general and special measures to be undertaken by multiple stakeholders. While the study lists the many steps in terms of policies and legislative measures that have been undertaken by the state institutions in India in compliance with its commitment to empower Dalit community, it underlines that Dalits still face discrimination and exclusion from the mainstream society. The Study also points out several key indicators in terms of non-implementation of various executive policies and legislative measures specifically drawn up for the welfare, security and development of the Dalit community.

Undoubtedly, this Study is a landmark document. Its thrust lies in bringing the state institutions to accountability and in calling them to focus on the task of full implementation of the promises expressed through concrete legislative, policy and programmatic measures. As such, the Study offers concrete recommendations to the Government, the judiciary, national human rights institutions, civil society and other key stakeholders on the steps to be taken to ensure that Dalits enjoy equal access to various policy, legislative and programmatic measures. The Study points the way, therefore, to a more systematic direction forward. The challenge for the State is to recognize its obligations to end discrimination and exclusion, put the recommendations of this Study as well the Draft Principles and Guidelines into practice within human rights framework so as to bring in quality changes in the lives of those who experience caste-based discrimination and untouchability as part of their everyday life.

Needless to say that this study is an important contribution to the literature and discourse on Dalit rights, and hence I recommend it as a highly valuable and effective advocacy instrument for all those interested in and committed to the empowerment of Dalits and the ending of discrimination and exclusion. In so doing, together

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we can participate in creating a benchmark for national policies, legislations, practical measures and practices, thereby opening the door of equal access to all Dalit women and men.

We are much indebted to the International Study Coordinators Dr. S.D.J.M Prasad (former General Secretary– National Dalit Movement for Justice-NCDHR) and Fr Aloysius Irudayam SJ, Policy Research-NCDHR for their guidance to the Study Team throughout the study period. We are especially grateful to Dr. Jayshree P. Mangubhai, India Study Coordinator, for her inspirational leadership, solid academic contribution and thoroughness in work. Our heartfelt thanks go to the Study Team members for their commitment and valuable contributions - Ms. Jesi Antony, Ms. Lauren Goldstein, Ms. Lee Macqueen, Ms. Loucille Alcala Dabhi, Mr. Mehul Dabhi, Mr. Rahul Singh and Ms. Serena Gianoglio. If it were not for their sustained hard work, we would not have obtained such a valuable study. Appreciating immensely Ms. Smita Narula for the lucid and insightful foreword, I sincerely acknowledge the support given by Mr. Paul Divakar, General Secretary, Dalit Arthik Adhikar Andolan-NCDHR, Ms Belinda Bennet, Head of South Asia Region, Christian Aid, and Mr. Anand Bolimera, Country Representative, Christian Aid in bringing out the Study.

**Dr. V. A. Ramesh Nathan**

**General Secretary**

**National Dalit Movement for Justice (NDMJ) - NCDHR**

**New Delhi**

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## Foreword

India is home to the largest population of Dalits in the world. Nepal, Bangladesh, Sri Lanka and Pakistan are other countries in South Asia that recognise Dalits as a social class of communities which need special attention in terms of protection, promotion and development. Formally termed Scheduled Castes (SCs) by the Indian government, their population numbers 201.3 million and they account for 16.6% of the Indian population, according to the Census of India 2011. This figure excludes the population of Dalit Muslims and Dalit Christians. Dalits have been historically 'outcaste', at the 'lowest' ladder of the varna system. Descent (birth) based segregation and discrimination continues to be practised in modern day India, amidst processes of globalisation and liberalisation. The socio-economic inequalities between Dalits and dominant castes have also seen an increase on ALL indicators, and also play out in times of humanitarian crisis (disasters) through systemic failures.

Having immersed ourselves in addressing caste based discrimination, violence and the phenomenon of 'untouchability', we in the National Campaign on Dalit Human Rights (NCDHR), and later also in the Asia Dalit Rights Forum, felt the need to have a comprehensive road map to identify and then eliminate the scourge of 'untouchability' and the caste virus in India as well as in South Asia. As Ambedkarites and defenders of Dalit Human Rights, we have engaged in the work of making visible these practices of caste based discrimination and violence against Dalit women, children and men for over two decades in several stages, areas and levels. This involvement continues through holding the state accountable and deepening the implementation of Dalit rights in several spheres.

At the international level, the 2001 World Conference against Racism in Durban (WCAR), South Africa was a watershed for Dalits, like for so other discriminated peoples and communities in the world. For Dalits, the WCAR was instrumental in raising national and international visibility to the issue of discrimination based on work and descent (caste). The WCAR, followed by later events, has brought the realisation among the governments in the Asian region that this issue of caste based discrimination has to be addressed.

With this experience and background, this Benchmark Study has been conducted. The purpose of the study is to map national mechanisms in order to strategise the future advocacy agenda; and to unearth the continuing and emerging forms of caste based discrimination and related violence. This study will help in evolving a comprehensive strategy to address these issues systematically at all the necessary levels in India as well as at the South Asia level.

The Constitution of India formally recognised the scourge of caste based discrimination, as manifested through the practice of 'untouchability', way back in 1950. The rights based framework of the Constitution, grounded in the principles of Liberty, Equality and Fraternity and the official ban on practices of 'untouchability', continue to strengthen the struggle for justice and substantive equality for Dalits. The Constitutional safeguards and measures introduced for the protection and promotion of the socio-economic and educational development of Dalits by the

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Government of India are acknowledged. However, severe gaps exist at the levels of implementation, governance and accountability. A number of factors have only escalated the challenges in addressing the issue of caste based discrimination. These factors include the changing political landscape and societal indifference to the plight of Dalits; national resistance to raising the issue at the international level; bureaucratic hitches; and dominant caste mindsets coupled with patriarchal norms. Serious also gaps exist in terms of insufficient structures and mechanisms to monitor and address caste based discrimination in a comprehensive manner.

This study therefore benchmarks 22 key draft UN Guidelines for the Eradication of Discrimination based on Work and Descent cutting across 12 thematic areas such as education, media, health, political participation, humanitarian aid, violence, private sector engagement, etc. It promotes the development of a deeper understanding of the human rights situation of Dalit communities in India, the level of implementation of state obligations vis-à-vis Dalits, and contributes to strengthening the national processes by way of providing an in-depth analysis of discriminatory practices and an agenda for action. As such, it is part of a wider initiative to benchmark state measures across the South Asia region. Ultimately, this study supports the wider, long-term objective of a South Asian Convention and Global Convention on the Eradication of Discrimination based on Work and Descent (Caste).

As the authors say, ‘a fundamental contradiction in the Indian state’s framework to address caste based discrimination is that a multitude of legal, policy, programmatic and budgetary measures have been created alongside weak institutions. These weak institutions ensure that the measures (undertaken) ... are almost bound to fail in terms of implementation.’ Massive and systematic efforts are needed by the state, civil society at large, Dalit movements and organisations at several levels to stimulate the existing institutions (state and non-state), to handhold, monitor and hold them accountable. In addition, advocacy, education and campaigning are required to overcome the hurdles and the ‘accountability deficit’ by the state.

My heartfelt congratulations to the entire team of authors and those who have extended their support to make this herculean effort possible. Particularly, Dr Prasad Sirivella and Fr Aloysius for coordinating the study across several South Asian countries, Dr Jayshree Mangubhai, the Coordinator and Editor of the India study, and the team of Jesi Antony, Lauren Goldstein, Lee Macqueen, Loucille Alcala-Dabhi, Rahul Singh, Mehul Dabhi and Serena Gianoglio, who have burned the midnight oil in completing the study.

Working towards a discrimination-free world.     Jai Bhim!

N.Paul Divakar

New Delhi

June 2014

*N. Paul Divakar is one of the founding members of the National Campaign on Dalit Human Rights (NCDHR). He serves as General Secretary of Dalit Arthik Adhikar Andolan –NCDHR. He is Convener of National Coalition on SCSP/TSP. He is also Convener of Wada Na Todo Abhiyan. He is the current Chairperson of the Asian Dalit Rights Forum.*

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## Foreword

Across the globe, an estimated quarter of a billion people are relegated to a lifetime of segregation, exploitation, and extreme forms of physical and psychological abuse, all because of the caste into which they are born. Caste denotes a system of rigid social stratification dividing people into ranked groups which are defined by descent and occupation. Under various caste systems throughout the world, caste divisions dominate in housing, marriage, and general social interaction—divisions that are often reinforced through the threat of social ostracism, economic boycotts, and even physical violence. The effective eradication of caste-based discrimination remains a major human rights challenge of our time.

India's caste system is perhaps the world's longest surviving and most rigorously enforced system of social hierarchy. Entire villages in many Indian states are completely segregated by caste. Despite formal protections in Indian law, caste-based discrimination remains endemic and discriminatory societal norms continue to be reinforced by both government and private structures and practices, in some cases through violent means. Dalits—so-called “untouchables” at the bottom of India's caste system—are denied access to land, forced to work in degrading conditions, and routinely abused at the hands of the police and dominant castes which enjoy the state's protection. Dalit women, who are singularly positioned at the bottom of India's caste, class, and gender hierarchies, bear the brunt of exploitation and physical attacks. For India's population of over 200 million Dalits, caste remains the determinative factor for the attainment of civil, political, economic, social, and cultural rights.

Despite the depth and magnitude of the problem, and its global reach, the issue of caste-based discrimination did not form part of the international community's human rights agenda until the beginning of this century. In August 2000, the then-UN Sub-Commission on the Promotion and Protection of Human Rights passed a resolution reaffirming that discrimination based on work and descent is prohibited under international human rights law. Because one's caste can be determinative of one's occupation, caste discrimination is also referred to as discrimination on the basis of “work and descent.” That same resolution commissioned an expert study on the subject, which underscored that caste systems are inherently economic and social in their consequences and represent a deeply oppressive form of work and descent-based discrimination.

The Sub-Commission subsequently appointed two Special Rapporteurs to undertake a comprehensive study on the issue. The U.N.'s Draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent—which form the basis of this benchmarking study—are the outcome of that initiative. The Draft Principles and Guidelines represent an important tool in the eradication of caste-based discrimination. Based on existing international human rights principles and obligations to which governments are already bound, the Principles and Guidelines propose both general and specific measures that should be taken by multiple stakeholders—including governments, U.N. and other international agencies, non-governmental organizations,



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educational institutions, and the private sector—to ensure the effective eradication of discrimination based on work and descent.

This study, produced by the National Campaign on Dalit Human Rights, “benchmarks” the status of India’s implementation of the Draft Principles and Guidelines, and by extension, its obligation to eradicate caste-based discrimination. The following features of the study are particularly worthy of note. First, the study undertakes a comprehensive and systematic analysis of national measures to address caste-based discrimination and ascertains the actual impact of these measures on their intended beneficiaries. By exposing yawning gaps in both the implementation of state measures and in the design of the measures themselves, the study lifts the veil on the Indian government’s assertion that it is successfully tackling the problem through constitutional guarantees and various forms of legislation and development programming. The analysis itself is informed by an exhaustive review of data currently available on the subject, from both official and non-governmental sources.

Second, the study provides a comprehensive overview of India’s human rights obligations to address caste-based discrimination under both international and national law, and highlights key recommendations of international and national bodies relevant to each guideline that is analyzed. As such, the study helps amplify the growing chorus of voices that are calling for immediate and effective measures to address caste-based discrimination, both in India and around the globe.

Third, the study uncovers new areas for Dalit rights interventions. Specifically, it underscores the critical need for measures and initiatives that step out of the formal and legal realm and into social spheres. Implicit in these recommendations is the understanding that conventional strategies adopted thus far do little to challenge vested socio-economic interests or address discriminatory and casteist mindsets, which together have helped ensure widespread impunity for caste-based abuses.

Fourth, the study appropriately addresses the intersectionality of gender and caste-based discrimination as a cross-cutting issue, relevant to all the guidelines, and not simply the guidelines that address gender specifically. In addition, the study is mindful of the diversity of sub-castes and religions within the Dalit community, and does not simply treat Dalits as a homogeneous category.

Finally, the study gives due attention to the work of Dalit community members, as well as civil society as a whole, to respond to gaps in the implementation of state measures. The many such initiatives highlighted in the study bear testament to the fact that Dalit community members, and other Dalit rights advocates, are powerful agents of social change who are playing a critical role in ensuring real accountability for caste-based abuses at the grassroots, national, and international level.

The new millennium marked the ascendance of the Dalit struggle onto the world stage. Dalit rights advocates seized the occasion of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to help make visible what is often a hidden apartheid of segregation, exploitation, and violence, and

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to declare once and for all that “Dalit Rights are Human Rights.” This study marks an important milestone in the journey of making that vision a reality: it moves beyond the documentation of rights violations to providing a specific and nuanced analysis of government actions in light of these violations, exposing critical gaps in the Indian government’s response and offering concrete recommendations for reform.

The significance of this study is not limited to India alone. Across the globe, discriminatory and cruel, inhuman, and degrading treatment has been justified on the basis of caste. The U.N. Draft Principles and Guidelines represent the recognition that caste-based discrimination blights the lives of millions worldwide, and requires a broad common framework to respond to the discrimination. This path-breaking study, and the analytical tools that it offers, shows how that framework can be put into practice in caste-affected countries around the world, in service of ensuring human rights and dignity for all.

Ms. Smita Narula

June 2014

New York

***Smita Narula is a human rights lawyer and professor, and is Faculty Director of the Center for Human Rights and Global Justice at New York University School of Law. She is author of the Human Rights Watch report ‘Broken People: Caste Violence against India’s “Untouchables.”***

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## Introduction

The 2001 World Conference against Racism in Durban, South Africa was a watershed event for Dalits, like for many discriminated peoples and communities in the world, in two respects.

*First*, it brought recognition among the international community of the existence of caste-based discrimination in South and East Asia, and later in the African region. Although the caste system has been studied and documented in the past by many scholars, the profile of Dalit communities in different social contexts as well as the nature, extent and forms of caste discrimination and violence practised against them has not been sufficiently studied and documented, or spoken about, or made known to the international community. It was the spark of Durban that stimulated the academics, activists, government and media milieu. Since then, there have been many observations, recommendations, principles and guidelines that have been suggested for the *effective elimination of discrimination based on work and descent globally*. This was mainly owing to the advocacy efforts done by such agencies as the international Dalit solidarity networks and the international human rights advocacy organizations jointly with Dalit activists and organizations in the affected countries. This spark of Durban needs to continue to spread swiftly and strongly.

*Second*, the WCAR, followed by later events, brought the realization, in howsoever small or great a measure, among the governments in the South and East Asian regions that this issue of caste based discrimination cannot be neglected and therefore needs to be addressed urgently. This was largely due to the continuous rights assertions of Dalit communities, as in India, Nepal and Japan. It was also due to the awareness generated and questions raised by the international community on the prevalence of and protracted response to this issue. Hindsight tells us that the stance taken to hold the state accountable has been paying dividends gradually. However, the task still remains too important to be left incomplete and too enormous to be done singlehandedly by any one of the South and East Asian countries.

It is against this background of the progress made so far in order to attain the goal of rights and dignity for all Dalits that the gaps need to be identified for careful and critical scrutiny, the tasks listed for planning and the agenda of action formulated for action in future. Hence, a ‘benchmark’ study on the **“National Mechanisms and their Impact in addressing Discrimination based on Work & Descent in Asia”** is necessary.

Set within the overall framework of the UN mechanisms, especially the draft UN Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent, this study has to be a collective endeavour of the affected countries of Asia.

The purpose of this study is the following:

- I. To have an overall understanding of the ground reality of the human rights situation of the communities affected by work and descent based discrimination;
- II. To access information as to what extent the states Asia have addressed the issue of caste or work and descent based discrimination;
- III. To make the Principles and Guidelines country specific and nuanced, so as to be able to contribute to strengthening the national processes by way of providing depth of perception and clear identification of

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- discrimination practices, evolving specific and concrete action programmes and implementation mechanisms, and suggesting specific indicators of elimination of caste discrimination;
- IV. To pave the way for similar study in African countries;
  - V. To support the wider, long-term objective of a South Asian Convention and Global Convention on the eradication of caste based discrimination;
  - VI. To justify the Principles and Guidelines as necessary and valid, through objective official data;
  - VII. To offer recommendations/proposals for addressing this issue of caste based discrimination more adequately and effectively in the affected country.

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## Study Methodology

This study was conducted over the period of one year, from January to November 2013.

The study **objectives**, as far as India was concerned, were the following:

- (1) To obtain a broad overview of the socio-economic, political and religio-cultural context of the Dalit communities in India;
- (2) To identify the international and national legal standards that the Indian state has set for itself to address the rights situation of the communities affected by caste-based discrimination and violence, and the specific policy, programmatic and budgetary measures that have been established;
- (3) To take stock of the status of the implementation of the national standards and measures, and to identify the gaps in both the measures themselves as well as their implementation;
- (4) To offer concrete recommendations both for implementation of national standards and measures, as far as implementation is concerned, and for advocacy efforts to make implementation possible and effective.

In other words, the focus of the research was on analysing state measures analysing state measures – i.e. state obligations – and *not* on status of Dalit rights, status and forms of ‘untouchability’, caste based discrimination and violence, as such. The core research questions therefore were: (i) Are state measures in place as per the draft UN Guideline? (ii) What is the status of national implementation of such measures? (iii) What are the gaps in the measures or in their implementation? (iv) What are the key recommendations to ensure the enactment and implementation of comprehensive measures in line with the Guideline?

As the draft UN Guidelines are extensive, a **sample** of 22 guidelines was chosen for in-depth research. These were guidelines chosen across the 12 major categories of guidelines, namely:

1. Combating segregation
2. Physical security and protection against violence
3. Access to justice and equal political participation
4. Equal employment opportunity and free choice of occupation
5. Forced, bonded and child labour
6. Health
7. Adequate food, water, and housing
8. Education
9. Public awareness raising and elimination of discriminatory customs
10. Multiple discrimination against women
11. Humanitarian and development assistance
12. Market Enterprises & Financial Allocations.

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If a category had only one guideline, that guideline was chosen for analysis. If, however, a category had multiple guidelines, two guidelines were chosen from that category on the basis of the following criteria:

1. Does the issue **exist** or not for Dalits in the country?
2. Is the issue **relevant** for Dalits in the country in terms of strengthening state performance? In other words, the issue covered under the guideline might exist, but the state does not consider it important and so no state measures are put in place; or the issue covered under the guideline exists and state measures are in place, but there is no proper implementation.
3. Is **adequate data/info** available or not?

The study was based on **secondary data collation and analysis** alone. Official data and research from government sources was primarily used. Only if these were not available on a guideline topic, then data and studies from civil society organisations and media reports were used to supplement this data. National data sources thus included: Constitutional provisions; Laws; Executive policies; Policies on Women/Children; Government Schemes; Budget provisions; Judicial pronouncements; Development Plans; reports from Statutory bodies such as commissions, authorities, boards, etc.; Annual Reports of various government ministries and departments; Corporate principles; etc.

Certain **principles were adhered to in collecting, collating and analysing the data**. *One* was that care was taken to ensure that information on measures and their implementation for Dalit women and children was provided across the guidelines, and not just for the gender specific guidelines. *Second* is that attention was paid to the diversity within the Dalit community in the country – e.g. the different sub-castes of Dalits, or different religions of Dalits. *Third* was that only the latest data and information available was included. In some cases, however, only old data dating back a decade was available and was therefore included. *Fourth* is that each guideline was examined in relation to the others, so as to lessen the overlap in terms of data and information provided for each guideline.

The **framework for each analytical report on a specific guideline** was divided into 11 sections as follows:

1. *Specific Aspects covered by the Guideline*: detailing what exactly the guideline was asking a state to do
2. *International Standards & Mechanisms*: providing justification for the Guideline by linking it to the international human rights laws to which the state was signatory
3. *International Recommendations*: detailing the various recommendations by UN treaty and other bodies on considering the Indian government's reports to treaty bodies or visits by UN representatives or recommendations issued by treaty bodies
4. *National Standards, Measures and Mechanisms*: detailing the various government laws, policies, programmes/ schemes, budgetary measures and institutional mechanisms in place in fulfillment of the guideline
5. *Recommendations by National Mechanisms*: detailing any official government or commission reports on the topic of the guideline, with specific focus on addressing caste based discrimination
6. *Status of Implementation of National Measures*: detailing the status of implementation of the various government measures and how mechanisms are functioning

- 
7. *Impact on the Beneficiaries:* examining the impact in terms of data showing a changing situation over time, good or bad, for the Dalit community after the implementation of the government measures.
  8. *Gaps in Measures and/or their Implementation:* specifying any gaps both in terms of the measures themselves and the way those measures are being implemented or enforced
  9. *Dalit Community Response:* providing examples of how Dalit communities and civil society organisations are responding to the issue vis-a-vis the Dalit community
  10. *Wider Society Response:* providing examples of how non-Dalit or wider coalitions of civil society organisations are responding to the issue vis-a-vis the Dalit community
  11. *Key Recommendations:* specifying recommendations, based on official government or civil society reports or programmes, in order for the state to ensure fulfilment of the guideline.

Given the extensive nature of the research, the executive summary reveals the broad patterns that emerge in terms of state measures and their implementation, and the gaps, across all 22 guidelines that were benchmarked.



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## Glossary & Abbreviations

<b>Adivasi</b>	Tribal or indigenous person in India
<b>Anganwadi</b>	Crèche, nursery for babies and children
<b>Atrocity</b>	Non-legal term that, according to the Ministry of Home Affairs, Government of India, implies offences under the <i>Indian Penal Code</i> perpetrated against scheduled castes and scheduled tribes by those not belonging to either community, where caste consideration is in fact the root cause of the crime even though caste consciousness may not be the immediate motive
<b>Backward caste</b>	Caste position below forward castes in the ritualised social hierarchy
<b>Creore</b>	10,000,000
<b>Dalit</b>	Literally meaning ‘broken people’, a term employed by rights activists to denote ‘untouchables’ or scheduled castes, the lowest group in the ritualised social hierarchy of the caste system, facing widespread discrimination on the basis of work and descent
<b>Devadasi/ Jogini</b>	Woman married to a temple deity, temple prostitute
<b>District Magistrate/ Collector</b>	Administrative head of a district with quasi-judicial powers
<b>Dominant caste/s</b>	Social groups with ascribed ritual status, and economic and political power, exercising dominance over Dalits in particular. Invariably the term refers to every castes, except for scheduled castes and tribes, who are dominant vis-à-vis Dalits
<b>Lakh</b>	100,000
<b>Lok Sabha</b>	Lower House of Parliament
<b>Panchayat</b>	Local governance institution
<b>Panchayati Raj</b>	Formal local self-governance system in India
<b>PDS ration shop</b>	Public distribution system ration shop
<b>Rajya Sabha</b>	Upper House of Parliament
<b>Reservations</b>	Quotas for Dalits allowing for increased representation in education, government jobs and political bodies
<b>Scheduled caste</b>	Official terminology used to connote those communities listed by the Government of India as those castes characterised by extreme social, educational and economic backwardness arising out of the traditional practice of untouchability, for the purposes of accessing special development, protection and affirmative action schemes

<b>Scheduled tribe</b>	Official terminology used to connote those communities listed by the Government of India as tribal communities
<b>BPL</b>	Below Poverty Line
<b>CEDAW</b>	<i>Convention on the Elimination of All Forms of Discrimination against Women 1979</i>
<b>CRC</b>	<i>Covenant on the Rights of the Child 1989</i>
<b>CrPC</b>	<i>Criminal Procedure Code 1973</i>
<b>DEVW</b>	<i>Declaration on the Elimination of Violence against Women 1993</i>
<b>FIR</b>	First Information Report filed by police regarding an offence
<b>ICCPR</b>	<i>International Covenant on Civil and Political Rights 1966</i>
<b>ICERD</b>	<i>Convention on the Elimination of All Forms of Racial Discrimination 1965</i>
<b>ICESCR</b>	<i>International Covenant on Economic, Social and Cultural Rights 1966</i>
<b>ILO</b>	International Labour Organisation
<b>IPC</b>	Indian Penal Code 1860
<b>MLA</b>	Member of Legislative Assembly (Lower House of Parliament) in the State
<b>MP</b>	Member of Parliament (National/ Central Government)
<b>NCSC</b>	National Commission for Scheduled Castes
<b>NCST</b>	National Commission for Scheduled Tribes
<b>NHRC</b>	National Human Rights Commission
<b>NGO</b>	Non-governmental organisation
<b>PCR Act</b>	<i>Protection of Civil Rights Act 1955</i>
<b>SC</b>	Scheduled Castes, official term used for Dalit communities
<b>SCSP</b>	Scheduled Castes Sub Plan
<b>SC/ST (POA) Act</b>	<i>Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act 1989</i>
<b>SC/ST (POA) Rules</b>	<i>Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Rules 1995</i>
<b>ST</b>	Scheduled Tribes, official term used for tribal/ Adivasi communities
<b>UT</b>	Union Territory

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## Executive Summary

The draft UN Guidelines on the Eradication of Discrimination based on Work and Descent lay down a comprehensive framework of state obligations to remove caste based discrimination from all areas of life. The framework is based on international human rights laws, which the Indian government has signed and ratified. Hence, while still a draft, the Guidelines detail the basic obligations that states like India have if they are committed to upholding principles of equality and respect for human rights and ensuring a society free from racial (i.e. caste) discrimination.

The 22 Guidelines that are benchmarked in this report cut across 12 major categories:

1. Combating segregation
2. Physical security and protection against violence
3. Access to justice and equal political participation
4. Equal employment opportunity and free choice of occupation
5. Forced, bonded and child labour
6. Health
7. Adequate food, water, and housing
8. Education
9. Public awareness raising and elimination of discriminatory customs
10. Multiple discrimination against women
11. Humanitarian and development assistance
12. Market enterprises and financial allocations.

A summary of the major trends that emerge across the [benchmarked](#) guidelines is presented below.

### I. Pervasive Caste Discrimination and Violence

India is home to the largest population of Dalits in the world; that is, people who experience discrimination on the basis of their birth into certain 'low' castes to which menial and degrading labour occupations linked to dirt and death are attached. The caste system has religious sanction and is reinforced by cultural customs, including those of segregation and discrimination against Dalits. Formally termed Scheduled Castes (SC) by the Indian government, their population numbers 201.3 million and they account for 16.6% of the Indian population, according to the Census of India 2011. Over three-quarters of SCs (76.4%) live in rural areas while less than a quarter (23.6%) live in urban areas. Women are 48.6% of the SC population. If one includes the Dalits currently not included in the Scheduled Caste lists, namely Dalit Christians and Dalit Muslims, their population is even more.

Due to historical and continuing caste discrimination, Dalits today continue to register at the bottom of most development indicators: they are among the poorest of the poor, are congregated in the informal sector as landless, daily wage labourers in farm and non-farm occupations, and have some of the lowest levels of education and health. Dalits also continue to experience endemic 'untouchability' practices, discrimination, and violence across the country. While globalisation-driven processes of market liberalisation and privatisation may have opened up new economic opportunities in the country, ample research and statistics over the past 20 years

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indicate that dominant castes, and not Dalits, have seized many of these opportunities to drive their development. The result has been increasing socio-economic inequalities between Dalits and dominant castes. All this is attested to by official government statistics, combined with research from academics and civil society organisations, and most of all, by the community itself. Without addressing the structural causes for Dalit underdevelopment, namely caste discrimination and violence, no policy or programme can ensure Dalits the rights due to them as equal citizens of the country.

## II. Significant Government Measures to Address Caste based Discrimination

### 1. Legal Measures

The Constitution of India 1949 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 (Article 15); the right to equality before the law and equal protection of law (Article 14); a ban on the practice of 'untouchability', namely the imposition of social disabilities on a person due to birth into certain 'polluted' castes (Article 17). In addition, a Directive Principle of State Policy commits the Indian state to promoting the educational and economic interests of SCs, and protecting them from exploitation (Article 46). The Indian state is also committed to affirmative action for SCs via reserved quotas in government employment, promotions in government service, education and central, state and local government (Articles 16, 330, 332, 243D & 243T).

Special laws have been enacted for SCs, to protect their right to security of life. The Protection of Civil Rights Act 1976 punishes a number of 'untouchability'-related offences. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 punishes host of crimes commonly committed against SCs on the basis of their caste, in addition to imposing higher penalties for crimes such as murder, rape, etc. punishable under the Indian Penal Code. In addition, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 provide for mandatory measures to prevent atrocities as well as to protect SC victims and ensure relief and rehabilitation following atrocities. There are also Devadasi System Abolition Acts in several states that seek to end the practice of ritualised forced prostitution under the Devadasi or Jogini system. All these laws are in addition to general civil and criminal laws applicable to protect their rights.

In other areas of socio-economic rights, a number of legal provisions exist to specifically protect Dalit rights or else ensure non-discrimination in the enjoyment of rights. These include:

- *Education Rights*: Socially disadvantaged children should not be discriminated against, segregated or prevented from pursuing and completing elementary education, as per the Right of Children to Free and Compulsory Education Act 2009.
- *Labour/Work Rights*: The Prohibition of Employment of Manual Scavengers and their Rehabilitation Act 2013, supplementing the Employment of Manual Scavengers (Prohibition) Act 1993, seeks to end the practice of manual removal of human excreta in which primarily Dalits are engaged. The Bonded Labour System (Abolition) Act 1976 and Child Labour (Prohibition and Regulation) Act 1986 likewise seek to ensure basic labour rights and protect a number of SCs who are often bonded or child labourers. India also has the Equal Remuneration Act 1976,

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Minimum Wages Act 1948, Unorganised Workers' Social Security Act 2008 and National Rural Employment Guarantee Act 2006, all of which support equality and basic work rights for citizens.

- *Land Rights*: Land Ceiling Acts are in place in the states to ensure land redistribution to the landless poor, a disproportionately large number of whom are Dalits.
- *Other Rights*: The Special Marriage Act enables inter-caste marriages to be registered, and constitutes an important step in breaking down caste barriers.

Moreover, the Supreme Court of India has laid down a number of judgements over the years towards securing basic socio-economic rights for Indian citizens, as well as specific judgements pertaining to the rights of scheduled castes. The Court has also gone so far as to declare that caste system is a curse on the nation, and that it is absolutely imperative to abolish the caste system as expeditiously as possible for the smooth functioning of the rule of law and democracy in India.<sup>1</sup>

## 2. Policies and Plans

In the last ten years, the Planning Commission of India has increasingly focused on 'inclusive growth'. The current 12<sup>th</sup> Five Year Plan 2012-2017 thus proclaims one objective to bring SCs on par with non-SCs in terms of all development indices. Moreover, both Plans acknowledge the special vulnerabilities of SC women in terms of under-development and violence, which need to be addressed.

A number of national policies exist that specifically speak of caste equality and special attention to Dalit rights. The National Education Policy speaks of the goal of education to remove social disparities and equalise educational opportunity irrespective of caste. Accordingly, the National Curriculum Framework insists that textbooks should be aligned to constitutional values of equality and social justice, and teachers trained to bridge caste/gender divides and be sensitive to Dalit issues. Likewise, inequalities in access to healthcare are acknowledged in the National Health Policy, which pledges to improve access for socially disadvantaged members like Dalits. The National Urban Housing and Habitat Policy speaks of special efforts to be taken to meet needs of SCs in housing and basic services, while the National Water Policy states that the needs of SCs should be given due consideration in local planning of water projects. In terms of government procurements of goods and services, the Public Procurement Policy for Micro and Small Enterprises 2012 mandates a target of 4% for procurements from micro and small enterprises owned by SCs/STs.

An acknowledgement of caste as a cross-cutting factor can also be read into the National Policy for the Empowerment of Women 2001 and is explicit in the National Policy for Children 2013. The Women's Policy talks of action to be taken to eliminate violence against women, including that arising from customs and traditions (like caste). Meanwhile, one of the guiding principles of the Children's Policy is equality and non-discrimination on grounds such as caste, and the Policy talks of eliminating discrimination especially in the field of education.

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<sup>1</sup> See *Arumugam Servai vs. State of Tamil Nadu* (2011) 6SCC 405, para 17 & *State of Uttar Pradesh vs. Ram Sajivan* [(2010) 1 SCC 529], para.

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### 3. Government Schemes

Three types of government schemes currently exist that specifically provide entitlements for Dalits, especially those living below the poverty line. One type is **targeted provisioning to SCs** under schemes for national rural drinking water, rural livelihoods, housing, self-employment, education scholarships, hostels and residential schools, health insurance, etc. Another type is **rehabilitation schemes** for bonded labourers, devadasis, manual scavengers and child labourers in hazardous industries, a disproportionate number of whom are Dalits. A third type are **promotive schemes** such as for inter-caste marriages, local cost sanitation for liberated scavengers, credit towards purchase of land by SCs, land redistribution schemes for landless labourers, etc.

### 4. Special Budgets for SCs

One of the most significant policy measures is the **Scheduled Caste Sub Plan**, which mandates Plan fund allocations in proportion to the national/state SC population. This is currently applied across all major ministries/departments that have a direct impact on SC development. These funds should be spent only on programmes that have a direct benefit to SC individuals and families, or to SC habitations. The central government also provides **Special Central Assistance (SCA)** to the state governments for the SC Sub Plan and for implementation of SC/ST (PoA) Act.

### 5. Government Institutions

Finally, a number of government institutions are established to specifically safeguard and promote Dalit rights. The Ministry of Social Justice and Empowerment, which has counterparts in all the states and union territories, is the nodal agency for the overall policy, planning and coordination of programmes for the development and welfare of Scheduled Castes. This work is supported by the National SC Finance and Development Corporation, established to finance, facilitate and mobilise funds for the economic empowerment of SC families living below double the poverty line. Its main work is the provision of concessional finance for self-employment and skills training grants. A separate National Safai Karmacharis Finance and Development Corporation focuses on promoting the socio-economic development of manual scavengers, safai karmacharis (those engaged in other cleaning works) and their dependents by way of concessional finance for income generating activities and loans to students for pursuing professional and technical education.

In terms of human rights institutions, separate National and State Commissions for Scheduled Castes exist to monitor the Constitutional and legal safeguards and welfare of scheduled castes. In addition, a National Commission for Safai Karmacharis looks into the welfare and rehabilitation of scheduled castes engaged in manual scavenging and other cleaning works.

## III. Implementation of Government Measures

The Constitutional rights and the vast array of government institutions and measures created to address caste-based discrimination and violence, and to promote the socio-economic development of Dalits, are impressive on paper. On the face of it, it might even appear that the Government of India has exceeded the measures laid down

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in the UN Guidelines in terms of its framework to address caste discrimination and violence. Benchmarking of the government's progress on implementation of these measures, however, reveals a completely different picture.

***In terms of protective measures,*** social laws have not been effectively implemented despite over two decades of their existence. This conclusion is attested to by the government's own data on the abnormally poor rate of convictions under protective laws for Dalits. This finding is further bolstered by studies indicating the number of cases of 'untouchability' practices and atrocities that are not even registered with the police for various reasons. Reports also indicate the extensive caste discrimination operative throughout the criminal justice process, manifesting especially in police actions towards Dalit victims of atrocities. Little protection is afforded especially to Dalits in inter-caste marriages. Further, displacement of Dalits from land without proper resettlement continues to occur.

***Despite a number of targeted measures,*** such as various schemes for the educational and economic development of scheduled castes, available data on SCs indicate that they are still concentrated in low wage, labour occupations. In rural areas in particular, a major reason for this situation is the lack of effective implementation of land reforms in order to ensure significant land redistribution to Dalits for their livelihood. In addition, despite the number of schemes promulgated for SC development, the issue of many Dalits' lack of information on the schemes as well as lack of discrimination-free access to these schemes remains. This can be gauged by the reports on low number of Dalit beneficiaries as well as reports and data that show even non-SCs benefitting from SC schemes. Moreover, the government currently has not made public adequate information on the extent of implementation of schemes meant for the welfare and development of SCs, and their impact.

Whether it is ***rehabilitation measures*** for Devadasis or manual scavengers or bonded/child labourers or those displaced from their land due to development projects or natural disasters, all such measures exhibit relatively poor implementation across the board. The numbers rehabilitated remain low, including for those displaced under development projects. Rehabilitation for manual scavengers is not clearly prescribed under law, leaving SC manual scavengers without clear guidance as to their entitlement. Moreover, SCs continue to form a disproportionate number of child and bonded labourers, with their rehabilitation questionable in the absence of data on the impact of rehabilitation schemes and evidence of corruption in the issuance of rehabilitation packages.

Turning to ***preferential measures,*** namely reservations, these have certainly created spaces for Dalits in education, government employment, government procurements and the political arena that would otherwise have been difficult to access due to historical discrimination. At the same time, in their implementation, several serious concerns remain. One is the backlog of vacancies in reserved posts in government posts that still remains despite the government's professed drive to clear the backlog. Another is that entry into government employment continues to operate around the logic of caste hierarchy, with SCs congregated into the lowest rungs of government service, including as cleaners. Meanwhile, reservations in political participation have been implemented, but without corresponding measures to ensure protection when Dalits seek to access reserved posts. Nor have measures been put into place to ensure that representation through quotas allows free and meaningful political participation. Finally, the positive step of an affirmative action code of conduct for companies is offset by the fact that this code is as yet voluntary, and not made mandatory in order to encompass the wide



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breadth of companies operative within the country and accordingly sufficiently equalise employment opportunities for SCs.

Across all the different government measures, **budgetary allocations** are another telling indication of the level of prioritisation accorded to equitable development for Dalits. While the Scheduled Castes Sub Plan (SCSP) budget allocation for certain areas such as education is significant, in areas that would ensure access to economic resources for the development of Dalits, funding allocations are much less. Overall, the allocations under the SCSP are lower than that mandated as per their share of the national population. Moreover, even where allocations are made, most are notional in that they are allocated for general schemes and programmes applicable to all communities. This contravenes the policy mandate that the SCSP be applied only for schemes and programmes that directly benefit SC individuals, families or SC habitations. Moreover, low budgetary allocations are matched by lower than budgeted expenditure in many cases.

Finally, in terms of **Dalit women**, two major trends appear. One is the presence of disaggregated government data only in a few areas such as education and literacy, work and health. This makes it impossible to assess the situation of Dalit women vis-à-vis enjoyment of their rights in a comprehensive way. Another is that with the current measures for SCs and for women, SC women fall between the gaps. They are often de facto excluded from either types of targeted measures and, therefore, are few among the beneficiaries. Instead, these measures either benefit SC men or dominant caste women.

#### **IV. Significant Gaps**

Based on the low level of implementation of many state measures, as well as significant limitations in the creation and scope of certain state measures, a number of gaps can be identified. These gaps either obviate or strongly diminish the efficacy of state measures aimed at addressing caste based discrimination.

First, an overall gap exists in terms of **insufficient structures as well as efforts to monitor and address caste based discrimination in a comprehensive manner**, including through legal prohibition, adequate grievance redress mechanisms and positive measures to promote the values of equality and diversity. There is sufficient evidence to indicate that in key areas of daily life, including in education institutions, in employment and in humanitarian assistance, anti-discrimination provisions are not matched by adequate grievance redress mechanisms built into state laws. Overall, there is no comprehensive anti-discrimination and equal opportunity law operative in the country covering all areas and applying legal penalties for all overt and covert forms of discrimination. Moreover, most private companies have not affirmed the non-acceptability of caste discrimination in their organisations and supply chain. Further, there is a lack of adequate and positive mention of scheduled castes and their contribution, as well as state and national leaders from the community, in the educational textbooks and curricula. Nor are there measures in place to mandate or encourage the media to profile Dalit rights violations, and to promote tolerance and caste equality.

Second, in key laws and regulations for public services and the private sector today, there is **no mention of equality and non-discrimination**. This includes under the National Food Security Act 2013, Mental Health Act 1987 and the Companies Act 2013, as well as the various regulatory mechanisms for media and public broadcasting. Similarly, in major national policies, plans of action, schemes and laws that have a large impact on

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Dalits and where caste discrimination has a significant impact on Dalits' enjoyment of constitutional and legal rights, there is ***no mention of scheduled castes or the nature of caste discrimination they experience***. This can be seen, for instance, in the National Policy for Children and National Plan of Action for Children, National Rural Health Mission, National Disaster Management Act 2005, State Panchayati Raj Acts, National Rural Drinking Water Programme and the National Urban Sanitation Policy. The significance of these omissions lies in allowing caste discrimination to continue unchecked or at the very least in neglecting attention to such discrimination in these areas.

Third, ***certain legal and policy measures are currently lacking***, which would have a significant positive impact in terms of securing for Dalits the enjoyment of their fundamental rights. These include a comprehensive employment policy with specific policy goals and provisions for scheduled castes; the enactment of protective legislation for unorganised sector workers, of whom SCs are a large group, in order to ensure the right to decent working conditions; and legislation on reservations in the growing private sector as well as on promotions in government posts. One positive step in this regard is the tabling of a Bill on reservations in promotions before the Indian Parliament. This Act, however, has been pending for a long time. Another area of protective legislation requirement pertains to the need to include major caste crimes, such as social boycotts, witchcraft related violence, chopping off of limbs and other body parts of Dalits, etc. In this regard, the proposed SC/ST (Prevention of Atrocities) Amendment Bill 2013 is a positive step that must be followed through into law. A further positive step is the Prevention of Honour Crimes Bill 2010, which again is pending before the Parliament and is vital to strengthen the 'honour' killings of Dalits who enter into inter-caste marriages. Similarly, the process of transforming the SC Sub Plan from policy guidelines to a legal right must happen soon through a central government Bill in this regard. Already the state of Andhra Pradesh has enacted such a law, with other states promising to follow. This has to be translated into a central law as soon as possible in order to empower Dalit communities at national and state level with the right to demand the socio-economic resources they require for their equitable development.

Fourth, as the previous section has shown, a major lacunae in terms of state action to eradicate caste discrimination lies in terms of the ***non-implementation or woefully inadequate implementation of state measures*** for the respect, protection and fulfillment of the rights of Dalits. Across the board, state accountability for the effective enforcement of social and protective laws, schemes and budgets is missing. Impunity for violence against Dalits, especially Dalit women, is rampant. Key measures like land reforms that would boost the SC community's development are not adequately implemented. Despite reservations, the backlog in filling vacant posts and the absence of mechanisms to ensure that political representation translates into political participation still remain. An example of the blatant violation of policy is the tendency towards notional allocations and accounting of funds under the SC Sub Plan, in direct contravention of policy stipulation of funds allocation and expenditure only for the direct benefit of SCs or their habitations.

An analysis of the impact of state measures to address caste discrimination and violence highlights a major gap in terms of little positive impact beyond the small proportion of SC individuals and families reached. The majority of Dalits engaged in manual scavenging, or bonded labour, or victims of atrocities, etc. remain locked into intolerable working conditions, vulnerability to discrimination and violence without any redress. Moreover, the

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caste system and norms and practices based on caste biases, prejudices and stereotypes remain relatively untouched.

Fifth, currently there is a **lack of adequate representation of Dalits** in key sectors such as the media, teaching profession, police, judiciary and higher-level government jobs. Even where provisions are made for due representation of SCs, these measures are often flouted.

Sixth, a major gap that affects around half the population of SCs, namely SC women, is **the lack of adequate separate measures as well as inadequate provision within existing measures to ensure that development benefits equally flow to SC women**. There is no intersectional perspective applied to planning for groups with multiple identities such as SC women. Hence, they often are excluded where government programmes are for SCs or for women. This situation is further made worse by the absence of disaggregated data on the situation of SC women across all major development and security indicators.

Seventh, there is **inadequate planning for SC development and security of life**. As an initial comment, no comprehensive review has been made of the various general and targeted schemes and programmes to assess their impact on the SCs. Compounding this situation, there is a lack of comprehensive development planning for Dalits across all sectors. This situation exists also because there are no nodal officers appointed to central and state ministries/departments to coordinate planning and budgeting for SC development. Moreover, there is no comprehensive plan of action to protect and ensure security of life for Dalits in general, and Dalit women and children in particular. Moreover, the emphasis of whatever planning and budgeting that takes place, due to the lack of information from a comprehensive review of existing government measures, is not in line with the needs of the community. This is especially noticeable in the lesser focus on programmes to develop the economic resources of Dalits and support their economic improvement in terms of asset building and development.

Eighth, the government has concentrated its efforts more on prohibitive and protective measures, and less on **measures to change caste prejudiced and biased mindsets**. Thus, there are little or no sensitivity training sessions, seminars and conferences mandated for all levels of government officials, judges, public prosecutors, police, teachers, etc. on issues of non-discrimination, equity and inclusion. The government has not initiated any large-scale, countrywide public campaigns towards zero discrimination in any or all areas of life, including campaigns against 'untouchability' practices. Moreover, in terms of human rights education, only some CSOs have taken efforts on voluntary basis and without any government support towards human rights education in schools as one means to change casteist mindsets.

Ninth, currently a number of SCs are unable to access basic development and security entitlements because of a **technicality that excludes them from the schedule list of scheduled castes**. This occurs in two ways. One is that the schedule list includes only Hindu, Sikh and Buddhist Dalits as scheduled castes, but not Dalits from other major religions such as Islam and Christianity. Second is that no mechanism has been created to address the loss of entitlements as SCs when SCs migrate to a new state where their caste is not included in that particular state's SC schedule list. The latter issue is significant in today's context of increasing inter-state migration of a large number of Dalits in search of a decent livelihood owing to development-induced displacement and natural disaster-induced displacement.

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Tenth, weak grievance redress mechanisms to address caste based discrimination are compounded by ***weak monitoring mechanisms*** for the various legal and other safeguards to protect and promote the rights of Dalits. For example, the mandatory monitoring and preventive mechanisms established under the SC/ST (Prevention of Atrocities) Act remain largely on paper even over 20 years after the enactment of this social law. Moreover, the National and State SC Commissions possess only weak powers to investigate cases of rights violations of SCs. In addition, there are also gaps in their monitoring of the situation of SC rights in a number of areas, including political rights and land rights.

In sum, the fundamental contradiction in the Indian state's framework to address caste based discrimination is that a multitude of legal, policy, programmatic and budgetary measures have been created alongside weak institutions. These weak institutions ensure that the measures mentioned in Section II are almost bound to fail in terms of implementation. On the face of it, there appears to be a complete absence of political will on the part of all those holding political power to drive through the necessary measures to comprehensively address caste based discrimination, including caste as it intersects with gender and other forms of discrimination. Two major factors underpin this lack of political will of the dominant caste groups: first, upholding of caste group interests ranging from social, economic and to political; and second, caste prejudices and mindsets formed and reinforced by cultural and religious beliefs and practices. Both these sets of factors produce individual and collective impunity at social, political and moral level. Hence, the weak institutions, as such, are not neutral in that they maintain systemic caste discrimination to the benefit of the dominant sections of Indian society. It is here that efforts need to be made to engage with government institutions, in terms of civil society monitoring and investigation, lobbying and advocacy, education and campaign in order to overcome the current accountability deficit by the state. The alignment of political interests with caste society must be broken, and new alternative norms of equality, dignity and respect for human rights and diversity fostered in order to eradicate caste discrimination. This is the major challenge before the Indian state today.

## **V. Significant Recommendations**

A large number of area-specific recommendations emerge from the analysis of the 22 different Guidelines, as translated by the Indian government into legal, policy, programmatic and budgetary measures today. The necessity of the hour is for the Indian government to demonstrate its political will to eradicate caste based discrimination by effectively enforcing all relevant laws, policies, budgets and programmes in order to stop caste discrimination and violence against Dalits. What are given below are only a few of the significant broader recommendations that would have a large impact in terms of the eradication of caste discrimination and violence:

### ***Policy and Legal Measures:***

- Section 17 of the Indian Constitution should be amended to include the abolition of the caste system and all practices that stem from this hierarchical social system.
- Amendments must be brought to the SC/ST (PoA) Act to bring in all relevant forms of caste based violence as offences, ensure effective enforcement of the law and speedy justice to the SC/ST victims-survivors.
- A comprehensive anti-discrimination law should be enacted and grievance redress mechanisms for discrimination built to provide effective legal recognition, prohibition and responses to such discrimination.

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- The existing mandatory provisions prohibiting discrimination and atrocities must be implemented by the government administration, and improvements made where necessary to these mechanisms to strengthen their enforcement.
  - Fortify the ties between government and civil society organisations working on issues of Dalit rights, in order to promote monitoring of the implementation of state measures, effective interventions to strengthen implementation, and awareness raising among SC communities on their rights and entitlements.

#### ***Planning and Evaluation Measures:***

- A comprehensive review and thereafter, necessary amendments, of all major laws, policies and programmes related to major areas of Dalit lives should be undertaken to ensure that these state measures place adequate emphasis on equality and non-discrimination, as well as the issue of caste and nature of discrimination faced by SCs.
- A comprehensive review must be undertaken of all state measures to assess the impact on SC women, men and children separately. This review, coupled with a mechanism to promote SC participation in the planning process, would facilitate central and state governments to adequately plan and implement measures needed by the Dalit community and required to promote their livelihood, development and security of life.
- It must be made mandatory that nodal officers are appointed in every ministry/department for planning and budgeting for SC development.
- Intersectionality must be made a guiding principle in planning, budgeting and programming for SCs and for women. This would require that specific mention is made of SC women in any general measures for SCs and for women, as well as specific measures for SC women created where necessary to protect and fulfil their rights.
- Similarly, time bound and comprehensive plans of action must be developed to eradicate discriminatory and exploitative practices such as manual scavenging, Devadasi system, bonded and child labour.

#### ***Data Generation Measures:***

- A periodic national survey should be evolved on social and economic discrimination, in order to provide gender and caste disaggregated data on the situation of SCs.

#### ***Financial Measures:***

- The SC Sub Plan (budget) must be legislated in order to create a legally enforceable right that ensures fair distribution of resources for the socio-economic development of SCs.

#### ***Training and Education Measures:***

- Human rights education should be made compulsory in schools, with one separate module of human dignity and equality. This must be coupled with a review of all education textbooks and curricula to ensure that the history

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and contribution of SCs to the country are highlighted and that the values of equality and respect for diversity built into the education system.

- Develop training modules on non-discrimination, equity and inclusion and make them a mandatory part of employment in any government service such as government administration, police, the judiciary and teaching.

***Effective Monitoring Measures:***

- The National Commission for Scheduled Castes should be legally empowered to monitor all matters related to the 'untouchability' and segregation practices, caste discrimination and violence against Dalits, to produce up-to-date information and analysis on the situation across the country, and to take effective legal action in cases brought to its notice.

***Other Measures:***

- All companies should publicly affirm and ensure the non-acceptability of caste discrimination within their own organisations as well as within their sphere of influence, including suppliers and business partners, with a special focus on ensuring equal access to markets, services and labour rights.
- Provisions should be put in place to encourage the media to highlight Dalit rights violations, as well as to promote positive interventions against caste discrimination and respect for values of equality and diversity.



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Benchmarking the Draft UN Principles and  
Guidelines on the Elimination of (Caste)  
Discrimination based on Work and Descent:

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INDIA REPORT

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**Guideline 21. National and local governments should ensure access to public places, including community centres, hospitals, schools, places of worships and water resources, by Dalits; take measures to eliminate and prevent segregation in employment, housing and education, and to ensure protection from violence against those who cross the boundaries of segregation.**

# 21

## COMBATING SEGREGATION

Dalits in India continue to face ‘untouchability’ practices that prevent their access to or deny them full freedom to access public places. Many Dalit habitations continue to be segregated away from the main village and when Dalits attempt to access housing rights, they are denied this right in dominant caste neighbourhoods where all, or almost all, facilities are available. In employment, not only are Dalits congregated into specific works linked to their traditional labour occupations, itself a form of segregation, but some Dalits find themselves segregated as they work in fields and cannot eat together with other caste workers. Meanwhile, Dalit children in many schools continue to be made to sit at the back of the class, are segregated during the serving of midday meals in schools, and kept apart from other caste children. Moreover, whenever Dalits attempt to break these caste barriers that prevent their equal access to public places and enjoyment of equal rights in employment, housing and education, they often face retaliatory violence.

### (i) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

The Indian national and state governments should take specific legal, policy, programmatic and budgetary measures for Dalits to ensure equal access, non-discrimination, freedom to exercise their right, and security of life in respect of:

- **access to public:** places: to be able to freely access and use all public places and facilities
- **elimination of segregation in employment, housing and education:** to be entitled to freely mix with others in terms of employment, housing and education without being isolated or treated differently; to sanction anyone who tries to enforce such segregation



• **prevention of segregation in employment, housing and education:** to have measures in place to prevent any differential treatment in access and enjoyment of employment, housing and education

• **protection from violence against Dalits who cross the boundaries of segregation:** to be entitled to state protection from violence for contravening any caste-based norms and customs of segregation; to be entitled to proactive measures from the state to change caste norms on segregation.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

• States should prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race (incl. caste)... to equality before the law in the enjoyment of the rights: to work, to free choice of employment; to housing; to education and training; to access any public place or service; to security of person and protection by the state against any violence or bodily harm. (Article 5(d) ICERD)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

• States should undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment. Measures should be taken against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for Dalits. (CERD. (2002). General Recommendation 29: Descent based Discrimination, paras 15 & 39)

• States should 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. (CERD. (2002). General Recommendation 29, para. 16)

• The Indian state should intensify its efforts to enforce the Protection of Civil Rights Act 1976, including by punishing acts of “untouchability”, take effective measures against segregation in public schools and residence, and ensure equal access for Dalits to any public place or service.

(CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 13)

• The Indian state should take effective measures to combat classroom segregation and discrimination against Dalit pupils and ensure non-discriminatory access to the Midday Meal Scheme, adequate equipment, staffing and quality of teaching in public schools, as well as physical access by Dalit pupils to schools in dominant caste neighbourhoods and armed conflict areas. (CERD. (2007). Concluding Observations on India report, para. 25)

• The Committee stresses the importance of the equal enjoyment by Dalit children of the rights in **the** Convention, including access to health care, education, work, and public places and services. (CRC. (2000). Concluding Observations on India Report. UN Doc. CRC/C/15/ADD.115, para.31)

## **(4) NATIONAL STANDARDS AND MECHANISMS**

### **Laws:**

• No citizen shall be subject to caste discrimination and any disability or restriction 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. (Article 15 Indian Constitution)

• ‘Untouchability’ is abolished and its practice in any form is forbidden. (Article 17 Indian Constitution)

• Hindu religious institutions are public institutions open to all classes and sections of Hindus. (Article 25(2)(b) Indian Constitution)

• Children from disadvantaged groups or economically weaker sections shall not be segregated from other children in the classroom, nor shall their classes be held at places and timings different from classes held for other children. These children also shall not face discrimination with regard to accessing education entitlements such as textbooks, etc. (Right of Children to Free and Compulsory Education Rules 2010, Rule 11)

• The Protection of Civil Rights Act 1976 and Rules 1977 make the preaching and practice of ‘untouchability’- i.e.



the imposition of religious or social disabilities – a cognizable and non-compoundable offence with enhanced terms of imprisonment. Section 15A prescribes the state's duties to appoint prosecutors for these offences, set up special courts to try these offences, and set up committees to assist the state governments to implement anti-untouchability measures.

- It is an offence to deny a scheduled caste person any customary right of passage to a place of public resort or obstruct such person so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to. (sec. 3(1)(xiv) SC/ST (PoA) Act)

#### ***Policies:***

- The National Urban Housing and Habitat Policy 2007 mandates the state to take special efforts to meet the needs of scheduled castes in relation to housing and access to basic services. (sec. 2 (xv))
- The National Policy on Education 1986/1992 specifies that the national system of education should remove social disparities and equalise educational opportunity irrespective of caste, in terms of access to education of a comparable quality.

#### ***Institutional Mechanisms and Plans:***

- The Ministry of Social Justice and Empowerment is responsible for the implementation of the PCR Act and the SC/ST (PoA) Act and should report to Parliament every year on the status of implementation of these Acts.
- The National Commission for Scheduled Castes has an Atrocities and Protection of Civil Rights Wing, which deals with cases relating to the PCR Act and the SC/ST (PoA) Act.

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- The National Commission for SCs and STs has recommended that the Central Government review the kind of facilities being provided by state governments to the victims of 'untouchability' practices; request state governments to complete the identification of 'untouchability'

prone areas on a time bound basis; and issue guidelines for the proper implementation of the PCR Act. (NHRC. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, p.266)

### **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- Despite the existence of laws against discrimination and 'untouchability', a study in 565 villages of 11 states revealed that in 70% of villages, Dalits cannot eat with non-Dalits; in 64% of villages, Dalits cannot enter common temples; in 53% of villages, Dalit women suffer ill-treatment at the hands of non-Dalit women. Denial of temple entry was not limited to Hindu places of worship: in Punjab, 41 of the 51 surveyed villages had separate gurudwaras for Dalit Sikhs; similar caste segregation within the Christian community was seen in Kerala and Andhra Pradesh. The study also found that in 37% of villages, Dalits were denied wage employment in agriculture; in around 25% of villages, they received lower wages than non-Dalit workers; in 32% of villages Dalits were denied access to irrigation facilities; and in 21% of villages they were denied access to common property resources. (Shah, Ghanshyam et al. (2006). Untouchability in Rural India. New Delhi: Sage Publications)
- A study, 'Discrimination and Social Exclusion: A Study on the Development Experience of Dalits in Karnataka' found that 13.7% of Dalit children from 50 villages had been asked to sit separately from dominant caste children in the classrooms and nearly 33% of parents told that their children had been frequently given the task of cleaning classrooms and the school grounds. (The Hindu. (2012, 22 Oct.). 'Study reveals discrimination in Karnataka schools')
- It is not only the society that discriminates against persons of scheduled caste origin converted to Christianity/ Islam (inasmuch as such converts are not treated by other members of their own religion or by members of other religions as their equals), they are being discriminated against even by their own religious institutions like church or the mosque; the manifestation of discriminations being separate churches/mosques or separate prayer halls or prayer timings in the same church/mosque for them and earmarked areas for the burial of their dead.
- Denial of scheduled caste status to Dalit Christians and Dalit Muslims despite 'untouchability' related practices be-



ing enforced against them or atrocities committed against them deprives them of the protection of the SC/ST (Prevention of Atrocities) Act. (Mishra, Ranganath. (2007). Report of the National Commission for Religious and Linguistic Minorities. New Delhi: Ministry of Minority Affairs, Government of India, p.142)

- Under the Untouchability Offences Act (which later became the PCR Act), from 1955 to 1976, 22,470 cases were registered, of which 19,893 were taken to court, out of which 3,402 were compounded, 3,288 acquitted and only 6,178 offenders convicted. In the light of stark differences in case registrations and convictions, the Minister of Home Affairs had therefore written to the state governments to make arrangements for the effective implementation of the PCR Act and to appoint small committees to oversee the implementation. However, apart from Bihar and Madhya Pradesh, no state governments have appointed such committees. (Centre for the Study of Casteism. (2006). Evaluation of the Protection of Civil Rights Act 1955 and its Impact on the Eradication of Untouchability. Bangalore: National Law School University, p. 30)

- As a result of segregation regarding water facilities, over 20% of Dalits do not have access to safe drinking water, only 10% of Dalit households have access to sanitation (as compared to 27% of non-Dalit households), and the vast majority of Dalits depend on the 'goodwill' of dominant castes for access to water from community wells. (Center for Human Rights and Global Justice & Human Rights Watch. (2007). Caste Discrimination against Dalits or So-Called 'Untouchables' in India. New York: CHRJ & HRW, p. 12)

- Government programmes for Dalit housing maintain the existing spatial segregation in both rural and urban areas. The state provides basic amenities of poorer quality for Dalit colonies and sometimes does not provide the amenities that are provided to non-Dalit colonies; for example, medical facilities and the better houses exist exclusively in dominant caste colonies. (CHRJ & HRW. (2007). Caste Discrimination against Dalits or So-Called 'Untouchables' in India, pp. 32-33)

- The Government of Tamil Nadu introduced the Samathuvapuram (Tamil: equality) housing scheme to create model villages in rural areas with free housing and other facilities wherein people of different castes and religions could live

together and share civic amenities and services without any caste discrimination. Some shortcomings in the implementation of the scheme include the misuse of subletting and political interference in the identification of beneficiaries. Rural housing schemes have not given any attention to spatial and social equality. (Jothi Sivagnanam K. and Sivaraj M. (2002). Tamil Nadu: Samathuvapuram: Towards Special Equality. Chennai: Department of Economics, University of Madras, p. 9)

- The State Governments have not taken the implementation of the PCR Act very seriously, including to identify untouchability-prone areas and develop plans of action to eradicate these practices. Punjab and West Bengal, in particular, have not taken any administrative measures for the implementation of the Act. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, pp. 21, 25)

- Special Police Stations for the registration of complaints of offences against SCs and STs under the PCR Act have been set up only in the states of Bihar, Chhattisgarh, Kerala, Jharkhand and Madhya Pradesh, and in the first three states not in all the districts as mandated by law. (Ministry of Social Justice and Empowerment. (2009). Report u/s 15A(4) Protection of Civil Rights Act 1955 for the year 2009. New Delhi: MSJE)

- Special Courts are said to be set up, as per the PCR Act, in many states. However, in most cases, only the existing courts are given the additional title of Special Courts and these courts do not have their own Prosecutor, etc., to deal speedily with these crimes. (Centre for the Study of Casteism. (2006). Evaluation of the Protection of Civil Rights Act 1955 and its Impact on the Eradication of Untouchability. Bangalore: National Law School University, p. 173)

- At the end of 2011, out of 1175 cases registered under the PCR Act, 86% were pending in the courts and the conviction rate was only 2%. (National Crimes Record Bureau. (2012). Crimes in India 2011. New Delhi: NCRB)

## **(7) IMPACT OF MEASURES**

- Over the period 2000 to 2007, there were a total of 4223 crimes against SCs registered under PCR Act and 75,105 crimes registered under the SC/ST (Prevention of Atrocities) Act. While the registration of cases under the PCR



Act decreased from 634 cases in 2003 to merely 206 in 2007, case registrations under the SC/ST (Prevention of Atrocities) Act drastically increased from 8048 cases in 2002 to 9819 cases in 2007. This shows that despite studies proving the continuing existence of rampant ‘untouchability’ practices across the country, the government’s actions to enforce the law to eradicate such practices has lessened over the years. (National Crimes Records Bureau. (2000-2007). Crimes in India, 2000 to 2007 reports. New Delhi: NCRB)

## **(8) GAPS IN THE MEASURES**

### ***Legal and policy gaps:***

- Offences under the PCR Act are cognizable and bailable in nature. Due to this, the provisions of the Act lose much of their teeth, since bail becomes a right. Moreover, if the complainant does not state his/her caste and the accused’s caste in the FIR, then the complaint cannot be registered. (Centre for the Study of Casteism. (2006). Evaluation of the Protection of Civil Rights Act 1955 and its Impact on the Eradication of Untouchability. Bangalore: National Law School University, pp.152 & 169)
- The PCR Act attempts to eradicate ‘untouchability’ and restore the rights of victims of ‘untouchability’ in public life (e.g. access to public wells), but leaves the private sphere (e.g. inter-dining and entry into dominant caste houses) untouched. This is despite growing evidence that overt ‘untouchability’ may be slowly lessening while ‘untouchability’ remains strong in the private sphere. (Kumar Tiwari, S. (2013). ‘Impact of Laws on the Abolition of Untouchability in India: A Critical Study.’ In Proceedings of 6th International Business and Social Sciences Research Conference, 3-4.01.2013, Dubai)
- While many traditional ‘untouchability’ and segregation offences continue, new forms are emerging. These new forms of untouchability and atrocities, which are not clearly specified in the law, provide loopholes for perpetrators and police officials to ensure these practices continue. (National Coalition for Strengthening SC/ST (PoA) Act. (2010). Enforcement of SCs & STs (Prevention of Atrocities) Act – Proposed Amendments. New Delhi: NCSPA)

- The punishments awarded under the PCR Act are not adequate and fail to serve the purpose for which this law was enacted. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, p.13)
- National policies related to housing, education, water, etc. make little reference to the addressing of caste discrimination in ensuring equal access and enjoyment of basic resources. For example, the National Water Policy 2002 stipulates the provision of water for all. No specific measures are mentioned to address caste discriminatory practices that accompany access to water. (National Campaign on Dalit Human Rights. (2012). Stigmatization of Dalits in access to water and sanitation in India. New Delhi: NCDHR)
- Dalit Christians and Dalit Muslims do not currently receive any protection under special laws for SCs as they are not included in the scheduled caste list.

### ***Legal implementation gaps:***

- There is little awareness and wide ignorance about the provisions of the PCR Act. Out of 30 police interviewed, only 27 were aware that ‘untouchability’ had been legally abolished, 15 knew about the existence of the PCR Act, and only 2 police knew the provisions of the Act. (Centre for the Study of Casteism. (2006). Evaluation of the Protection of Civil Rights Act 1955 and its Impact on the Eradication of Untouchability. Bangalore: National Law School University, p. 40)
- The PCR Act has proved extremely difficult for Dalit victims to see enforced. To take a case to the court is expensive and no Central Government resources are available to assist in a prolonged lawsuit. (Bemal, T. (2006). Issue of Untouchability in Modern India. Retrieved April 2013 from <<orissa.gov.in/e-magazine/Orissareview/April2006/engpdf/Issue\_of\_untouchability.pdf>>)
- The PCR Act has not been effective partly due to the lack of police officials to prevent and investigate offences and partly due to the fact that the Dalits are dependent on the dominant castes economically in rural areas, and hence are hesitant to file reports with the police. (Centre for the Study of Casteism. (2006). Evaluation of the Protection of Civil Rights Act 1955 and its Impact on the Eradication of Untouchability, p. 170)



- There is virtually no monitoring of the implementation of the PCR Act at any level. No periodic surveys are carried out as required under the Act. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, p.25)
- The provision of ‘summary trial’ under section 15(i) PCR Act, if applied in all seriousness, prevents the Magistrates from awarding the maximum punishment under the Act.
- The State Governments are reluctant to adopt the special measures stipulated under the PCR Act or Central Government directives for the eradication of ‘untouchability’. This lack of State-Central Government cooperation renders the implementation of the Act ineffective. (Kumar Tiwari, S. (2013). ‘Impact of Laws on the Abolition of Untouchability in India: A Critical Study’. In Proceedings of 6th International Business and Social Sciences Research Conference, 3-4.01.2013, Dubai)

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- The National Campaign on Dalit Human Rights, Dalit Social Forum, Centre for Dalit Studies and other Ambedkarite organisations make information available about enduring ‘untouchability’ and segregation practices, as well as the various government schemes for the development of Dalits
- The National Coalition for Strengthening PoA Act (NCSPA), a network of more than 500 Dalit and non-Dalit organizations, has come out with amendments to the SC/ST (Prevention of Atrocities) Act that include criminalising discrimination against Dalit children in schools, anganwadis and midday meals in schools; imposing social or economic boycotts on Dalits; etc.
- Dalit Christians, alongside Dalit Muslims, have been campaigning for years for inclusion in the lists for scheduled castes, in order to avail of special protective laws and provisions.

## **(10) WIDER RESPONSE TO GAPS IN IMPLEMENTATION**

- Since its formation in August 2007, the Tamil Nadu Untouchability Eradication Front (TNUF), one of the mass front of Communist Party of India (Marxist), has been intervening where ‘untouchability’ practices and caste oppression exists in Tamil Nadu.
- The Empowerment and Entitlement Coalition of India, which consists of many non-Dalit and Dalit civil society groups, people’s movements, NGOs, individuals and international solidarity groups has identified the many practices of ‘untouchability’ that pose serious threat to the social fabric of this nation. In 2010, the Coalition gave a call to all the citizens and rulers of this country to do everything they can to abolish ‘untouchability’ within a given timeframe.

## **(11) RECOMMENDATIONS**

- The Indian government should enact relevant, adequate and stringent laws and enforce implementation of such laws in order to stop all caste discrimination and segregation happening at all levels both in public and private spaces.
- The Indian government must amend the schedule to the Indian Constitution to ensure that Dalit Christians and Dalit Muslims are also extended scheduled caste status and the protective and promotive measures that attach to that status.
- New types of discrimination and ‘untouchability’ practices that are not listed in current laws need to be included.
- High-level committees should be appointed at the Centre and in the States/UTs to review the implementation of the PCR Act, assess the realization of its objectives, and take appropriate and speedy action for strengthening the Act and for its effective implementation in future.
- The National Commission for Scheduled Castes should be legally empowered to monitor all matters relating to the ‘untouchability’ and segregation practices against Dalits and produce up-to-date information and analysis on the situation across the country. The Commission should also hold annual meetings of the heads of the PCR cells set up in all the states/UTs in order to monitor and ensure the effective implementation of PCR Act.



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**Guideline 22. National and local governments should introduce and apply special measures to eradicate the persistence of social and cultural stigma of impurity and pollution that de facto precludes marriages between members of affected and non-affected communities and, in some societies, gives rise to violence, collective punishment and social exclusion against couples from different communities.**

# 22

## COMBATING SEGREGATION

Dalits continue to face ‘untouchability’ that prevents even their freedom of choice to marry outside their caste. Though there are no legal barriers for inter-caste marriages, due to the social norm of endogamy that lies at the heart of the caste system, Dalits who enter into such marriages face different social, economic, cultural and political problems. Dominant castes often resort to social boycotts, social ostracism and restrict the property rights of the Dalit spouse after such marriages. Sometimes, conflicts emerge between Dalit and dominant caste families, leading to ‘honour’ crimes against inter-caste couples that include murder.

### (1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

The Indian government should take specific legal, policy, programmatic and budgetary measures to ensure freedom to exercise their right and security of life for Dalits in respect of inter-caste marriages between Dalits and non-Dalits:

- eradicating ‘untouchability’ practices and socio-cultural notions of impurity-pollution that prevent inter-caste marriages;
- protecting Dalits who enter into inter-caste marriages from physical violence, collective punishment and social exclusion;
- prosecuting those who engage in violence or other punishment of inter-caste couples.

### (2) INTERNATIONAL STANDARDS AND MECHANISMS

- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights



as to marriage, during marriage and at its dissolution. (Article 16(1) UDHR)

- All men and women of marriageable age have the right to marry and to found a family. (Article 23(2) ICCPR)
- States should prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race,... (caste), to equality before the law, notably in the enjoyment of the right to marriage and choice of spouse. (Article 5(iv) ICERD)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should take steps to identify those descent-based communities under their jurisdiction who suffer from caste discrimination as recognised by an inability or restricted ability to alter inherited status; and socially enforced restrictions on marriage outside the community. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 1)
- States should take resolute measures to secure rights of marriage for members of descent-based communities (e.g. Dalits) who wish to marry outside the community. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 32)
- The Indian State should punish acts of discrimination or violence against inter-caste couples and rehabilitate the victims. Furthermore, it should conduct training and awareness-raising campaigns to sensitize police, prosecutors, judges, politicians, teachers and the general public as to the criminal nature of such acts. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, para. 18)

### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The Special Marriage Act 1954, which came into effect on 1 January 1955, allows for inter-caste marriages, but requires that couples give written notice of their intent to marry at

least 30 days before the marriage. (secs. 1, 4, 5, 7 Special Marriage Act 1954)

- A central government scheme to diminish caste consciousness and to encourage inter-caste marriages exists. The scheme operates on a 50:50 sharing basis between the central and state governments. Under this scheme, Rs 30,000 is to be paid to the inter-caste couple where either the bride or bridegroom is a scheduled caste person.
- The Punjab government has set up the protection homes/centres in various districts to provide protection to newly married inter-caste couples under the supervision of respective Deputy Commissioners. (Punjab Newline. (2011, 12 Sept.). 'Punjab notifies the list of Protection Home/Centres for Inter – Caste Marriage Couples')
- The Supreme Court has called for an end to customary practices that promote "honour killings", which can occur when inter-caste marriages take place. The Court has directed all administrative and police departments to ensure that couples in inter-caste relationships are not harassed or subjected to violence, adding that inter-caste marriages are in the national interest and would help dismantle India's age-old caste system. (Arumugam Servai vs. State of Tamil Nadu [(2011) 6 SCC 405]; see Hindustan Times. (19 Sep. 2013). Rohtak couple found dead in suspected honour killing')

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- The Law Commission of India has recommended the enactment of a new law, The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, which is intended to curb the social evil of caste councils/panchayats interfering with and endangering the life and liberty of young persons marrying partners belonging to a different caste. Under this law, no person or any group of persons should gather with an intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned. (Law Commission. (2012). Prevention of Interference with the Freedom of Matrimonial Alli-



ances (in the name of Honour and Tradition): A Suggested Legal Framework. Report No.242)

- The state governments should give wide publicity to the scheme of inter-caste marriages through mass media in order to encourage large number of youths for inter-caste marriages. (National Commission for SCS and STs. (2001). Sixth Annual Report 1999-2000 & 2000-01. New Delhi: NCSCST, para. XI)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- Despite the special marriage law and the creation of incentive schemes for inter-caste marriages, Human Rights Watch notes an independent study that states that at least 900 honour killings, in which people are killed for marrying outside their caste or religion, or within their kinship group, occur each year in the states of Haryana, Punjab and Uttar Pradesh. Honour crimes against inter-caste couples range from "quiet murders passed off as suicides, to pre-meditated, long-drawn public humiliation and social boycott." The Dalit spouses in particular are subject to torture, discrimination and abuse. Inter-caste couples may be murdered either by family members or "people with social clout" in the community.

- The government does not provide protection to inter-caste couples who experience mistreatment, and the police are not effective and are sometimes themselves the perpetrators of violence against inter-caste couples. (Immigration and Refugee Board of Canada. (2012). Situation of inter-caste couples, particularly those involving Dalits, from both urban and rural locations, including societal attitudes, treatment by government authorities and the treatment of their children (2005 – April 2012). Retrieved 20.10.2013 from <<www.refworld.org/docid/50b4a36c2.html>>)

- Of the domestic violence cases involving inter-caste couples that were registered in Tamil Nadu between 2009 and 2012, over 80% involved Dalit women. Across the state, 84 women had filed cases of domestic violence against their husband and family members, husbands who deserted them after marriage and men for sexually harassing them by making false promise of marriages. Of the 84 women, 67 were Dalits. Out of the 67 Dalit women, 52 were lured by caste

Hindu men on false promise of marriage and sexually harassed them. (Deccan Chronicle. (2013, 4 March). '80% Dalit women face violence in inter-caste marriage')

- Dalit women reported facing caste discrimination from dominant caste husbands and in-laws in inter-caste marriages, or violent reactions from dominant caste husbands on being ostracised from their dominant caste community for marrying a Dalit woman. (Irudayam, A. et al. (2011). Dalit Women Speak out: Caste, Class and Gender Violence in India. New Delhi: Zubaan, pg. 15)

- According to a survey of 5,462 people from 1,589 villages in Gujarat inter-caste marriage is forbidden in 98.4% of villages. In such locales, an inter-caste couple would be subject to violence and would often have to leave the village. (Navsarjan Trust and Robert F. Kennedy Centre for Justice and Human Rights. (2010). Understanding Untouchability: A comprehensive study of practices and conditions in 1589 villages. Ahmedabad: Navsarjan Trust, p.17)

- The khap panchayats wield enormous influence in the villages of north India. These khaps operating without any legal sanction to issue death warrants to young people who defy caste conventions, including the prohibition of inter-caste marriages between Dalits and dominant castes. (DNA. (2013, 20 Sept.). 'A silent revolution is underway'. Retrieved Oct. 2013 from <<www.dnaindia.com/analysis/1891231/editorial-dna-edit-a-silent-revolution-is-underway>>)

- In Andhra Pradesh, over 300 Dalit families of Deveera-halli village in Krishnagiri district were banned from labouring in fields of dominant caste landowners as collective punishment for an inter-caste relationship. (The Hindu. (2013, 14 Apr.). 'A love affair is the reason for denial of work to Dalits')

- In Tamil Nadu, on 7 November 2012, over 268 Dalit households were looted and set ablaze by a dominant caste mob over an inter-caste marriage in Natham, Dharmapuri district between a Dalit boy and a dominant caste girl. (The Hindu. (2012, 10 Nov.). 'Dalit houses, property systematically destroyed')



## **(7) IMPACT OF MEASURES**

- According to national figures, the number of people tying the knot with Dalits is constantly going up, touching 9,623 in 2012 from 7,617 in 2011 and 7,148 in 2010. Maharashtra seems to be ahead of other states in taking to the liberal tradition, with 2,296 marriages between Dalits and non-Dalits in 2012. (Times of India. (2013, 19 Sep.). 'Steady rise in inter-caste marriages involving Dalits')
- Maharashtra, Andhra Pradesh and Kerala are the top three states showing the welcome trend. At the top Maharashtra has registered a four-fold increase in inter-caste matrimonial alliances in recent times.(DNA. (2013, 20 Sept.). 'A silent revolution is underway'. Retrieved 20.10.2013 from <<www.dnaindia.com/analysis/1891231/editorial-dna-edit-a-silent-revolution-is-underway>>)
- There is a significant spatial variation in the pattern of inter-caste marriages. There seems to be higher inter-caste marriages in socio-economically developed states like Punjab, Haryana, Assam, Maharashtra and Karnataka, in comparison with the socio-economically backward states of northern India, namely Uttar Pradesh, Madhya Pradesh, Bihar and Rajasthan. (Goli, S., Singh D. and Sekher T.V. (2013). 'Exploring the myth of Mixed Marriages in India: Evidence from a Nation-wide Survey', Journal of Comparative Family Studies, 44(2))

## **(8) GAPS IN THE MEASURES**

- There are no laws that punish crimes committed in the name of 'honour' in India. There are also no laws that punish the illegal actions of khap or community panchayats or other caste associations, which often pronounce punishments for inter-caste marriages.
- Even though the crimes they orchestrate should attract the harshest of legal penalties, the perpetrators of violence over inter-caste marriages can be booked only under the existing provisions in the Indian Penal Code and the SC/ST (Prevention of Atrocities) Act, if the victim is a Dalit.(DNA. (2013, 20 Sept.). 'A silent revolution is underway'. Retrieved 20.10.2013 from

<<www.dnaindia.com/analysis/1891231/editorial-dna-edit-a-silent-revolution-is-underway>>)

- Threatened inter-caste couples can petition the Punjab and Haryana High Courts for protection. However, sometimes the couples are killed before the protection is granted or despite the police protection efforts. (Immigration and Refugee Board of Canada. (2012). Situation of inter-caste couples, particularly those involving Dalits, from both urban and rural locations (2005 – April 2012). Retrieved 20.10.2013 from <<www.refworld.org/docid/50b4a36c2.html>>)

## **(9) DALIT COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- Caste Annihilate Movement (CAM) is the coordination of different parties and organisations, which launches vigorous campaigns against harassment and violence over inter-caste marriages and also promote such marriages.

## **(10) OTHER COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Democratic forces, prominent writers and social activists in Tamil Nadu are very active in demanding a comprehensive law to curb honour killings and hate speech against inter-caste marriages.

## **(11) RECOMMENDATIONS**

- A separate legislation should be enacted to deal with honour crimes out of inter-caste marriages in which most of the victims are Dalits.
- Apart from legislation to legally prohibit honour related crimes, steps should be taken to organise counseling programmes for village communities, for instance to explain to them that such marriages are not opposed to law or religion.
- The time gap between the date of giving notice of marriage and the registration of inter-caste marriages should be removed and the entire process of marriage registration



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should be expedited. The domicile restriction should also be removed.

- The acts of endangerment of liberty, including by social boycott, harassment, etc. of an inter-caste couple or their family members, should be treated as criminal offences punishable with mandatory sentences. The acts of criminal intimidation by members engaged in an unlawful assembly or others acting at their instance or otherwise, should be also made punishable with mandatory sentences.
- The intervention of caste/community assemblies such as khap or katta panchayats in the occurrence of inter-caste marriage related criminal offences involving serious endangerment of the life and liberty of the couple should be condemned and punished under the law.
- Human rights education and awareness campaigns should be launched to actively promote inter-caste marriages.

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**Guideline 24. State actors should take special measures, such as devising and implementing comprehensive plans of action and creating a monitoring mechanism, to protect affected communities from physical violence, including torture, sexual violence and extrajudicial killings.**

# 24

Despite the protective and preventive provisions of laws such as the SC/ST (Prevention of Atrocities) Act, atrocities against Dalits have increased in recent years and many preventive and monitoring mechanisms have not been fully implemented. The Ministry of Social Justice and Empowerment does review annually the security situation of Dalits, but there is no comprehensive plan of action in place to protect Dalits from all forms of physical and sexual violence.

## PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

### (I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

In fulfilment of this guideline, national and state governments should evolve and implement a comprehensive plan of action, effective monitoring mechanisms and other similar measures to:

- Protect Dalits from physical violence such as torture, murder, assaults, honour killings, kidnappings, illegal detentions and extra-judicial killings, whether perpetrated by private citizens, police or security forces, and including domestic violence.
- Protect Dalits from sexual violence such as sexual harassment or assault, rape, sexual exploitation, naked parading, forced prostitution including ritualised prostitution, and child sexual abuse.



## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to life and no one shall be arbitrarily deprived of their life. (Article 6 ICCPR)
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Article 7 ICCPR)
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention, nor deprived of their liberty outside of legal procedures. (Article 9 ICCPR)
- Everyone has the right to security of person and protection by the state against violence or bodily harm without discrimination based on race (caste). (Article 5(b) ICERD)
- The state should take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women. (Article 6 CEDAW)
- The state should develop national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing. (Article 4(e) Declaration on the Elimination of Violence against Women)
- Every child has the right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, malnutrition or exploitation, including sexual abuse, torture, sale or traffic in children. (Articles 19, 35 & 37 CRC)
- States should pursue national strategies aimed at: (i) implementing plans of action to eliminate structural racial discrimination, including guidelines for prevention, investigation and prosecution of racist incidents. (CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System. UN Doc. A/60/18, para. 5)
- India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but has signed the Convention on 14 October 1997.

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- The Indian state should provide effective protection to SCs against acts of discrimination and violence, introduce mandatory training on the SC/ST (Prevention of Atrocities) Act for police, judges and prosecutors, and take disciplinary or criminal law measures against law enforcement officers who violate their duty of protection in relation to crimes against SCs. (CERD. (2007). Concluding Observations on India report, para. 14)
- The Indian state should take steps to enforce the Protection of Women from Domestic Violence Act 2005 and to ensure that all victims of domestic violence, including SC women, benefit from the legislative framework and support systems in place. Public officials, especially the police, and the judiciary should be sensitised on violence against women. (CEDAW. (2007). Concluding Comments on India report, para. 21)
- The Indian state should put in place a mechanism to monitor the effective enforcement of the SC/ST (Prevention of Atrocities) Act in order to ensure accountability and end impunity for crimes against Dalit women. (CEDAW. (2007). Concluding comments on India report, para. 29)
- The government should enforce laws preventing discrimination against Dalit women and prohibiting the Devadasi system –i.e. dedication of girls to deities and thereafter forced ritualised prostitution. (CEDAW. (2007). Concluding Comments on India report, para. 75)
- The Indian state should ensure that legislation criminalises the sexual exploitation of children and penalises all the offenders (and not the child victims) involved. Given the legal prohibition on Devadasi dedication, the Indian state should take all necessary measures to eradicate this practice. (CRC. (2000). Concluding Observations on India report, para. 75)



## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### **Laws:**

- Everyone has the rights to equality before the law, and no one shall be deprived of their life or personal liberty except by procedure established by law. (Articles 14 & 21 Indian Constitution)
- Traffic in human beings is prohibited and is a punishable offence. (Article 23 Indian Constitution)
- The Indian Penal Code 1860 specifies a number of criminal offences, including criminal offences against women such as rape, trafficking, etc.
- Anyone who molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person on the ground of 'untouchability' commits an offence. (sec. 7(i)(b) PCR Act)
- Any non-SC/ST who assaults or uses force against any SC woman with intent to dishonour or outrage her modesty, commits an offence. (sec. 3(i)(xi) SC/ST (PoA) Act)
- Any non-SC/ST who exploits a SC woman sexually to which she would not have otherwise agreed, commits an offence. (sec. 3(i)(xii) SC/ST (PoA) Act)
- State governments should adopt precautionary and preventive measures such as identifying areas where SCs are likely to be subjected to atrocities; visiting the area to review the situation; cancelling arms licences and seizing illegal firearms of non-SC/STs; constituting a state/district-level committee to ensure proper implementation of the Act; setting up vigilance and monitoring committees to suggest effective measures; etc. (Rule 3 SC/ST (PoA) Rules)
- State governments should develop model contingency plans for implementing the provisions of the SC/ST (PoA) Act, which specify the role and responsibilities of various government departments and their officers, local bodies and NGOs, and include relief measures. (Rule 15 SC/ST (PoA) Rules)
- The dedication of a woman as a Devadasi is unlawful. (sec. 3 Karnataka Devadasis (Prohibition and Dedication) Act 1982; Maharashtra Devdasi System (Abolition) Act

2005; Andhra Pradesh Devadasis (Prohibition of Dedication) Act 1988)

- The state government shall establish a Devadasi Practice Control and Eradication Board and also constitute a District Devadasi Practice Control Committee for the purposes of this Act. (secs. 5 & 8 Maharashtra Devdasi System (Abolition) Act 2005)
- The Immoral Trafficking Prevention Act 1956, dealing with sex work in India, mostly punishes acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where the sex work is not coerced.
- A protection officer should be appointed in each district and the Magistrate should pass a protection order in favor of any domestic violence victim and prohibit anyone from committing this crime. (secs. 8 & 18 Domestic Violence (Prevention) Act 2005)

### **Institutional Mechanisms and Plans:**

- The Ministry of Women and Child Development is the nodal ministry that deals with the prevention of trafficking in women and children for commercial sexual exploitation.
- The Ministry of Social Justice and Empowerment is responsible for annually reporting to Parliament on the implementation of the SC/ST (Prevention of Atrocities) Act.
- The National Commission for Scheduled Castes provides safeguards against the exploitation of SCs and works to ensure their protection, welfare and development. It has the powers to inquire into specific complaints of atrocities against SCs.
- The National Policy on the Empowerment of Women 2001 aims to ensure the elimination of all forms of violence against women and girls, whether at domestic or societal levels, including those arising from customs, traditions or accepted practices such as caste. The policy calls for institutions and mechanisms/schemes for assistance to be created and strengthened for violence prevention; the rehabilitation of the victims of violence; and taking effective action against violence perpetrators. A special emphasis is laid on measures to deal with female trafficking. But no mention is



made about addressing intersectional violence on the basis of caste and gender.

- The National Plan of Action for Children 2005 aims to ensure the protection of all rights of children up to the age of 18 years. Measures include ensuring the outreach of child care, protection and developmental programmes in order to prevent exploitation. While specific action for girls and disabled children are detailed, nothing is mentioned about vulnerable Dalit children.

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- State governments should expeditiously identify atrocity prone and 'untouchability' prone areas as per the law and thereafter prepare a Plan of Action for eliminating 'untouchability' practices and reducing violence against SCs through various regulatory and development measures. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, p. 205)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- Despite protective legislative and affirmative action laws and policies, the reality of Dalit women in India is one where they experience some of the worst forms of discrimination, violence and oppression, thereby perpetuating their socio-economic vulnerability across generations. (Special Rapporteur on Violence against Women. (2013, 1 May). Press statement on Conclusion of Country Mission to India. New Delhi: UN Information Centre)
- The Protection of Civil Rights Act 1955 and the SC/ST (Prevention of Atrocities) Act 1989 have been rendered increasingly ineffective in their ability to protect Dalits from fundamental rights' violations because of the failure of state governments to properly implement the acts. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, pp.120-1)
- Contingency plans for the implementation of the SC/ST (PoA) Act have been put in place in only six states: Bihar, Goa, Gujarat, Karnataka, Madhya Pradesh and Punjab.

Other states have not provided information on the status of the creation of model contingency plans. Nor is information available on the status of implementation of especially rehabilitation measures. (Ministry of Social Justice and Empowerment. (2011). Report u/s 21(4) SC/ST (POA) Act for the year 2011. New Delhi: MSJE)

### **(i) Devadasi system**

- Though there are state laws to prevent the dedication of girls as Devadasis, the Devadasi system still flourishes in several states, especially in Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka. The National Commission for Women estimates that there are 48,358 Devadasis currently in India. (Ashwini Y.S. (2012, 20 Aug). 'Schemes fail to curb devadasi practice', Deccan Herald)
- According to a UNICEF 2006 estimate, there are around 27,000 Devadasis alone in Andhra Pradesh, a figure that is much higher than the one officially declared by the government. (Ashwini Y.S. (2012, 20 Aug). 'Schemes fail to curb devadasi practice', Deccan Herald). Around 95% of Devadasis (Joginis) are SCs and STs. (The Pioneer. (2011, 27 Aug). 'God of Awful Things')
- A report commissioned by the National Commission for Women estimates that girls dedicated to temples along the Maharashtra-Karnataka border number over 250,000 and are all Dalits. More than half become prostitutes. (The Hindu. (2006, 30 Jan). 'Project Combat' launched to eradicate 'Devadasi' system')
- After the Karnataka government legally banned the Devadasi system, the authorities registered 45 cases in Belgaum. Of these cases, only one ended with three persons being convicted in 2003, but two only were imprisoned for two years and fined, while the third was let off with a Rs 1,000 fine. (Times of India. (2009, 23 Jan). 'Finally an end to Devadasi system', Bangalore)
- The Maharashtra Devadasi System (Abolition) Act 2006 has not proved to be much of a deterrent. In the last five years, not a single case has been registered, though child trafficking continues to thrive in the state. (The Star online. (2011, 21 April). 'Exiting the Devadasi system')



## **(ii) Physical Violence including Sexual Violence and Torture**

- The National SC Commission has noted that approximately 10,000 cases of human right violations against Dalits occur every month. However, only one out of ten cases is reported annually.
- On average, about 1000 cases of sexual exploitation of Dalit women are reported annually and in the year 2011 alone, 1557 cases of rape were reported. (National Crime Records Bureau. (2011). Crimes in India 2011. New Delhi: NCRB)
- A three-year study of 500 Dalit women's experiences of violence across four states showed that the majority of Dalit women faced incidents of verbal abuse (62.4%), physical assault (54.8%), sexual harassment and assault (46.8%), domestic violence (43.0%) and rape (23.2%). (Irudayam, A. et al. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan)
- Similarly, a study of violence against Dalit women in three districts of Gujarat in 2004-09 recorded 185 crimes by non-Dalits, around 50% of which resulted in death or grave physical injury to the woman. (Navsarjan Trust. (2011). Gender Violence and Access to Justice for the Dalit Women. Ahmedabad: Navsarjan Trust)
- As per sec. 17 SC/ST (PoA) Act, all state governments should identify atrocity-prone areas and take preventive action so that atrocities do not occur in those areas. However, currently only 12 states have identified 223 districts as atrocity-prone and sensitive areas.
- As per Rule 3 SC/ST (PoA) Rules, in order to take preventive measures to check incidents of atrocities, state governments should conduct periodic surveys and identify atrocity-prone areas. Except for Madhya Pradesh, no other states have done any such survey.
- Special Police Stations, aiming to ensure the prompt registration of crimes against SCs, have been set up in some states. However, their working is far from satisfactory, for these police stations are not adequate and do not have proper staff and facilities to function effectively. (National Coalition for Strengthening SC/ST (PoA) Act. (2012). People's Report on implementation of SCs & STs (PoA) Act and Rules, 2009-2011. New Delhi: NCSPA)

## **(iii) Extra-Judicial Killings ('Encounter Deaths')**

- The National Human Rights Commission reported 440 cases of alleged fake encounter deaths in the country during 2002 to 2007, mostly in the states of Uttar Pradesh, Rajasthan, Maharashtra, Delhi, Andhra Pradesh and Utaranchal. The case of Andhra Pradesh, Jharkhand, Madhya Pradesh and other central Indian states are noteworthy because Dalits are among the major victims of such deaths there. (Indian Express. (2011, 8 Nov). 'Sohrabuddin: Interrogating the Media')
- The National Human Rights Commission indicated that of the 1037 reported cases of custodial deaths in 2000, 910 occurred in judicial custody. SCs accounted for a sizeable number of such custodial deaths. (NHRC. (2001). Annual Report 2000-2001. New Delhi: NHRC)
- In 1979, the government constituted the National Police Commission to analyse problems in police performance. However, the Commission's recommendations, which include several specific to police abuse of Dalits, have still not been adopted.
- Draconian security laws have been used to arrest Dalits. For example, in Jharkhand and Andhra Pradesh, the Prevention of Terrorism Act 2002 (POTA) allowed the government to prosecute alleged acts of terrorism largely outside the ordinary rules of the regular criminal justice system. A fact-finding team examining the use of POTA in early 2003 found that in Andhra Pradesh, POTA was not invoked in many of these cases against individuals who appeared not to have been involved in any criminal activity at all, but rather had been targeted simply for their caste or tribal status alone. While India repealed POTA in 2004, many of the law's provisions have been preserved in other similar legislation. (Kalhan, A. et al. (2006). 'Colonial Continuities: Human Rights, Terrorism, and Security Laws in India', Columbia Journal of Asian Law 2(1), pp.93-224)

## **(7) IMPACT OF MEASURES**

### **(i) Devadasi system**

- In both Andhra Pradesh and Karnataka, state legislation passed in the 1980s outlaws all Devadasi rituals and dedica-



tion ceremonies. These laws have been more effective than previous efforts, especially where there has been active rehabilitative and preventive work in the communities. Organisations involved believe that a significant proportion of Devadasis have been reached by their efforts. (Black, Maggie. (2007). *Women in Ritual Slavery: Devadasis, Joginis and Mathammas in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International)

- The Karnataka Government has amended the Karnataka Devadasis (Prohibition of Dedication) Act to make the practice, coercion and planning of dedications a cognisable and non-bailable offence, and to take the responsibility for rehabilitating Devadasis. Until 2009, 9,672 Devadasis had been rehabilitated from the profession, and been able to access a monthly pension from 2007-08. In 2009-10, under the government's housing scheme 1,660 former Devadasis were to receive Rs 40,000 each and 2,500 to receive houses. (Times of India. (2009, 23 Jan). 'Finally, an end to devadasi system')
- However, even after declaring the practice illegal in 1982, a 1994 Karnataka government survey identified 22,873 Devadasis in 10 districts. In 2007-08, another government survey found 23,787 Devadasis in 13 districts, indicating no sizeable decline in the number of Devadasis. (Deccan Herald. (2011, 20 Aug.). 'Schemes fail to curb Devadasi practice')

### ***(ii) Physical Violence including Sexual Violence and Torture***

- Despite the number of protective laws and measures in place, the rate of crimes against Dalits has increased over the years: as per National Crimes Records Bureau data, in 2007 30,031 cases of atrocities against Dalits were reported, while in 2010 this number rose to 32,712 cases. (NCRB. (2008 & 2011). *Crimes in India 2007 & 2010*. New Delhi: NCRB)
- Without a comprehensive plan of action to protect Dalit women, the number of reported cases of SC women being raped increased from 784 in 1991, to 1316 in 2001, and to 1349 in 2010. The all-India data for 1981 to 2009 indicates that not only the number of incidents of caste discrimination and violence, but also the brutal crimes such as rape and murder, are on the increase. (A. Ramaiah (2011). 'Grow-

ing crimes against Dalits in India despite special laws: Relevance of Ambedkar's demand for 'separate settlement', *Journal of Law and Conflict Resolution* 3(9), pp. 151-168)

## **(8) GAPS IN MEASURES**

### ***(i) Devadasi system***

- Despite the prevalence of the Devadasi system in a number of Indian states, including Orissa, Kerala and Goa, there is currently no Central Government legislation, nor state laws in these and other states, to uniformly protect against the dedication of Dalit girls as Devadasis.
- In Andhra Pradesh and Karnataka, neither the victims nor the enforcement authorities are aware of Devadasi prohibition laws. (The Hindu. (2006, 30 Jan). 'Project Combat' launched to eradicate 'Devadasi' system')
- The Karnataka state government has failed to date to frame rules to the Karnataka Devadasis (Prohibition of Dedication) Act 1982. Rehabilitation programmes, which suffer from ad-hocism and inadequacy, do not provide an adequate means of livelihood for the victims of the Devadasi system. (The Hindu. (2006, 30 Jan). 'Project Combat' launched to eradicate 'Devadasi' system')
- In Andhra Pradesh, fines and terms of imprisonment are set for those found responsible for such dedication of girls. However, no penalties are mentioned for the exploiters or agents, although the girls and women themselves are regarded as indictable where complicit. During one research, no case was identified of penal action taken against procurers of girls or performers of dedications under the terms of the Act. (Black, M. (2007). *Women in Ritual Slavery: Devadasis, Joginis and Mathammas in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International)
- Despite the legal stipulation of a Devadasi Prohibition Officer in each district in Maharashtra and the formation of a state-level control group, this has not occurred in many districts. (The Star online. (2011, 21 April). 'Exiting the Devadasi system')



## ***(ii) Physical Violence including Sexual Violence, Torture and Extra Judicial Killing***

- There are no explicit provisions for the protection of Dalits from physical violence such as torture, murder, rape and gang rape in the SC/ST (PoA) Act.
- The SC/ST (PoA) Act neither covers any acts of discrimination and violence that Dalit children face nor provides protection, including against such crimes committed in schools.
- No state government has complied with all the mandatory provisions under the SC/ST (Prevention of Atrocities) Rules to take preventive measures and to set up mechanisms to ensure the effective implementation of the SC/ST (PoA) Act.
- As per Rule 8, all the state government should set up a Protection Cell. According to the Ministry of Social Justice and Empowerment, 23 out of 28 States and 3 out of 7 Union Territories have set up SC/ST Protection Cells. Moreover, in almost all the states, the meetings of the state-level Monitoring and Vigilance Committees to enforce the proper implementation of the SC/ST (Prevention of Atrocities) Act, are not held regularly. (National Coalition for Strengthening SC/ST (PoA) Act. (2012). People's Report on Implementation of SCs/STs (PoA) Act and Rules, 2009-2011. New Delhi: NCSPA)
- The Indian Government's consistent inaction in protecting, promoting and fulfilling rights for its Dalit women citizens – evidenced in increasing rates of crimes against women and SCs, its failure to resister many cases of violence against Dalit women, and low disposal rates of SC atrocity cases combined with low conviction rates – all points to the Indian state's failure to comply with its human rights obligations of due diligence to prevent violence against Dalit women. (Irudayam, A. et al. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan)
- The government has created the Protection of Children from Sexual Offences Act 2012 only on sexual offences against children, the focus of which is on punishing offenders and not on providing counseling, rehabilitation and restoration of confidence and dignity of the affected child.

- Torture is not criminalised in law as a separate offence. Only secs. 330 (causing hurt to extort confession or to compel property restoration) and 348 (wrongful confinement to extort confession or compel property restoration) of the Indian Penal Code 1860 penalise acts that can be termed as torture. The Indian Evidence Act 1872 also has no provisions dealing with the evidentiary aspects of torture.

## ***(iii) Extra-Judicial Killings***

- Legislation to prevent torture in custody and hold police torturers accountable has not been enacted; nor has the Indian Government ratified the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The country does not have a permanent National Police Commission yet. The state of policing in India today therefore is an indicator of the reasons for the country's ineffective democratic experiment, and continuing lack of protection to Dalits.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Many Dalit human rights organizations such as Centre for Dalit Rights in Rajasthan, Navsarjan Trust in Gujarat, Sakshi in Andhra Pradesh, Social Awareness Society for Youth (SASY) and Evidence in Tamil Nadu have started monitoring, documenting and following up cases of physical violence against Dalits.
- Organization such as the National Campaign on Dalit Human Rights have filed Public Interest Litigations (PILs) before the High Courts and Supreme Court to demand better protection for Dalits via effective implementation of the SC/ST (Prevention of Atrocities) Act.
- The National Coalition for Strengthening PoA Act, a network of more than 500 Dalit and non-Dalit organisations, has come out with a set of proposed amendments to the SC/ST (Prevention of Atrocities) Act, such as the inclusion of heinous crimes such as grievous hurt, rape, minor rape, gang rape and murder, as well as strengthening the preventive and protection mechanisms under the Act.



## **(to) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Many non-Dalit organisations such as Peoples' Watch in Tamil Nadu and Human Rights Law Network in New Delhi take up atrocity cases in order to ensure justice to Dalit victims of violence and proper enforcement of the laws to protect Dalit rights.
- Eminent people like former IAS Officer P.S. Krishnan and Justice Ramaswamy support various Dalit organisations and the National Coalition for Strengthening PoA Act in order to ensure comprehensive protection of Dalit rights.

## **(ti) RECOMMENDATIONS**

- Enact national legislation to abolish the Devadasi system in any part of the country and to provide relief and rehabilitation to the victims, including livelihood and development programmes for them and their families.
- The Indian Parliament should amend the SC/ST (PoA) Act to include all major forms of atrocities such as murder, rape, gang rape, etc., as well as additional atrocities Dalits face such as social boycotts, filing of false counter cases, etc. The district and state level Vigilance and Monitoring Committees should also be activated to monitor the implementation of the protective mechanisms under the Act and Rules.
- Appoint high level committees at the Centre and in the States/UTs to review the implementation of the SC/ST (PoA) Act, assess the realisation of its objectives, and take appropriate and speedy action for strengthening the Act and for effective implementation in future.
- The Indian Parliament should ratify the Convention against Torture and amend the Indian Evidence Act to make inadmissible any evidence obtained on the basis of a police interrogation that involved the use of torture or cruel, inhuman, or degrading treatment or other illegal coercion.
- Implement the recommendations of the Law Commission of India to make amendments to the Indian Evidence Act 1872 to provide that in cases of custodial death the onus of proving guilt is fixed on the police.

- Strengthen the capacity of the various National Human Rights Institutions to operate branch offices in all states with enough financial resources and powers to initiate the prosecution of cases of violence especially against Dalits.
- Implement the recommendations made by the National Police Commission in 1980, specifically those that call for a mandatory judicial inquiry in cases of alleged rape, death or grievance injury of persons while in police custody.
- Take immediate legal and departmental disciplinary action against police officials who neglect to discharge their duties under section 4 SC/ST (PoA) Act.
- The National Commission for Scheduled Castes should hold annual meetings of the heads of the PCR cells set up in all states/UTs and the Nodal and Special Officers designated under the SC/ST (PoA) Act to review the implementation of the Act especially the mandatory protective provisions.

Ensure the implementation of precautionary and preventive measures in atrocity prone areas as prescribed under Rule 3 SC/ST (PoA) ACT



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**Guideline 26. National and local governments should investigate, prosecute and punish perpetrators of all forms of violence and atrocities, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.**

# 26

## PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE

Dalits have been subjected to increasing crimes over the years. However, police negligence in the effective investigation, prosecution and punishment of dominant caste perpetrators of such crimes is rampant. Hurdles exist at every stage of the process to attain justice after caste violence take place. Tremendous pressure and threats are placed on the Dalit victims not to lodge their initial complaints of atrocities. Often police officials refuse to write the complaint of the victims or register the FIR, or to register cases under the SC/ST (PoA) Act. Moreover, false counter cases are increasingly registered against the victims at the behest of the dominant castes, sometimes in collusion with police officials. Police do not arrest the accused immediately and cases are not investigated in time. Dalit victims of crimes often also face threats to withdraw their cases or compromise throughout the criminal justice process, and have their cases tried often by biased prosecutors who do not adequately inform and prepare witnesses for the trial. The result is the abnormally low conviction rate for atrocities against Dalits under the SC/ST (PoA) Act.

### **(1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should ensure non-discrimination, freedom to exercise their right and security of life for Dalits in respect of:

- Investigation of all crimes of violence and atrocities against Dalits: to be entitled to have one's complaint of violence registered by the police; to have one's case effectively, speedily and fairly investigated; to have sanctions applied against any gov-



ernment official who willfully neglects to register or investigate crimes against Dalits.

- Prosecution of the perpetrators of crimes or atrocities: to be entitled to speedy justice before the courts; to be entitled to the appointment of a competent public prosecutor; to have one's case tried using proper legal procedures and with all fairness; to have the perpetrators of atrocities adequately punished under the law in relation to the gravity of their crime and injuries caused.
- Sanctions against anyone who hinders the reporting of crimes against Dalits: to have sanctions applied against anyone, including government officials, who prevents or discourages Dalit victims from reporting crimes committed against them.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Anyone whose rights are violated has the right to an effective remedy, and should be able to claim that remedy through competent judicial, administrative or legislative authorities. (Art. 2(3) ICCPR)
- All persons are equal before courts and tribunals. In the determination of her/his rights and obligations in a suit at law, everyone shall be entitled, without discrimination, to a fair and public hearing by a competent, independent and impartial tribunal established by law. (Articles 2(1) & 14(1) ICCPR)
- Everyone has the right to effective protection and remedies, through competent national tribunals, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. (Art. 6 ICERD)
- Victims are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. The needs of victims should be facilitated by avoiding unnecessary delays in the disposition of court cases and the execution of orders granting awards to victims. (Arts. 4 & 6 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- State should ensure the prosecution of persons who commit crimes against members of descent-based communities and the provision of adequate compensation for the victims of such crimes. They should also organize training programmes for public officials and law-enforcement agencies with a view to preventing injustices based on prejudice against such communities. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, paras 23& 25)
- Complaints by victims of racist (casteist) acts should be recorded immediately, investigations pursued without delay and in an effective, independent and impartial manner, and files kept relating to racist (casteist) incidents. (CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System. UN Doc. A/60/18, para. 11)
- Any refusal by a police official to accept a complaint involving an act of racism (casteism) should lead to disciplinary or penal sanctions, and those sanctions increased if corruption is involved. (CERD. (2005). General Recommendation 31, para. 12)
- States should ensure the lack of racial (caste) prejudice by judges, jury and other judicial personnel, including prejudices created by direct influence of pressure groups, ideologies and religions. (CERD. (2005). General Recommendation 31, paras. 31-32)
- The Indian State should encourage victims and witnesses to report such acts and protect them from acts of retaliation and discrimination. The State should also ensure that complaints under the SC/ST (Prevention of Atrocities) Act and other criminal law provisions are properly registered and investigated, perpetrators prosecuted and sentenced and victims compensated and rehabilitated; and establish and make operational special courts trying atrocity cases as well as committees monitoring the implementation of the SC/ST (Prevention of Atrocities) Act in all states and districts, as mandated by the Act. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 26)



- The Indian State should take disciplinary or criminal law measures against police and other law enforcement officers who violate their duty of investigation in relation to crimes against scheduled castes. (CERD. (2007). Concluding Observations on India report, para. 14)
- The Indian State should strengthen procedures for prompt and impartial investigations and effective prosecutions of all allegations of violations under SC/ST (Prevention of Atrocities) Act. The State should also improve awareness-raising and training programmes regarding the treatment of caste-based and other crimes related to discriminatory attitudes and prejudices, for professionals engaged in the administration of justice including judges, public prosecutors, lawyers and the police. (CESCR. (2008). Concluding Observations on India report. UN Doc. E/C.12/IND/CO/5, para. 53)
- The Indian State should put in place a mechanism to monitor effective enforcement of the SC/ST (Prevention of Atrocities) Act in order to ensure accountability and end impunity for crimes committed against Dalit women. (CEDAW. (2007). Concluding Comments on India report. UN Doc. CEDAW/C/IND/CO/3, para. 29)

#### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. (Art. 14 Indian Constitution)
- Law enforcement officials should fulfil their legally mandated duty to serve the community and protect all against illegal acts. (Art. 1 Code of Conduct for Law Enforcement Officials 1979)
- The SC/ST (Prevention of Atrocities) Act lists 22 offences relating to various patterns of criminal offences that target SCs/STs on the basis of their caste/tribe and shatter their self-respect and esteem, deny their social and economic rights, discriminate and exploit them, etc.
- All information relating to the commission of an offence under the SC/ST (PoA) Act, if given orally to an officer in charge of a police station, shall be reduced to writing, read

over to the informant, and signed by the persons giving it. (Rule 5 SC/ST (PoA) Rules)

- Offences committed under SC/ST (PoA) Act are to be investigated by a police officer not below the rank of Deputy Superintendent of Police (DSP), and investigations to be completed within 30 days and report submitted. (Rule 7 SC/ST (PoA) Rules)
  - Only receipt of information about the occurrence of an atrocity, an Executive Magistrate or police officer not below the rank of DSP shall immediately visit the place of occurrence to assess the extent of loss of life, loss and damage to the property, and submit a report to the state government. (Rule 6 SC/ST (PoA) Rules)
  - Anticipatory bail for bailable offences is not permitted for persons accused of committing atrocities against Dalits under this Act. (sec. 18 SC/ST (PoA) Act)
  - Any public servant, not being a SC/ST, who willfully neglects her /his duties under SC/ST (PoA) Act, shall be punished. (sec. 4 SC/ST (PoA) Act)
  - The Supreme Court of India has stated that speedy trial is a component of social justice... (Babu Singh vs. State of Uttar Pradesh (1978) Cr.L.J. 651); that speedy trial is a fundamental right... (Sheela Barse vs. Union of India (1986) Cr.L.J. 1736)
  - For the purpose of speedy trials, the state governments should specify for each district a Sessions Court to be a Special Court to try offences under the SC/ST (PoA) Act, and a senior advocate as a Special Public Prosecutor to conduct the trial. (secs. 14-15 SC/ST (PoA) Act)
  - The District Magistrate/Collector or a victim of atrocity can engage another senior advocate for conducting cases in the Special Courts, should the performance of the appointed Special Public Prosecutor prove unsatisfactory. (Rule 4(5) SC/ST (PoA) Rules)
- #### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**
- Any non-SC/ST police officer refusing to register a FIR for a reported atrocity can be prosecuted under section 4 of SC/ST (PoA) Act for willful neglect of duties. (Ministry



of Home Affairs. (2005). Advisory Ref No.24024/9/2004-SC/ST Cell, dated 03.02.2005)

- The state government should set up Exclusive Special Courts in all districts for trial of offences under the SC/ST (PoA) Act; timely prosecution of cases under the Act by special public prosecutors who are paid appropriated remuneration/fee so as to take up such cases effectively; review factors responsible for high level of acquittals under the Act. (Ministry of Home Affairs. (2005). Advisory Letter D.O.No.24024/9/2004-SC/ST Cell, dated 03/02/2005)
- States need to constitute exclusive special courts for dealing with atrocity cases in districts where the volume of such cases is large. Special public prosecutors for this work may be selected on the basis of their competence and commitment and their level of remuneration should be adequate to sustain their interest in work. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p. 204)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Delays in Investigations***

- Despite the legal stipulation for speedy investigations of crimes against Dalits, long delays continue to take place. During 2012, of the total 45,008 registered crimes against SCs (including pending cases from the previous year) in the country, only for 33,103 cases (74%) had the investigation been completed. Of these, only for 23,396 cases (52%) had the charge sheets been submitted. Moreover, out of 18,826 cases registered under the SC/ST (PoA) Act that year, only for 9,049 cases had the charge sheet been submitted. (National Crime Records Bureau. (2013). Crimes in India 2012. New Delhi: NCRB)
- Even where the formality of registration of an atrocity case has been done, investigation is tardy, trials slow and convictions almost nil. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p. 68)
- The High Court of Andhra Pradesh, in an interim order on Writ Petition 1019 of 2006, observed that as per the Director General of Police statistics regarding cases regis-

tered under the SC/ST (PoA) Act: 1 case had been pending investigation for almost six years; 53 cases for between three to five years; 190 cases for almost two years; and 805 cases for about one year. (National Coalition for Strengthening SC/ST (PoA) Act. (2010). Report Card: 20 years of the SC/ST (Prevention of Atrocities) Act. New Delhi: NCSPA, p. 17)

- In response to this writ petition demanding effective implementation of the SC/ST (PoA) Act, counter affidavits filed by the police revealed that during the period 1995 to 2006, 21,000 cases were registered under the Act. Of these, more than 14,000 were pending without a charge sheet being submitted, even though the Act stipulates that investigation must be completed within 30 days of the FIR being filed. (Alluri, A. (2009, 4 Dec.). 'Many Hurdles', Frontline, p. 20)
- In 2012 in Tamil Nadu, 2,048 cases registered under the SC/ST (PoA) Act were pending investigation at various stages in the police stations. While 318 cases were disposed at the station level, only in 885 cases (43%) the charge sheets were framed and in 75 cases (4%) final reports prepared for filing in the courts. (Special Correspondent. (2013, 10 April). 'Atrocities against Dalit peak in 2012: Study', The Hindu)
- Abnormal delay leads to forced 'compromises' at the investigation stage (thereby enabling the police to file the report 'false') and to hostile witnesses (and therefore acquittals) during the judicial process. (Committee Monitoring and Strengthening SC/ST (PoA) Act in Karnataka. (2011). Karnataka State Report on the Implementation of the SC/ST (Prevention of Atrocities) Act in Karnataka in 2010. Bangalore: CMASK)

### ***Procedural Violations in Investigation:***

- Despite several steps being taken by the State Governments, the picture is still very grim and needs to be improved. Complaints are still being received regarding non-registration of FIRs and unsympathetic/ insensitive attitude of some police personnel towards crimes against SCs and STs...The National SC/ST Commission has pointed out laxity and insensitiveness on the part of certain police officials in some specific cases. The Commission has observed



that non-filing of FIRs even in heinous cases continues to be a problem area. (Ministry of Home Affairs. (2010). 'Memorandum on Measures needed to curb Advisory on Crime against Scheduled Castes/Scheduled Tribes', issued 01.04.2010, F. NO.15011/48/2009-SC/ST-W, para. 5)

- The police resort to various machinations to discourage SCs/STs from registering cases, to dilute the seriousness of the violence, to shield the accused persons from arrest and prosecution and, in some cases, the police themselves inflict violence. This apathy and bias extends to other agencies of the government and the district civil administration. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, pp.113-4)
- In Andhra Pradesh there are districts which have closed a large number of cases as false, the main reason given by the SPs/DSPs being a delayed investigation leading to eventual compromise between the victims and accused. (Social Welfare Department, Government of Andhra Pradesh. (2009). Video Conference on Atrocities against SCs/STs under POA Act, 21/03/2009, RC.No.H2/8193/2008-2)
- A RTI response received from nine districts in Himachal Pradesh showed that in Sirmour district around 40% of atrocity cases registered under the SC/ST (PoA) Act were not investigated by the DSP. Similarly, RTI information received from Bihar revealed that in Aurangabad district, in 217 out of 417 atrocity cases the investigation was done by an officer below the rank of DSP. From Uttar Pradesh, in Kushinagar district in 273 out of 956 cases the investigation was done by an officer below the rank of DSP. On this technical ground, the victims' cases in atrocity incidents are vitiating and weakened. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act 1989 and Rules 1995, 2009-2011. New Delhi: NCSPA, pp.26 & 30)
- Similarly, of the 19,080 cases of atrocities against SCs registered with the police in 25 districts of Gujarat from 30.01.1989 to 31.12.2006, in 7,468 cases (39.1%) the investigation was done by a police officer below the rank of DSP. (NCSPA. (2010). Report Card: 20 years of the SC/ST (Prevention of Atrocities) Act. New Delhi: NCSPA, p. 18)
- Only in 9.3% of cases were charge sheets filed within the stipulated time of 30 days. Even if we take the Criminal Procedure Code time limit of 90 days, charge sheets were filed within this time limit in only 22.1% of cases. In 40.7% of

cases charge sheets were filed between 90 days to 1 year, and for 27.9% of cases the investigating officer took more than one year. (PIL by NCDHR, Sakshi Human Rights Watch - A.P. & Centre for Dalit Rights - Rajasthan (WC 104/2006), p.17)

- According to a study of 386 atrocity cases in Tamil Nadu, only 157 cases were investigated by the DSP, while a common practice was for a lower ranking police official to conduct the investigation, prepare the report and get it signed by the DSP. Still worse, in 146 out of 386 cases (37.8%), a formal investigation was not done. Moreover, out of those cases investigated by the DSP, only 34 (21.9%) were found satisfactory. Regarding the remaining cases, the DSP was both partial and biased in his/her approach, or threatened or forced victims/witnesses to compromise with the accused and withdraw their complaints. (M.A. Britto. (2007). Implementation of the SC/ST (PoA) Act 1989 (Tamil). Madurai: Doctor Ambedkar Cultural Academy, pp. 195-6, 198)
- Some core issues related to the investigation of atrocity cases are the shortage or non-availability of DSPs, and the lack of police staff assigned exclusively for the investigation of these cases. (Committee of Governors. (2001). Report on Certain Aspects concerning the Welfare and Rights of SCs and STs. New Delhi: Government of India, pp.68-9)
- Police often delay investigation of atrocity cases, record statements from solely dominant castes, and see that incompetent or unauthorised officials investigate the case, thus laying the foundation for acquittals on technical grounds. (People's Commission against Atrocities on Dalits. (2008). Draft Observations and Advice on Effective Measures to Address Atrocities against SCs and STs. New Delhi, p.2)
- Caste bias against victims results in denial of investigation: Ignoring the complaints of SCs, discouragement and even rejection of them, giving no credence to the version of victims but believing in the version of the victimisers, shoddy investigation, deliberately creating loopholes to benefit the accused persons, discouraging victims from pursuing the case, pressuring them to compromise, failing to expeditiously conclude investigation and failing to provide necessary protection either before or even after the [atrocity], are some expressions of these biases. (Saxena, K.B.



(2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, p.131)

- A potent method the Tamil Nadu police have discovered to punish SC victims of atrocities who insist on pursuing their cases is to file counter cases against them.(M.A. Britto. (2007). Implementation of the SC/ST (PoA) Act 1989 (Tamil), p.167)

### ***Issues at Prosecution Stage:***

- Only nine out of 35 states/union territories have set up exclusive Special Courts to try cases under the SC/ST (PoA) Act. Moreover, even in the states with exclusive Special Courts: the number of atrocity-prone districts continues to outstrip the number of such Courts; and around 53% of districts in these nine states have not set up such Courts. (NCSPA. (2010). Report Card on 20 years of the SC/ST (PoA) Act. New Delhi: NCSPA, p. 22)
- Other states have merely designated district courts as Special Courts, without relieving these courts of additional cases in order to ensure the speedy trial of atrocity cases. District Session Courts have been designated as Special Courts in all states/UTs except for Arunachal Pradesh, Mizoram, Nagaland, Jammu and Kashmir, Lakshadweep and Dadra & Nagar Haveli. This leaves 9% of districts without even Designated Special Courts. (Ministry of Social Justice and Empowerment, 2010. Report under sec. 21(4) SC/ST (PoA) Act for 2010. New Delhi: MSJE)
- The greatest defect is that special mobile courts are not set up in each district as means of handing out swift and deterrent punishment on the spot. (P.S. Krishnan. (2009). 'Atrocities against Dalits: Retrospect and Prospect', Combat Law 8(5-6), p.15)
- Designated Special Courts are not in a position to do justice with these cases of atrocities against SCs because of prolonged proceedings, lack of interest by witnesses and their preoccupation with other Sessions Cases... There should be exclusive Special Courts, not just designated Courts, for speedy trial of atrocity cases. (National SC/ST Commission. (1998). Fourth Report 1996-97 & 1997-98. New Delhi: NCSCST, para 9.17)
- One of the main reasons for the delay in the disposal of (atrocity) cases in courts is that a large number of posts of Judges/Magistrates in the District and Subordinate Courts

are vacant. (Parliamentary Committee on the Welfare of SCs and STs. (2005). Fourth Report 2004-05. New Delhi: Government of India, para. 3.25)

- The appointment of Special Public Prosecutors for the operation of the SC/ST (PoA) Act does not exist in many states... Further, often Special Public Prosecutors appointed to handle such cases are of very poor competence and experience, the reason for which is their meager remuneration and lack of facilities provided to them to do their job effectively. Their appointment is also often influenced by political considerations. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: NHRC, pp.25-26, 123-4)
- Lack of speedy Justice: In Uttar Pradesh, on average it takes around 3.15 years from registration to the disposal of cases under the SC/ST (PoA) Act before the exclusive Special Courts and other Designated Courts. (Parliamentary Committee on the Welfare of SCs and STs. (2005). Fourth Report 2004-05. New Delhi: Government of India, para. 3.23)

### ***Little Punishment for Crimes against Dalits:***

- During 2012, out of the total 110,774 cases pending for trial (including pending cases from the previous years), only 4093 cases ended in a conviction. In other words, the conviction rate was only 4%, while a large number of cases 13,023 ended in acquittals. At the end of the year, the trial pendency rate was 84 percent. (National Crime Records Bureau. (2013). Crimes in India 2012. New Delhi: NCRB)
- Of the 646 cases studied from Special Courts in Karnataka, Andhra Pradesh and Tamil Nadu, 578 were disposed of and 68 are pending. Just 27 of the decided cases resulted in convictions as compared to 551 cases in acquittals. (Ghildiyal, S. (2006, 12 Dec.). 'Dalit atrocity cases: Just 15% convictions', The Times of India)
- One study across Tamil Nadu revealed that of the 94 cases of murders of Dalits that were pending trial, only in three cases did a conviction result. Though 62 cases of sexual abuse against Dalit women had been reported from different towns/districts, not even a single accused had been convicted. (Special Correspondent. (2013, April 10). 'Atrocities against Dalit peak in 2012: Study', The Hindu)



- A submission from the Home Secretary stated that weakness in police investigation, difficulty in pursuing cases so investigated, coupled with loss of interest in pursuing cases in courts, are responsible for high acquittals (of crimes against SCs/STs), besides stringent requirements under the Indian Evidence Act. (Parliamentary Committee on the Welfare of SCs and STs. (2005). Fourth Report 2004-05. New Delhi: Government of India, para. 3.16)

- In Andhra Pradesh, even though there are Special Courts in all 23 districts to try cases under the SC/ST (PoA) Act, these Courts recorded a very low conviction rate of 8.7% in 2009. Interestingly, very low conviction rates were observed in six districts that the state government had declared as atrocity prone. (Commissioner of Social Welfare and Nodal Officers, Government of Andhra Pradesh. (2009). Video Conference on Atrocity Cases against SCs/STs under PCR and POA Acts, Hyderabad on 21.03.2009, RC.NO.H2/8193/2008-2)

- The study of 500 Dalit women's cases of violence revealed that in less than 1% of cases were the perpetrators convicted by the courts. In 17.4% of instances of violence, police obstructed the women from attaining justice. In 26.5% of instances of violence, the perpetrators and their supporters, and/or the community at large, prevented the women from obtaining justice. (Irudayam, A., Mangubhai, J.P. and Lee, J.G. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan)

- The reasons for the high acquittals in atrocity cases include the Dalit victims and witnesses turning hostile during court proceedings due to threats; the Special Public Prosecutor failing to adequately prepare the victims and witnesses to face trial, leading the witnesses to give inconsistent statements or additional information; the lack of protection extended to victims and witnesses during trials; the preconceptions of judges that the SC/ST (PoA) Act is being misused or that it is being used for less serious criminal offences; the judges suggesting that sexual violence against Dalit women occurred due to 'sexual desire' as opposed to the caste of the victim. These cases fail on a number of procedural grounds: that the Investigating Officer was below the legally stipulated rank of Deputy Superintendent of Police; the delay in the filing of the FIR by the victim; the failure to have a medical examination done in case of physical injuries; the inability of the SPP to prove that the accused

know the victim's caste beforehand; the failure to prove that the insult or intimidation took place in public; etc. (Haan, M. (2005). An Analysis of 112 Judgements of Special Courts for SC/ST (PoA) Act Cases. Secunderabad: Sakshi-A.P.; Centre for Study of Casteism, Communalism and Law.(2004). Study on Performance of Special Courts set up under the SC ST Prevention of Atrocity Act. Bangalore: National Law School.)

- In Bihar, in the last one and half years, all the major mass atrocities against Dalits adjudicated by the Patna High Court have resulted in the acquittals of almost all the accused persons belonging to the outlawed caste outfit, the Ranvir Sena. Significantly, the acquittals made by the High Court involved the reversal of convictions awarded by the trial courts in all the four major atrocity cases booked under the SC/ST (PoA) Act. (Mitta, M. (2013, 15 Oct.). 'In 18 months, Patna HC frees almost all in 4 Dalit killings', Times of India)

- About 90% of cases registered under the PCR Act end in acquittal in the lower courts, which questions the fairness on the part of investigations, trial and judicial decisions. There is hardly any instance where state governments have filed any appeal before the High Courts against decision of the lower courts on PCR Act cases. (Chandrapal. (undated). Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc>>, para.7)

## (7) IMPACT

- Dalits experience violence in their daily lives due to caste-based social order. The incidence of atrocities is on the increase and the deterrence envisaged in the laws specially enacted for this purpose is not in evidence. This is because the implementation of important criminal laws – the Protection of Civil Rights Act and the SC/ST (Prevention of Atrocities) Act – has been dismal. (Expert Group to the Planning Commission. (2008). Development Challenges in Extremist Affected Areas. New Delhi: Government of India, para. 5.1.2)

- Despite the rising number of atrocities against SCs over the years, there has been no corresponding rise in the con-



viction rate for such crimes, as per the National Crimes Records Bureau data.

- The conviction rate under the SC/ST (PoA) Act is merely 15.7% as compared to over 40% for general crimes under the Indian Penal Code, and pendency rate for atrocity cases is as high as 85.4 percent. This is despite the SC/ST (PoA) Act having strict provisions aimed as a deterrent. (Ghildiyal, S. (2006, 12 Dec.). 'Dalit atrocity cases: Just 15% convictions', The Times of India)

- Though the special courts are established in the states, the pendency rate for atrocity cases is increasing year by year. Gujarat, though having 10 Special Courts for the speedy trial of SC/ST cases, has a high trial pendency rate (90.9% in 2010). Uttar Pradesh, despite having 40 Special Courts at the end of 2009, had 29,839 pending cases in the courts. Of these, pending trial were 23,386 cases (78.4%). Likewise, in Madhya Pradesh, despite having 29 Special Courts, pending cases at the end of 2009 were 12,848, out of which 10,071 (78.4%) were pending trial in the courts. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act 1989 and Rules 1995, 2009-2011. New Delhi: NCSPA)

## **(8) GAPS**

- Inadequate implementation of the SC/ST (PoA) Act and PCR Act: No state government has complied with all the mandatory provisions of the SC/ST (PoA) Rules to set up mechanisms to ensure the effective implementation of the SC/ST (PoA) Act. Nor has there been proper implementation of both this Act and the PCR Act, as evidenced in the low conviction rates under both laws established to protect Dalit rights.

- Inadequate sanctions against negligent police officials: Despite the number of cases where police have obstructed access to justice for Dalit victim-survivors of atrocities and violence, no punishment is meted out through departmental disciplinary action. Hence, police effectively sabotage the SC/ST (PoA) Act without fear of being prosecuted under sec.4 of the Act. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act and Rules, 2009-2011. New Delhi: NCSPA)

- Inadequate special police stations: The setting up Special Police Stations helps in prompt registering of crimes committed against SCs/STs and creates a sense of confidence among them. Although such special police stations have been set up in some states, their working is far from satisfactory, for these police stations are not adequate and do not have proper staff and facilities to function effectively. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act 1989 and Rules 1995, 2009-2011. New Delhi: NCSPA)

- Non-existence of sufficient and exclusive Special Courts: Special Courts are yet to be set up in 25 States/UTs. Nine states have Exclusive Special Courts, but these are not set up in all the districts. Bihar has Special Courts in only 11 of its 38 districts; Tamil Nadu has Special Courts in only 4 out of 32 districts; Rajasthan has Special Courts in only 17 out of 33 districts; Uttar Pradesh has Exclusive Special Courts in only 40 of its 71 districts, Chhattisgarh has 6 Special Courts in out of 18 districts. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act and Rules, 2009-2011)

- Issues with Special Public Prosecutors: The majority of Public Prosecutors who try atrocity cases are non-Dalits who also feel that Dalits should not have rights and that non-Dalits have the privilege to attack Dalits and deny them any rights. Most of the cases are made weak on technical grounds and the judgment is often in favour of the non-Dalit perpetrators. This is only because the Public Prosecutors wilfully do not seem to argue the cases properly. (NCSPA. (2012). People's Report on implementation of SCs & STs (PoA) Act and Rules, 2009-2011)

- Cumbersome legal processes: The whole purpose of the provision is to provide for speedy trials of atrocity cases to bring justice to Dalit and Adivasi victims. However, by requiring that all cases have to go through a committal process by a Magistrate to the Special Courts, not only is the overburdened regular court system being stretched with this unnecessary responsibility, but also the efficacy and pace of Special Courts in disposing of atrocity is slowed down. (Agrawal, G. and C. Gonsalves. (2005). Dalits and the Law. New Delhi: Human Rights Law Network, p.134)

- A complaint or a charge sheet cannot straight away be lodged before the Special Court under the SC/ST (PoA)



Act. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p.46)

- After experiencing the biased conduct of police officials and indifference of civil administration, victims pin their last hope on judiciary to deliver justice. This hope has also been belied, judged by the low rate of conviction under the Act. On examining atrocity cases involving both the trial courts and the High Court, one Andhra Pradesh organisation has concluded that judicial delay and dilution of the scope, applicability and meaning of the SC/ST (PoA) Act has resulted in denial of justice to SCs. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p. 121)
- Despite the regular meetings of the District Vigilance and Monitoring Committees set up to monitor the implementation of the SC/ST (PoA) Act, little information is made publicly available on whether these committees inquire into the issues that negatively affect police investigations and prosecutions of atrocity cases. There has been no initiative at various levels to review and monitor the status of the cases of crimes against Dalits, in particular, the conduct of the enforcement machinery in dealing with them during investigation and trial.

### **(9). DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Many Dalit movements and civil society organisations, besides members of the communities themselves, have started monitoring cases of violence against Dalits, publishing these crimes and using the SC/ST (PoA) Act to provide justice to the victims. To name some of these organizations: The Alliance for Dalit Rights, All India Dalit Mahila Adhikar Manch, All India Dalit Rights Federation, Alternative Forum for Dalit Liberation, Ambedkar Lohiya Vichar Manch, AP Dalit Bahujan Shramik Union, Centre for Dalit Rights, Centre for Mountain Dalit Rights -Himachal Pradesh, Centre for Social Justice, Dalit Action Group, Dalit Adhikar Manch Bihar, Dalit Dasta Virodhi Manch, Dalit Movement for Human Rights and Dignity, Dalit Mukti Morcha, Dalit Nyaya Andolan, Dalit Stree Shakti, Development Initiative, Dynamic Action Group, Evidence – Tamil Nadu, Human Rights Forum for Dalit Liberation –

Karnataka, Human Rights Forum for Dalit Liberation – TN, Jana Vikas, Jan Sahas, Jeevika, National Dalit Forum, National Dalit Movement for Justice, National Federation for Dalit Land Rights Movement, Navsarjan Trust, People's Vigilance Committee on Human Rights, SAKSHI – Human Rights Watch, Sampurna Gram Vikas Kendra, Social Awareness Society for Youth (SASY).

- Some Dalit organisations also have filed Public Interest Litigations (PIL) before the High Courts to demand for better implementation of the SC/ST (PoA) Act, including a PIL before the Supreme Court filed by the National Campaign on Dalit Human Rights.

### **(10). WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- The National Coalition for Strengthening the SC/ST (Prevention of Atrocities) Act (NCSPA), comprising over 500 Dalit and non-Dalit organisations across the country, has been working on enhancing equal access to justice under the criminal justice system since 2009. The single aim is to campaign for amendments to the SC/ST (PoA) Act and to strengthen its enforcement so as to provide equal access to judicial remedies to the victims of atrocities. The campaign produces a number of advocacy research reports on the status of access to justice for Dalits, which are used for advocacy and lobbying.

## **II. RECOMMENDATIONS**

- Amend the SC/ST (PoA) Act to incorporate the following:
  - o Amend sec. 4 to explicitly bring in all the types and nature of negligence by public servants at various stages in their handling of atrocity cases.
  - o Add a new chapter in the PoA Act to deal with the rights of victims and witnesses, thereby explicitly granting various citizen rights to them with regard to their atrocity cases.
  - o Delete expressions such as “intent”, “on the ground”, “wilful”, etc. from various sections of the Act which give leeway



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to the police and judiciary to dilute cases of atrocities through subjective or arbitrary interpretations of the Act.

o Establish exclusive special courts, exclusive public prosecutors and exclusive investigators for the speedy trial of cases under the Act.

o Enhance punishment for offences of atrocities under the Act to be on par with the Indian Penal Code as well as based on the nature and gravity of the offences, so as to ensure its deterrent effect.

o Amend the definitions of 'Scheduled Castes' and 'Scheduled Tribes' in the Act so as to add: all Christians or Muslims belonging to any of the castes in the Schedule; all ethnic minority communities subjected to atrocities on the basis of their ethnicity; and SC/ST migrant labourers on the basis of their caste/tribal status in their state of origin.

- Appoint high-level committees at the centre and state government levels to review the implementation of the SC/ST (PoA) Act and PCR Act, including the reasons for low conviction rates and low appeal rates against acquittals, assess the realisation of the objectives of these social laws, and take appropriate and speedy action for strengthening the Acts and for effective implementation.

- Ensure that section 4 of the PoA Act is stringently imposed on all public servants, including the police, who neglect to discharge their duties under the SC/ST (PoA) Act and Rules.

- Ensure the strict implementation of the various Ministry of Home Affairs guidelines as to the conduct of police in investigating atrocities against SCs and STs.

- Make it mandatory, that all complaints of atrocities be immediately registered as FIRs, incorporating the proper sections of the SC/ST (PoA) Act and that police officials not resort to investigations without registering FIRs.

- Enforce the mandatory requirement that the investigation of atrocities is done by an investigating officer of a rank no less than the Deputy Superintendent of Police (DSP) within 30 days, and in order to facilitate this task, appoint an adequate number of DSPs, depending on the intensity, frequency and spread of atrocities in the districts.

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**Guideline 29. National and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities, including the provision of legal aid or other kinds of support to public interest organisations representing the interests of those subject to caste discrimination.**

# 29

## ACCESS TO JUSTICE

Despite the existence of social laws enacted to protect against atrocities by dominant castes and specific provisions for their socio-economic development, caste discrimination and violence against Dalits remains rampant. However, because of their weak socio-economic position and relative lack of information on their legal rights, Dalits often find it difficult to access judicial remedies. Further, where they try to access such remedies, pathways like legal aid are not made easily available to them. They also find that even when they take recourse to the law, the proceedings are protracted, witnesses are reluctant to testify in their favour against more powerful persons, and the potential for manipulation of the legal process is large. In addition, even though victims, they cannot afford to forego their daily wages for days on end in order to attend the courts. The result is that legal provisions become ineffective in the delivery of justice.

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The national and state governments should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination for Dalits in respect of:

- Equal access to judicial remedies: to have access to information on the special laws and mechanisms in place to protect their rights; to have equal opportunity to access the courts and present cases to the courts; to be entitled to free legal aid in order to afford court and legal fees; to be granted financial support by suitable legislation or schemes so as to be able to access judicial remedies; to have access to civil society organisations who can provide legal and other support while pursuing legal



justice; to be able to file public interest litigation regarding issues of caste discrimination.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to an effective remedy by competent national tribunals for acts violating their Constitutional and legal rights. (Article 8 UDHR)
- All persons shall be equal before courts and tribunals. In the determination of her/his rights and obligations in a suit at law, everyone shall be entitled, without discrimination, to a fair and public hearing by a competent, independent and impartial tribunal established by law. (Articles 2(1) & 14(1) ICCPR)
- Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. (Article 3 Basic Principles on the Role of Lawyers. Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana, Cuba in September, 1990)
- Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fairness and public trust in the criminal justice process. States should therefore guarantee the right to legal aid, without discrimination on any grounds, in their legal systems at all stages of the criminal justice process. This includes, without prejudice to or inconsistency with the rights of the accused, legal aid to victims and witnesses of crime. (Principles 1(14), 4(24), 5(25), 6(26) & 7(27) UN Principles on Access to Legal Aid in Criminal Justice Systems, adopted by the UN General Assembly in December, 2012)
- States should ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. The necessary human and financial resources should be allocated to the legal aid system. (Principle 2(15) UN Principles on Access to Legal Aid in Criminal Justice Systems)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should take the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by provision of legal aid, facilitation of group claims, and encouragement of non-governmental organizations to defend community rights. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 21)
- In order to facilitate access to justice for the victims of racism (casteism), States should supply the requisite legal information to persons from the most vulnerable social groups, who are often unaware of their rights. States should promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation. (CERD. (2005). General Recommendation 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System. UN Doc. A/6.18, paras. 7-8)
- Persons seeking access to justice in judicial or administrative fora should be guaranteed access to legal advice and representation, including, where necessary, free legal aid. It is the responsibility not only of the state, but also of the legal profession, to act to facilitate such access. (International Commission of Jurists. (2012). Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems. Adopted in Geneva in December, 2012)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Legal Entitlements:***

- The Indian State shall secure that the operation of a legal system that promotes justice on the basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes so as to not deny any citizen by reason of economic or other disability access to justice. (Article 39A Constitution of India)



- The Indian State to ensure equality before the law and a legal system which promotes justice on a basis of equal opportunity to all. (Article 14 Constitution of India)
- For every Special Court, the State Government shall specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court. (sec. 15 SC/ST (PoA) Act)
- The District Magistrate or Sub-Divisional Magistrate may, if deem necessary or if so desired by the victim of atrocity, engage an eminent senior advocate for conducting cases in the Special Courts. (Rule 4(5) SC/ST (POA) Rules)
- The government shall provide adequate facilities, including legal aid to the persons subjected to atrocities, to enable them to avail themselves of justice. (sec. 21(2)(i) SC/ST (POA) Act)
- The State Government shall provide travelling and maintenance expenses to witnesses, including the victims of atrocities, during the investigation and trial of offences under this Act. (sec. 21(2)(ii) SC/ST (PoA) Act & Rule 11 SC/ST (PoA) Rules)
- Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is a scheduled caste. Such services include the payment of all court fee and charges incurred in connection with legal proceedings, the provision of advocates in legal proceedings, and the obtaining of certified copies of all documents and orders in legal proceedings. (sec. 12(a) Legal Services Authorities Act 1987)
- The Supreme Court has laid down norms or guidelines for state governments to follow in giving financial support and cooperation to various voluntary organisations and social action groups in operating legal aid programmes and organising legal aid camps and lok adalats (People's Courts). (Centre for Legal Research and Another vs. State of Kerala, AIR 1986 SC 1322, (1986) 2 SCC 706)

### ***Legal Services Institutions:***

- A nationwide network has been envisaged for providing legal aid and assistance. Under sec. 3 Legal Services Act, the

National Legal Services Authority (NALSA) is constituted as the apex body to lay down the policies, principles and schemes for legal services. It disburses funds and grants to State Legal Services Authorities for implementing legal aid schemes and programmes. In every state a State Legal Services Authority is constituted to give effect to the policies and directions of NALSA, to provide legal services to the people and to conduct Lok Adalats. District and Taluk Legal Services Authorities are also constituted for the same purpose at the local levels, including to and to organise legal awareness camps in rural areas.

- A Supreme Court Legal Services Committee is constituted by NALSA for the purpose of exercising such powers and performing such functions as may be determined by regulations made by NALSA. Similarly, High Court Legal Services Committees for every High Court and Taluk Legal Services Committees for every taluk/mandal or group of taluks/mandals are envisaged under the Legal Services Act. These Legal Services Committees have been constituted to administer and implement the legal services programme in so far as it relates to their respective court jurisdictions.
- The National Legal Services Authority Plan of Action 2009-2010 specifies the initiation of a number of schemes. One is the para-legal volunteer scheme, under which a group of rural volunteers will be formed to act as intermediaries between the people and legal services institutions at all levels. Second is the initiation of legal aid clinics in urban areas where socio-economically disadvantaged people reside.
- NALSA also plans training programmes to provide exposure to the paralegal volunteers on the necessity of generating legal awareness in respect of Constitutional and statutory rights and duties, civil, criminal substantial and procedural laws, and issues of law and society. Additionally, one of the topics is special issues related to scheduled castes, including the provisions of the SC/ST (PoA) Act. (NALSA. (2010). Quinquennial Vision Document. New Delhi: NALSA)

### ***Financial Support for Access to Judicial Remedies:***

- For the implementation of the PCR Act and SC/ST (PoA) Act, Special Central Assistance or financial assistance



is provided by the central government to the state governments on a 50:50 basis, and to Union Territory Administrations on 100% basis, for strengthening the administrative, enforcement and judicial machinery related to these laws, publicity on the laws, travelling and maintenance expenses for victims and witnesses accessing judicial remedies, and the relief and rehabilitation of the affected SC/ST persons.

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- A strong base of paralegals all over the country should be developed to act as a bridge between the people and Legal Services Authorities. (NALSA. (2010). Quinquennial Vision Document. New Delhi: NALSA)
- The National Commission for Scheduled Castes has emphasized the need for providing legal aid where the demand for minimum wages results in atrocities against SCs alongside the strengthening of the minimum wages enforcement machinery. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p. 84)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Appointment of Special Public Prosecutors:***

- No disaggregated information is available regarding the state-wise appointments of Special Public Prosecutors to try cases of atrocities under the SC/ST (PoA) Act.

### ***Appointment of Senior Advocate of Victims' Choice:***

- No disaggregated information is available as to the number of cases tried under the SC/ST (POA) Act in which the SC victims of atrocities were allowed to engage an advocate of their own choice as per the SC/ST (PoA) Rules.

### ***Status of Legal Aid provided to Victims of Atrocities:***

- In 2011, in 12 states/union territories a total of 25,311 cases of atrocities were registered under the SC/ST (PoA) Act, but only 7,738 SCs/STs benefitted from legal aid that year. Assuming that in each case an average of 1 victim per atrocity case benefitted from legal aid, this would mean that only 30% of victims benefitted from legal aid. In the other 22 states/union territories no information was made available on the number of SC/ST victims provided legal aid. (Ministry of Social Justice and Empowerment. (2011). Report u/s 21(4) SC/ST (POA) Act for the year 2011. New Delhi: MSJE)

- Between 1 April and 30 September 2011, over 695,000 lakh persons benefitted from legal aid services in the country. Out of this number, over 25,100 were scheduled castes, which amounts to only 4 percent. (India Current Affairs. (2012, 17 Feb.). 'National Legal Services Authority: Performance – Cum – Achievements'. Retrieved 01.11.2013 from <<<http://indiacurrentaffairs.org/national-legal-services-authority-performance-%E2%80%93-cum-achievements/>>>)

- The National SC/ST Commission carried out a study on the status of implementation of SC/ST (PoA) Act in Uttar Pradesh and Madhya Pradesh. In the Uttar Pradesh study, which covered 10% of the districts and an analysis of 1311 cases of atrocities against SCs/STs, the study found the non-implementation of mandatory provisions: (a) regarding legal aid, traveling and maintenance expenses to victims and witnesses; and (b) regarding the economic and social rehabilitation of atrocity victims. (Saxena, K.B. (2004). Report on Prevention of Atrocities against SCs. New Delhi: National Human Rights Commission, p. 123)

### ***Status of Relief and Rehabilitation for Victims of Atrocities:***

- In 2011, in 17 states a total of 35,065 cases of atrocities were registered under the SC/ST (PoA) Act and a total of 19,547 SCs/STs were provided relief and rehabilitation. Assuming an average of 1 victim per atrocity case, this means that 15,518 victims (44%) were not provided relief and rehabilitation. Further no information is available on the sanctioned amount for relief and rehabilitation in the remaining 16 states/union territories. (Ministry of Social Justice



and Empowerment. (2011). Report u/s 21(4) SC/ST (POA) Act for the year 2011. New Delhi: MSJE)

- An analysis of 101 cases under the SC/ST (PoA) Act in Andhra Pradesh revealed that in 27.4% of cases the district administration provided the full relief and rehabilitation package. In 49.5% of cases, however, the administration failed to provide any relief measures post-atrocity. This situation arose where police did not file a FIR, or the administration neglected its duties to dispense relief and compensation to victims when required ... Further, in a large number of cases, the administration refused to divulge information on its compliance with compensation provisions. (Sakshi Human Rights Watch - A.P. (2004). Dalit Human Rights Monitor 2000-2003. Secunderabad: Sakshi, pp.78-9)
- A study examining 386 cases of atrocities under the SC/ST (PoA) Act in Tamil Nadu revealed that only in 256 cases (71.9%) was relief awarded to the victims or their dependents. This included 22 murder cases where relief was not distributed even after the post-mortem, as well as 23 rape cases where relief did not follow the medical examination or FIR registration. Notably, some lower level revenue officials demanded bribes in order to release the relief amounts. In 144 cases (37.3%), the mandatory relief amount (first installment), usually given either at the FIR stage or on filing the charge sheet, instead was disbursed between 0.5 to 4 years after the atrocity incident. (M.A. Britto. (2007). Implementation of the SC/ST (PoA) Act 1989 (Tamil). Madurai: Doctor Ambedkar Cultural Academy, pp. 221-6)

#### ***Status of Travelling and Maintenance Expenses for Victims and Witnesses:***

- In 2011, in 8 states a total of 29,166 cases of atrocities were registered under the SC/ST (PoA) Act and a total of 5,196 SCs/STs were provided travelling and maintenance allowances for their cases. Assuming an average of 1 victim per atrocity case, this means that only 17% of victims were provided these allowances. Further, no information is available on the sanctioned amount for travelling and maintenance allowances, and the number of cases in which victims were provided these allowances. Nor was information provided on the status of these allowances for victims and witnesses of atrocities in the remaining states/union territo-

ries. (Ministry of Social Justice and Empowerment. (2011). Report u/s 21(4) SC/ST (POA) Act for the year 2011. New Delhi: MSJE)

#### **(7) IMPACT OF MEASURES**

- No information is available to assess the impact of provisions such as legal aid or travelling and maintenance expenses on access to judicial remedies for SCs. What can be observed, though, are overall trends of rising atrocities against SCs and low conviction rates which suggest little impact of legal aid and other measures on access to justice for Dalits. A comparison of the 30,031 cases of crimes against SCs reported in 2007 and 33,719 cases reported in 2011 indicates a sharp increase in the crime rate by around 10% within this five-year period. At the same time, the conviction rate for these crimes remained very low: just 2% of all pending SC/ST (PoA) Act cases in 2012. This rising trend in registered crimes against SCs at the national level has to be contrasted with the trend of the number of SCs receiving legal aid and advice in recent years, which has increased from 29,677 persons in 2009 to 51,021 in 2011 – an increase of around 42% in the three-year period. (National Crimes Records Bureau. (2008 & 2012). Crimes in India 2007 & 2011. New Delhi: NCRB; Ministry of Social Justice and Empowerment. (2009 & 2011). Report u/s 21(4) SC/ST (POA) Act for the years 2009 & 2011. New Delhi: MSJE)

#### ***Budgeting the Implementation of Laws:***

- In the first three years of the 11th Five Year Plan (2007-12), the expenditure incurred for the implementation of the PCR Act and SC/ST (PoA) Act amounted to Rs 150.8 crores as against the outlay of Rs 123 crores, or 122.6% of the total outlay. The allocation for the Annual Plan 2010-11 alone was Rs 59 crores. The magnitude of crimes committed against SCs is evident from the sharp increase in expenditure, that is, 15 times the Plan outlay of Rs 10 crores in the first three years of the Eleventh Plan. (Planning Commission. (2011). Mid-Term Appraisal of Eleventh Five Year Plan 2007-12. New Delhi: Planning Commission, p.171)
- As per the answer given by the Minister of State, Ministry of Social Justice and Empowerment in the Lok Sabha,



unstarred Question No. 1674 dated 30.11.2009, around 24,500 SC/ST persons were provided relief during 2007-08, for which an expenditure of around Rs 48 crores was incurred by states/UT governments. The statement given shows that per person only an average of Rs 19,591 was spent for the relief of the SC victims of atrocities, despite the rising atrocities in recent years.

## (8) GAPS IN MEASURES

- **Inadequate budgeting:** Despite rising atrocities against SCs over the years, the budget for the implementation of the SC/ST (PoA) Act provisions, especially related to relief and rehabilitation, travelling and maintenance allowances, is inadequate. For example, in 2007 the number of registered cases of atrocities and attracting compensation was 29,825. Minimum compensation, when calculated towards travel, medical and minimum maintenance for victims and witnesses as per the guidelines, worked out to approximately Rs 90 crores. However, the amount available out of the approximately Rs 71 crores for implementation of the SC/ST (PoA) Act was only around Rs 43 crores (assuming around 40% of the Rs 71 crores goes towards maintenance and functioning of the Special Courts). This was almost 50% less than what the victims of atrocities should receive. (Divakar, Paul N. & Kumar, Abhay. (2009). 'A Neglected Component', *Combat Law* 8(5-6), pp.53-4)
- **Non-Payment of Relief and Rehabilitation:** A RTI response received from the Deputy Director (SW), Vizianagar, Andhra Pradesh on the District Vigilance Monitoring Committee meeting held on 25.04.2011 states the following gaps that delay the payment of compensation to atrocity victims: ".....the charge sheets are not received, for which the sanction of compensation under relief measures is lagging behind ....." (National Coalition for Strengthening PoA Act. (2012). *People's Report on the implementation of SC/ST (PoA) Act for 2009 – 2011*. New Delhi: NCSPA)
- **Less amount of TA/DA available for disbursement:** A RTI response, dated 25.03.2011, was received from the Public Information Officer, Scheduled Caste Welfare Department, Satna district, Madhya Pradesh on the District Vigilance Monitoring Committee meeting held on 04.08.2010. It states the problem of non-payment of travelling allowance to the victims and witnesses due to 'Special Public

Prosecutor receiving less amount for disbursing the travelling allowance among the victims and witnesses coming for the trial in the Special Court.' (National Coalition for Strengthening PoA Act. (2011). *People's Report on Implementation of SC/ST (PoA) Act for 2009 – 2011*. New Delhi: NCSPA)

- **Inadequate Number of Special Public Prosecutors:** In practice, the majority of states do not have panels of eminent senior advocates who can be called upon to act as Special Public Prosecutors in SC/ST atrocity cases. For instance, Gujarat has not created any panel in any district; instead, Special Public Prosecutors are assigned cases on an ad hoc basis. (Paleaz, Jenny. (undated). *A Legally Immune form of Discrimination: Report on socio-economic boycotts of Dalits in Gujarat*. Ahmedabad: Navsarjan Trust)
- **Special Public Prosecutors have not been conducting cases under the SC/ST (PoA) Act conscientiously and vigorously.** It has been observed that 82% officials of different units of the legal system and 88% law-makers and opinion-makers have opined that neither they have given, nor caused to be given, nor seen giving, the victims of atrocities, the services of senior advocates of their choice for conducting their cases at government expenses. (T.R Naval. (2004). *Legally Combating Atrocities on Scheduled Castes and Scheduled Tribes*. New Delhi: Concept Publishing Company, p.378)
- **Paralegals not clear of their roles:** Legal Service Authority (LSA) paralegals are expected to be the bridge between the community and the LSAs in order to remove barriers to justice. However, many paralegals are not clear on what their role is, and have received no training. Nor is there any training module for paralegals with a clear articulation of the role of paralegals, their code of conduct, do's and don'ts.
- **No proactive outreach to Dalits for legal aid:** Although the Legal Services Authority Act directs state LSAs to work closely with government agencies and NGOs to "promote the cause of legal services to the poor", many state agencies (e.g. SC Commissions) requiring legal aid have not been proactively approached by the LSAs. (Multiple Action Research Group. (2012) *Needs Assessment Study of Selected Legal Services Authorities*. New Delhi: Department of Justice, Government of India & UNDP)



## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

• Many Dalit organisations all over the India are working on access to justice for Dalits and focus on various aspects such as legal aid, compensation, travelling allowances and maintenance expenses, etc., including: The Alliance for Dalit Rights, All India Dalit Mahila Adhikar Manch, All India Dalit Rights Federation, Alternative Forum for Dalit Liberation, Ambedkar Lohiya Vichar Manch, AP Dalit Bahujan Shramik Union, Centre for Dalit Rights, Centre for Mountain Dalit Rights -Himachal Pradesh, Centre for Social Justice, Dalit Aarthik Adhikar Aandolan, Dalit Action Group, Dalit Adhikar Manch Bihar, Dalit Dasta Virodhi Manch, Dalit Movement for Human Rights and Dignity, Dalit Mukti Morcha, Dalit Nyay Andolan, Dalit Sthree Shakti, Development Initiative, Dynamic Action Group, Evidence – Tamil Nadu, Human Rights Forum for Dalit Liberation – Karnataka & TN, Jana Vikas, Jan Sahas, Jeevika, National Dalit Forum, National Dalit Movement for Justice, National Federation for Dalit Land Rights Movement, Navsarjan Trust, People's Vigilance Committee on Human Rights, SAKSHI - AP, Sampurna Gram Vikas Kendra, Social Awareness Society for Youth (SASY), SI-CHREM.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

• The National Coalition for Strengthening the SC/ST (Prevention of Atrocities) Act (NCSPA), comprising over 500 Dalit and non-Dalit organisations across the country, has been working on enhancing equal access to justice under the criminal justice system since 2009. The aim is to campaign for amendments to the SC/ST (PoA) Act and to strengthen its enforcement so as to provide equal access to judicial remedies to the victims of atrocities.

## **(11) RECOMMENDATIONS**

• The SC/ST (PoA) Act should be amended to include the following provisions that would enhance equal access to justice: (i) Exclusive Public Prosecutors; and (ii) increase in the quantum of relief and rehabilitation measures.

• The Ministry of Social Justice and Empowerment should expeditiously review the reasons for very poor access of SCs to legal aid and identify steps necessary to promote access and availability of this aid for seeking various protections and entitlements under social and economic legislation.

• The Central Government should review the kind of facilities, including legal aid and travelling/ maintenance allowances, being provided by the state governments to the SC victims of atrocities and issue guidelines to ensure the proper implementation of such provisions for SCs.

• Because of illiteracy and lack of awareness among the public regarding the provisions of Art. 39A Constitution and sec. 12(h) LSA Act, and the provisions of advocate of victim's choice, compensation and travelling and maintenance allowances, the government should reach out to the legal services institutions, law colleges and paralegals to create awareness among the people, especially SCs.

• The Indian State should support civil society organisations and activists who are working on the issue of equal access to justice for Dalits and who have generated a legal aid movement at the grassroots that helps identify and solve the problems and difficulties of Dalits. It is necessary to promote more informal paralegal services in places where basic access to justice opportunities and infrastructures are absent for Dalits.



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**Guideline 32. National and local governments should take specific measures to ensure equal rights to political participation for affected communities, including rights to participate in public elections, and to equal opportunity to run and be elected to public office.**

# 32

## ACCESS TO JUSTICE AND EQUAL POLITICAL PARTICIPATION

Despite reservations in the political sphere that ensure their representation in politics, Dalits across the country are frequently denied their right to free and meaningful political participation. They are forced not to vote in elections, or else to vote only for certain dominant caste-chosen candidates. They are intimidated or else forcibly prevented from nominating for elected positions, especially in the panchayats. And even if in public office, Dalits often face obstacles such as caste discrimination, which prevent their free political participation and ability to positively influence development outcomes for the community.

### (I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

The Indian government should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination, freedom to exercise their right, and security of life for Dalits in respect of:

- Equal rights to participate in public elections: to be registered on the voters' roll; to express political opinions; to campaign for one's candidate; to cast vote; to vote for candidate of one's choice; to access polling booth freely
- Equal opportunity to run and be elected for political office: to access both reserved and non-reserved seats; to file nomination; to campaign; to cast vote; to have booth agents; to have votes counted impartially
- Equal, free and independent exercise of right to political participation if elected to public office: to use office space; to convene meetings; to make decisions; to determine distribution of funds/programmes; to enjoy full term in office.



## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Every citizen has the right to take part in public affairs either directly or via freely elected representatives. There should be universal and equal suffrage by secret ballot and equal access to public service. (Article 25 ICCPR)
- UN Human Rights Council Resolution 7/11(2008) recognised that ‘transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, including women and members of vulnerable and marginalized groups, is the foundation on which good governance rests.’

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- Governments should take special and concrete measures to guarantee to members of descent-based communities the right to participate in elections, to vote and stand for election on the basis of equal and universal suffrage, and to have due representation in government and legislative bodies. (CERD. (2002). General Recommendation 29: Descent based Discrimination, para. 28)
- The Indian state should effectively enforce the reservation policy in the political sphere; ensure the rights of SCs to freely and safely vote and stand for election and to fully exercise their mandate if elected to their reserved seats; apply the reservation policy to all categories of public service posts, including the highest, and extend it to the judiciary; ensure adequate SC representation in Union, State and local governments and legislatures. (CERD Committee. (2007). Concluding Observations on the India State Report. UN Doc. CERD/C/IND/CO/19, para. 17)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Legal Standards:***

- Universal suffrage is guaranteed for all Indian citizens who are at least 18 years of age. (Article 326 Indian Constitution 1949)

- Anyone shall be eligible to vote in a constituency if his/her name is entered on the electoral roll of that constituency. (sec. 62 Representation of the People Act 1951)
- Dalits are assured equal representation in national, state and local governments through the reservation policy in the Indian Constitution 1949. Seats are reserved for scheduled castes: in the Lok Sabha in proportion to their population in each state (Article 330); in the State Legislative Assemblies in proportion to their population in the state (Article 332); in the panchayats and municipal government respectively in proportion to their population in the district/municipality, with not less than one-third of these reserved seats reserved for scheduled caste women. (Articles 243D & 243T)
- Any person who promotes feelings of enmity or hatred between different classes of Indian citizens on grounds of religion, race, caste, community, or language commits an electoral offence. (sec. 125 Representation of the People Act 1951)
- Forcing or intimidating a scheduled caste to vote or not vote for a particular candidate, or to vote in a manner other than that provided by law, is a punishable offence. (sec. 3(1)(vii)SC/ST (PoA) Act)

### ***Election Commission Norms:***

- To protect voters from being identified as belonging to a certain caste, caste identity is forbidden to be entered by any caste-denoting words on voter registration forms. (Election Commission. (2011). Training Module for Booth Level Officers. New Delhi: Election Commission, p.31)
- Financial burdens are lessened for SC candidates for election to the Council of States or a State Legislative Council (Rs 125 as opposed to the Rs 250 deposit for others) so as to level the campaigning playing field. (Election Commission. (1992/96). Handbook for Returning Officers. New Delhi: Election Commission, p.50)
- The Election Commission specifies that candidates should not “threaten any candidate or any elector or any person with any kind of act including social ostracism and ex-communication or expulsion from any caste.” (Election



Commission. (2009). Handbook for Candidates. New Delhi: Election Commission, p.288)

- Monitoring mechanisms include: vulnerability mapping by sector officers prior to the elections to identify possible threats to voters' right of franchise, monitoring threats throughout the election process, and following up with vulnerable voters; monitoring the election rolls on the election day to see if any group of voters is missing and inquiring into any such missing groups; and police patrols of polling locations in vulnerable localities. (Election Commission. (2009). Compendium of Instructions: Pre-Poll Arrangements, Vol. I. New Delhi: Election Commission, pp. 11-12, 13 & 16)

#### ***National Commissions and Committees:***

- The National Commission for Scheduled Castes and National Human Rights Commission also have mandates to examine the working of any safeguards of Dalit rights, including the right to political participation.

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- The Election Commission needs to be empowered to take strong action against those who capture voting booths and intimidate voters. The election rolls also need to be protected from being tampered with by political parties and influential persons. (Core-Committee on Electoral Reforms. (2010). Background Paper on Electoral Reforms. New Delhi: Ministry of Law and Justice, pp.16-18)
- Each panchayat (local government), at all levels, should have a Committee for Justice and Social Welfare which shall look after the welfare and development interests of SCs and protect them from social injustice and any form of exploitation. (Ministry of Panchayati Raj. (2009). Draft Model Panchayat and Gram Swaraj Act. New Delhi: Government of India, p. 42)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Reservations:***

- Most states have been successful in enforcing reservations for SCs in the panchayats and municipalities. A 2006-2007 analysis of the percentage of SC panchayat representatives out of the total elected representatives from each state, as compared to their percentage of the state's population, revealed that: nine states had SC representation in the panchayats greater than 1% above the SC percentage share in the general state population; four states had SC representation in the panchayats greater than 1% below the SC percentage share in the general state population. (Ministry of Panchayati Raj. (2008). Annual Report 2007-08. New Delhi: MPR, p.17)

- However, in spite of reservations, Dalit women elected representatives face intersectional discrimination based on their caste and gender. Consequently, their numbers in state and national government are dismally low. For example, only 12 of the 543 members of the 15th Lok Sabha (2.2%) were SC women. (Mangubhai, J. (2009). 'Obstacles to the Effective Political Participation of Dalit Women'. Statement presented at the UNHRC Second Forum on Minority Issues, Geneva, 12-13/11/2009)

### ***Legal and other measures preventing electoral rights violations:***

- In direct contravention of sec. 62 Representation of the People Act, there are cases of the police or polling officials or dominant castes violating Dalits' political rights during elections such as the following violations during the 2009 Lok Sabha elections:
  - o 11 cases in which police or polling agents threatened, intimidated, or committed violence against Dalit voters and activists;
  - o 43 cases in which Dalits were prevented from voting due to non-acceptance of proof of identity, early closing of the polls and malfunction of EVMs;
  - o 157 cases of threat, intimidation, abuse, violence, boycotts and physically debarring from polling stations by dominant caste members against Dalit voters. (National Dalit Election Watch. (2009). Dalits and the Right of Fran-



chise: The Experience of the General Elections 2009. New Delhi: NDEW, p.11)

In 2009, a large group of dominant caste villagers came to the Dalit settlement in Ranti Brahmotra Masahari, Bihar and started beating the Dalits, set fire to 75 Dalit houses and looted approximately 150 Dalit homes. The two causes of this outbreak of violence were the Dalits' assertion of their right to fish in the public stream; and their assertion of their right to vote in the 2009 General Elections. (National Dalit Election Watch. (2009). Dalits and the Right of Franchise: The Experience of the General Elections 2009. New Delhi: NDEW, p.21)

- Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate. (CERD Committee. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19)

- Once elections finish, Dalit elected officials often face continued incidences of discrimination while in public office. A survey of 166 Dalit women panchayat representatives in Gujarat and Tamil Nadu found that: 89.8% felt they were treated differently from other elected representatives in their panchayats; 38% were restricted from sitting on chairs with other elected representatives; 52% were barred from participating in the public programmes of the panchayat; and 23% were restricted by others from active participation in panchayat council meetings. (Mangubhai, J., Irudayam, A. and Sydenham, E. (2009). Dalit Women's Right to Political Participation in Rural Panchayati Raj. The Hague: IDEAS, Justitia et Pax & Equalinrights, p.197)

- Oftentimes, dominant caste panchayat representatives use no-confidence motions against Dalit panchayat representatives in order to rob the latter of their political power. In 2007 alone, 34 no-confidence motions were passed against Dalit heads of panchayats in the state of Chhattisgarh. (Sehgal, R. (2008, 30 May). 'Dalits remain unempowered', The Asian Age)

- In the 2009 Lok Sabha elections in Rajasthan, due to strong lobbying by Rajasthan Dalit Election Watch, the State Election Commission made adequate security arrangements for 42,701 polling stations in accordance with the Election Commission's by-laws. In addition, mobile polling

stations were made available in rural areas, and the location of some booths in sensitive areas was changed. Re-polling was conducted at 60 booths, of which 26 were due to the efforts of Rajasthan Dalit Election Watch. (Centre for Dalit Rights. (2009). Report of Rajasthan Dalit Election Watch on Violations of Dalit Voters' Rights in Lok Sabha Election 2009. Jaipur: CDR, pp. 59 & 69)

### ***Financial access to political participation:***

- State panchayat laws specify different financial caps on election canvassing expenses. Hence, while lower nomination fees for SC candidates aid financial access to political participation, candidates often have to outlay large financial amounts for canvassing elections. For example, a survey of 200 Dalit women nominees for panchayat elections in two states found that in Tamil Nadu only 40% of women and in Gujarat 13% of women had spent within the stipulated limit for election canvassing, whereas 45% of women had crossed the cap in Tamil Nadu and 3% in Gujarat – the latter low percentage explained by Gujarat Election Commission failing to set any limit on canvassing expenses at the village panchayat level. (Mangubhai, J., Irudayam, A. and Sydenham, E. (2009). Dalit Women's Right to Political Participation in Rural Panchayati Raj. The Hague: IDEAS, Justitia et Pax & Equalinrights, pp.118-19)

## **(7) IMPACT OF MEASURES**

- The political awareness of Dalit communities has risen in the past years as a result of increased laws on the matter. According to a recent report, 'the time-tested equations of vote bank politics are being transformed with eloquent Dalit leaders emerging on the electoral and political scenario.' (National Dalit Election Watch & Society for Participatory Research in Asia. (2009). Democratic Rights of Dalits: Violations in Local Government Elections. New Delhi: NDEW & PRIA, p.6)

- The number of seats reserved for scheduled castes in the Lok Sabha has increased over the years in accordance with Article 330 of the Constitution. For example, 79 out of 543 seats were reserved for SCs in the 11th Lok Sabha (1996), and this was raised to 84 out of 543 seats for the 15th Lok Sabha (2009). (IBN Live. (2010). 'Total Lok Sabha Seats



State-wise 2009'. Retrieved April 2012 from <<ibnlive.in.com/politics/electionstats/totalseatsN/year/2009.html>>

- However, political representation of Dalit women through reservations in the panchayats has not led to effective political participation in many cases. In one study, 59% of the 166 Dalit women panchayat representatives interviewed reported being proxy representatives primarily for dominant caste men. This effectively nullifies any political power they gained from such a position in local government. (Mangubhai, J., Irudayam, A. and Sydenham, E. (2009). Dalit Women's Right to Political Participation in Rural Panchayati Raj. The Hague: IDEAS, Justitia et Pax & Equalinrights, p. 142)

## **(8) GAPS IN MEASURES**

Continuing absence of reservations law:

- A Bill to make the Reservation Act has been pending in the Parliament since 2004 and till date, it has not been passed.

### ***Gaps in legal protection:***

- There are several offences related to political participation which currently are not specified in the SC/ST (Prevention of Atrocities) Act. These offences include the use of force and intimidation by any means to influence SC votes; the use of violence or boycott after elections to punish SCs for voting in a certain manner; the use of force or intimidation to prevent an SC from filing or withdrawing nomination as a candidate; and obstructing in any manner an SC holder of office from performing the normal functions of his/her position. (National Coalition for Strengthening SC/ST (PoA) Act. (2009). Enforcement of SC/ST (PoA) Act 1989 (draft). New Delhi: NCSPA, p.35)
- No measures are in place to prohibit and punish economic and social boycotts that can result from Dalit voters exercising their right to conscience vote.
- State-level Panchayat Acts and Rules do not contain stipulations to specifically safeguard Dalits' political rights.
- There are no clear specifications regarding the location of polling booths to ensure Dalits' safe access to polling booths and to prevent intimidation or threats that often occur at polling booths located in dominant caste neighbour-

hoods. (National Dalit Election Watch & Society for Participatory Research in Asia. (2009). Democratic Rights of Dalits: Violations in Local Government Elections. New Delhi: NDEW & PRIA, p.31)

### ***Absence of monitoring of political rights situation by Commissions:***

- The latest publicly available annual report (2004-05) by the National Commission for SCs makes no mention of their rights to franchise or political participation otherwise, and the Commission appears not to collect any data on this topic.
- Similarly, the Parliamentary Committee on SC/ST welfare has not produced any report on the right to political participation for Dalits, including the status of representation through reservations in the political sphere.
- The National Human Rights Commission also has not reviewed the constitutional safeguards to protect the right to political participation and made any recommendations. Only in the NHRC's 2004-05 Annual Report was mention made of a pilot study titled "Socio-Economic, Political and Cultural Status of Dalit Women in Haryana". However, the study does not seem to have been realised and is not publicly available. (National Human Rights Commission. (2005). Annual Report 2004-05. New Delhi: NHRC, p. 159)

### ***Uneven financial access to political participation:***

- State panchayat acts are not uniform in terms of setting caps on election canvassing expenses at all levels of government, especially for the panchayats.

Weaknesses in Election Commission functioning to ensure equal political participation:

- Election Commission materials do not instruct polling officials in terms of preventing caste-based discrimination.
- Election officials do not receive sensitivity training on the specific vulnerabilities of scheduled castes to political rights violations, in order to equip these officials to better deal with caste discriminatory voting practices and fraud.
- There are no specific Election Commission policies geared toward providing political rights awareness training to Dalits. Only the India International Institute of Democracy and Election Management (IIDEM) mentions about



educating marginalised communities about their political rights and the electoral process as one of its goals to nurture a vibrant and inclusive democracy that equally represents all citizens. (Bhagbanprakash. (2011). India International Institute of Democracy and Election Management (IIDEM): Towards professionally managed elections, participatory democracy and social development. New Delhi: IIDEM, pp.35 & 37)

- The Election Commission has created rules to monitor and prevent election fraud, intimidation and interference during polling. However, none of its monitoring measures specifically address the issue of caste and ensuring Dalit security at the polls (as exists for women). (National Dalit Election Watch. (2009). Dalits and the Right of Franchise: The Experience of the General Elections 2009. New Delhi: NDEW, p.20)

Absence of budgetary allocations to advance Dalits' political rights:

- There are no stipulations in the Scheduled Castes Sub Plan guidelines for budgetary allocations specifically for the advancement of political rights for Dalits. (Planning Commission. (2006). Scheduled Caste Sub-Plan: Guidelines for Implementation. New Delhi: Planning Commission)

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

### **• Election Monitoring:**

- o National Dalit Election Watch (NDEW) was set up in 2009 to monitor fairness during elections, increase political awareness among Dalits, identify fraud-prone areas and file cases with the Election Commission on behalf of those Dalits whose political rights are violated.

- o The Human Rights Forum for Dalit Liberation (HRFDL) monitored the 2004 Tamil Nadu elections and distributed a Dalit Election Manifesto detailing Dalit demands for their candidates.

- o The Centre for Dalit Rights worked in collaboration with Rajasthan Dalit Election Watch to organize voter aware-

ness camps and also monitor state and national elections in 2008-2009.

- o The Dalit Association for Social and Human Rights Awareness (DASHRA) does election monitoring in Bihar and is especially concerned with atrocities committed against Dalits during election periods.

### **• Identification of Sensitive Areas**

- o During the 2009 Lok Sabha elections in Rajasthan, the Centre for Dalit Rights identified sensitive areas that merited increased monitoring for violation of Dalits' right to franchise. The State Election Commission and the police were notified of these findings. (Centre for Dalit Rights. (2009). A Report of Rajasthan Dalit Election Watch on violation of Dalit voters Rights in Lok Sabha Election 2009. Jaipur: CDR, pp. 13 & 40)

### **• Rights Education and Awareness Campaigns:**

- o Dalit Sangarsh Morcha has organized pre-election voter awareness camps in Bihar to educate Dalit voters about their political rights and to sensitise candidates to the election process, and continues to pressurise panchayats to eradicate corruption in the distribution of social welfare schemes.

- o Dalit Samakhya provides training for Dalit elected officials and provides legal aid and advice to Dalit communities in Andhra Pradesh.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Society for Participatory Research in Asia (PRIA) commissioned the preparation of panchayat compendia in 13 states and converted them into user-friendly booklets in order for elected women and Dalit panchayat members to have all the rules and information about their posts in one place. (PRIA. (2005). Annual Programme Report 1: Reforming Panchayati Raj Institutions 2004-2005. New Delhi: PRIA)

- The Village Service Trust and its partner organizations in Tamil Nadu encourage women and Dalits to stand for election, backs their campaigns, and support them while in office.



- The Sahbhagi Shikshan Kendra's Pre-Election Voters Awareness Campaign (PEVAC) encourages political participation via election training sessions and a rights awareness campaign in Uttar Pradesh. One of their goals is to empower Dalits and women politically as voters and as candidates.

## **(II) RECOMMENDATIONS**

### **• *Institute Sensitivity and Awareness Trainings***

- o Elected Dalit officials should be given training to help them more effectively meet the demands of their posts and to educate them about their rights as community leaders.
- o Communal harmony activities should be undertaken in caste-tense areas around elections.

### **• *Improve Election Monitoring Mechanisms***

- o There should be an improved system of complaint filing via the Election Commission, including confidential hearings from scheduled caste community members.
- o Polling booths should be available in neutral territory, where SCs are comfortable going and which are easily accessible to them. Security should be provided at fraud-prone polling stations and should also be provided in areas of high conflict risk before and after the elections.
- o The Election Commission should revamp its vulnerability mapping completely, moving beyond just controlling and observing visible violent incidents, to dealing with the invisible and silent threats and intimidation of Dalit voters.
- o In order to decrease incidences of fraud and intimidation of Dalit voters, SC polling officials should be trained and appointed to reserved SC constituencies.

- Fortify ties between Government and Civil Society Organisations to combat Injustice

- o The State should extend its trust to national and local level NGOs to help implement election-related measures, such as monitoring of elections and sensitisation and training of officials.

- o Increased government funding should be put into programmes that enlist the cooperation and support of civil society organisations. This would help create sustainable pro-

grammes increasingly rooted in the local sphere rather than administered from above by the government.

- Improve Participation of Women as Electors and as Members of Government

- o While it is commendable that specific reservation measures are in place for scheduled caste women in the panchayats, the enforcement of such measures needs to be strengthened. It is not enough that Dalit women are represented among elected office-bearers. They need to be able to freely exercise their political rights whilst in office for such a measure to truly have an impact. Such enforcement, including against proxy representation and discrimination, should be done by government officials monitoring the panchayats or by an independent third party.

- o In order to improve voter participation amongst Dalit women, separate voting booths could be established specifically for them, so that they feel comfortable and secure in the face of intimidation by dominant caste members and/or pressure from Dalit men. Alternatively, more female poll officials could be hired and/or police presence at polling sites could be increased.

### **• *Budgetary Measures***

- o Financial resources should be made available to protect Dalits during elections, to facilitate the strengthening of Dalit political rights via training sessions and workshops, public awareness campaigns, and sensitivity training for non-Dalit polling officials.
- o A fund should be established for scheduled caste candidates who cannot afford to pay election costs, which would help level the playing field and make elections fairer.

### **• *Strengthen Existing Legislation***

- o The SC/ST (Prevention of Atrocities) Act should be amended to include "offences related to interference with Dalits' political participation: that is, any person not being a member of a scheduled caste or scheduled tribe forcing, intimidating or bribing a member of a scheduled caste or scheduled tribe to act as a benami for them; and any person not being a member of a scheduled caste or scheduled tribe instigating false or malicious no confidence motions or complaints against panchayat presidents with the intention to remove them from office.



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**Guideline 34. National and local governments should enact equality laws that prohibit public and private employer discrimination on the basis of caste, take steps to remove customary constraints on leaving traditional caste-based occupations, and promote gainful alternative employment opportunities and full access to markets for members of affected communities.**

# 34

## EQUAL EMPLOYMENT OPPORTUNITY AND FREE CHOICE OF OCCUPATION

Dalits continue to be one of the poorest segments of the Indian population. Many remain confined to their traditional menial and lowly valued caste occupations even today. They form a bulk of the informal, unorganised sector workers, who subsist on low wages with poor working conditions and no social security. Generally, their access to social services such as education and health, and access to economic endowments such as land and financial capital, is very limited. They also continue to face widespread exclusion and discrimination in the arena of labour and employment. Policy and legislative measures to promote equal rights and opportunities for Dalits in employment, including reservations in government employment, have not made sufficient inroads into this situation to date.

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should take specific (i) legal, (ii) policy, (iii) programmatic, and (iv) budgetary measures to ensure the following to Dalits:

- Prohibition of caste discrimination in employment: to be protected against caste discrimination in access to public and private sector jobs, participation in the workforce and equal opportunity for promotions; to eliminate multiple discrimination against Dalit women in employment; to ensure employers do not investigate the caste background of applicants.
- Removal of customary constraints on leaving traditional caste-based occupations: to be protected against threats and violence in leaving traditional caste occupations; to receive alternative skills training and financial support to transition



into alternative work; to have plans and programmes of socio-economic development made in consultation with the Dalit community.

- Promotion of gainful alternative employment opportunities and full access to markets: to be free from discrimination in access to markets and employment opportunities; to not be ghettoised into certain occupations related to traditional caste occupations; to have access to information on alternative employment opportunities; to have special measures, such as training courses or credit avenues, in place to enable Dalits to access alternative employment and market opportunities.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- The state should safeguard the right to work without any discrimination, which includes the right of everyone to the equal opportunity to gain her/his living by work which s/he freely chooses or accepts. This includes vocational guidance and training programmes, policies and techniques to ensure full and productive employment. (Articles 6 r/w. 2(2) ICESCR)
- Everyone has the right to just and favourable conditions of work, which ensure fair wages and equal remuneration for work of equal value, safe and healthy working conditions, equal opportunity for promotions, and reasonable limitation of working hours. (Article 7 ICSECR)
- States undertake to eliminate racial (caste) discrimination in all its forms and guarantee the right to everyone, without distinction, to equality before the law in the enjoyment of the rights to work, to free choice of employment, to just and favourable conditions of work including remuneration, to protection against unemployment, to equal pay for equal work. (Article 5 ICERD)
- States should eliminate discrimination against women in the field of employment to ensure, inter alia, the equal right to work, employment opportunities, free choice of profession and employment, right to safe working conditions, and prevention of discrimination on grounds of marriage or maternity. (Article 11 CEDAW)

- States should take legislative, administrative, social and educational measures to ensure the right of every child to be protected from economic exploitation and from performing any work that harms or interferes with the child's education, health or development. (Article 32 CRC)

- State members to this Convention undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. (Article 2 ILO Convention no. 111)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should take special measures to promote the employment of persons affected by descent-based discrimination in the public and private sectors. (CERD. (2002). General Recommendation 29, para. 36)
- States should take all measures necessary in order to eliminate multiple discrimination, including descent-based discrimination against women, particularly in the areas of employment. (CERD. (2002). General Recommendation 29, para. 12)
- States should take measures against public bodies, private companies and other associations that investigate the descent background of job applicants. (CERD. (2002). General Recommendation 29, para. 38)
- The Indian State should strengthen enforcement of existing legal prohibitions of discrimination and, in addition, consider enacting comprehensive anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, including in employment. (CESCR. (2008). Concluding Comments on India report. UN Doc.E/C.12/IND/CO/5, para. 52)
- The Indian State should ensure the effective implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993. The State party should also adopt measures to enhance Dalits' access to the labour market, e.g. by issuing job cards under the National Rural Employment Guarantee Scheme to Dalit appli-



cants. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 23)

- The Committee urges the Indian State to address all the impediments to eradicating the practice of manual scavenging, including by putting in place modern sanitation facilities and providing Dalit women scavengers with vocational training and alternative means of livelihood. (CEDAW. (2007). Concluding Comments on India report. UN Doc. CEDAW/C/IND/CO/3, para. 29)

#### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

##### ***Legal rights and offences:***

- No citizen shall, 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 or, any employment or office under the State. (Article 16(2) Constitution of India)
- The State shall promote with special care the economic interests of particularly the scheduled castes and the Scheduled tribes, and shall protect them from social injustice and all forms of exploitation. (Article 46 Constitution of India)
- Article 16 of the Constitution allows for 15% reservation for SCs to enable their participation in government services, educational institutions and political bodies like the legislature.
- Whoever, on the ground of ‘untouchability’, enforces against any person any disability with regard to the practice of any profession or the carrying on of any occupation, trade or business or employment in any job, commits a punishable offence. (sec. 4(iii) PCR Act)
- Whoever compels any person, on the ground of ‘untouchability’, to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, commits a punishable offence. (sec 7A(i) PCR Act)
- If the person committing an offence under the PCR Act is a company, every person who at the time the offence was committed was a charge of, and was responsible to, the company for the conduct of the business of the company,

shall be deemed to be guilty of the offence. (sec. 14(i) PCR Act)

- The Equal Remuneration Act 1976 provides for payment of equal remuneration to men and women workers, for same work or work of similar nature and for the prevention of discrimination against women in the matters of employment. Employers should not discriminate on the basis of gender, in matters of wage fixing, transfers, training and promotion.
- The Unorganised Workers’ Social Security Act 2008 provides for the social security and welfare of unorganised workers. A National Social Security Board as well as State Social Security Boards are created to recommend the formulation of suitable social security schemes for unorganised workers/categories of unorganised workers, as well as a National Social Security Fund for Unorganised Sector Workers to provide the necessary social security benefits.
- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 prohibits and penalises the employment of manual scavengers and the construction of dry latrines. The Prohibition of Employment of Manual Scavengers and their Rehabilitation Act 2013 requires local authorities to identify and demolish insanitary latrines, prohibits the employment of manual scavengers, and makes provisions for the rehabilitation of manual scavengers.
- The dedication of a woman as a Devadasi is unlawful under various state laws: Karnataka Devadasis (Prohibition and Dedication) Act 1982; Maharashtra Devdasi System (Abolition) Act 2005; Andhra Pradesh Devadasis (Prohibition of Dedication) Act 1988.

##### ***Five-Year Plans and Employment Policies and Programmes:***

- In the Twelfth Five Year Plan 2012-17, the issue of promoting employment opportunities for minorities, SCs, STs and disabled people assumes greater importance, and employment oriented education needs to be provided in a manner that ensures the needs of the vulnerable sections of the society are taken care of. Training institutes should be set up in the areas where vulnerable populations are concentrated to facilitate their participation in skill development for enhancing their employability (Planning Commission. (2012).



Draft Twelfth Five-Year Plan 2012-2017. New Delhi: Planning Commission, paras. 22.52 & 22.108)

- Under the Public Procurement Policy for Micro and Small Enterprises (MSEs) 2012, every Central Ministry/ Department/PSU shall set a procurement goal of minimum 20% of the total annual purchase of products or services produced or rendered by MSEs; and out of this target of 20%, a sub-target of 4% will be earmarked for procurement from MSEs owned by SCs/STs.
- The National Scheduled Castes and Scheduled Tribes Finance and Development Corporation (NSFDC) was set up in 1989 to provide concessional finance for setting up of self-employment projects and skill-training grants to unemployed SC/ST persons living below double the poverty line. It has its counterparts in all the states as well.
- Swarnajayanti Grameen Swarozgar Yojana (SGSY) promotes self-employment of rural poor by providing income generating assets through a mix of bank credit and government subsidies. The programme insists that 50% of the self-help groups must be formed exclusively by women and that 50% of the benefits should flow to SCs and STs.
- The Swarna Jayanti Shahari Rozgar Yojana (SJSRY) establishes urban women's self-help groups for setting up group enterprises. The groups are entitled to a subsidy and bank loans. However, there is no specific provision that any percentage of benefits flow to SC and ST women.
- The Prime Minister's Employment Generation Programme (PMEGP), a credit linked subsidy programme for the establishment of micro enterprises, mandates that identified banks sanction 95% of the project cost in case of special category (i.e. scheduled castes and other disadvantaged groups) of the beneficiary/institution, and disburse the full amount suitably for setting up of any enterprise.
- Under the National Rural Employment Guarantee Act 2005, the Mahatma Gandhi National Rural Employment Guarantee scheme (MGNREGS) was launched in 2006 to ensure livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual labour.

### ***Rehabilitation Schemes for Safai Karmacharis and Devadasis:***

- The National Safai Karmacharis Finance and Development Corporation (NSKFDC) was established in 1997 to provide financial support to safai karmacharis (scavengers) to take up various alternative income-generating activities.
- A National Scheme for Liberation and Rehabilitation of Manual Scavengers was launched in 1992 for the identification, training and rehabilitation of those engaged in manual scavenging – the manual removal of human excreta from dry toilets – throughout the country, the majority being Dalits.
- The Ministry of Social Justice and Empowerment provides training-cum-loans to rehabilitate manual scavengers into other occupations under the Self-Employment Scheme for the Rehabilitation of Manual Scavengers (SRMS), launched in 2007.
- The Devadasi Rehabilitation project was set up in 1991 to eradicate the 'Devadasi' system in a district in Karnataka and help those exploited by this system. This programme is currently being implemented in nine districts and provides subsidised bank loans for income generating activities among women who stopped being Devadasis. (Karnataka Women's Development Corporation website. Retrieved Oct. 2013 from <<<http://202.138.105.9/kswdc/devadasir.php>>>)

### ***Monitoring Implementation of Reservations in Government Employment:***

- The Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes produces a number of reports on the situation of reservations in various government sectors (e.g. the railways) and companies. Its reports give a series of recommendations, on which the Government of India should produce an action taken report. (Parliamentary Standing Committees website. <<[http://164.100.47.134/committee/committee\\_information.s.aspx](http://164.100.47.134/committee/committee_information.s.aspx)>>)
- The National Commission for Safai Karmacharis is created to recommend to the central government specific programmes of action towards the elimination of inequalities



in status, providing facilities and opportunities for safai karamcharis (those involved in cleaning works, including manual scavengers) under a time-bound action plan.

### **Special Budgetary Provisions:**

- The Scheduled Caste Sub Plan (SCSP), established in 1979-80, is designed to channelise the flow of budget outlays and benefits from the general sector in the Plans of States/Union Territories and the Central Ministries to the SCs. Under the SCSP, Central Ministries and State Departments should allocate funds at least in proportion to the population of SCs in the country – i.e. 16.2% – both in physical and financial terms. These funds should be applied only for the direct benefits to SC individuals or families, or SC localities with more than 40% SC populations. The overall aim to achieve the overall development of SCs on par with the general Indian population, including through promoting equal employment opportunities. (Planning Commission. (2006). Guidelines for Implementation of the Scheduled Castes Sub Plan. New Delhi: Planning Commission)

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- There is a need to incorporate at least legal provisions in the form of Equal Employment Opportunity Act so that clear legal protection is guaranteed against labour market discrimination to the SCs in hiring and wage payment. The government should use both provisions of Equal Opportunity Act and supplement it by affirmative action particularly binding on the firms/industries which receive any kind of support (i.e. licence and registration) from the government. (Chandrapal. (undated). Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<[planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc](http://planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc)>>, para. 27)

- In order to ensure accessibility to the capital market, there is an urgent need for the government to set up a National Bank for Scheduled Castes and Scheduled Tribes with at least Rs 1,000 crore as equity. (Chandrapal. Action

Points for Development of SCs and STs, Planning Commission, para. 40)

- The National Commission for Scheduled Castes has made radical suggestions for the welfare and development of Dalits that include preferential treatment for the community in purchases for government stores – i.e. on contracts of up to Rs 1 crore. (Singh, M. (2013, 10 Oct.). 'National Panel suggests Quota for Dalits in Government Purchases.' Times of India)

- The National Advisory Council, in its resolution dated 23.10.2010 on the issue of Manual Scavenging, had urged the central government to ensure that the practice of manual scavenging was fully abolished by the end of the 11th Plan Period, i.e. 2011-12, in coordination with all the Central Government Departments, including the Railways, and concerned states/local governments. (National Advisory Council. (2010). Note on Recommendations for Follow-Up Measures to Eradicate Manual Scavenging.' Retrieved Nov. 2013 from <<[http://nac.nic.in/pdf/manual\\_scavenging.pdf](http://nac.nic.in/pdf/manual_scavenging.pdf)>>)

- The government should give a waiver of all kinds of loans and advances through different schemes to Safai Karmacharis by adjusting the accrued Special Component Plan funds for SCs since 1979... The present system of awarding contracts/outsourcing for cleaning work should be banned...Safai Karmacharis should be declared as skilled technicians and paid accordingly. (National Commission for Scheduled Castes. (undated). Report on the Plight of Safai Karmacharis and Recommendations/Proposals to improve their Plight. Retrieved Nov. 2013 from <<<http://ncsc.nic.in/files/Residence%20School%20and%20hostels.docx>>>, p.7)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

Continuing concentration in casual wage labour and traditional occupations:

- Despite the numerous employment measures, SCs and STs are the most vulnerable among the agricultural workers, of which they make up 46.7% as in 2004-05. In 2007, the bulk of agricultural workers (90.7%) and rural workers



(64.5%) were paid less than the national minimum wage of INR 66 (USD 1.25) per day. The highest proportion of casual workers in the non-agricultural unorganised sector are STs, followed by the SCs. Human capital and access to better jobs among Hindus improved from STs, SCs to OBCs and 'upper' castes in that order. (National Commission for Enterprises in the Unorganised Sector. (2007). Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector. New Delhi: NCEUS, paras 2.31, 2.47, 6.10& 7.26)

- Of the total rural SC workers, more than 60% are wage labourers and there is significant discrimination of SCs in hiring and wage payments. (Chandrapal. Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc>>, para. 27)

- In 2009-10, the average wage for SC regular workers was Rs 236.16, for SC casual workers in public works Rs 94.47 and for SC casual labourers in other works Rs 95.29. These wages were much lower than those of other backward class (OBC) and other caste (Other) workers: OBC regular workers received Rs 274.24 and Other regular workers 388.27; OBC casual labourers in other works Rs 101.17 and Other casual labourers Rs 103.20. (Ministry of Labour and Employment. (2011). Second Annual Report to the People on Employment. New Delhi: Government of India, table 4.5)

- In 2010-11, according to the Ministry of Rural Development, SCs form 30.7% of all workers employed under the central government's National Rural Employment Guarantee Scheme. (Ministry of Labour and Employment. (2011). Second Annual Report to the People on Employment. New Delhi: Government of India, box 5.1)

- In 2010-11, according to the Ministry of Rural Development, only 7.35% of SCs benefited under the SGSY scheme. (Ministry of Labour and Employment. (2011). Second Annual Report to the People on Employment. New Delhi: Government of India, table 5.1)

- Dalit women continue to be primarily agricultural labourers – as per the Census 2001, 57% of SC women compared with 29% of non-SC/ST women were agricultural labourers. They also take on non-farm labour, including 'polluted' tasks such as manual scavenging (the manual removal of hu-

man excreta from dry pit latrines) and sweeping. Casual labour is distinguished by high gender differentials in wages, which are only partially linked to skills and resources, and are more likely due to discrimination. (Das, M.B. (2006). 'Do Traditional Axes of Exclusion Affect Labor Market Outcomes in India?', Social Development Papers, South Asian Series 97. Washington DC: The World Bank; Center for Human Rights and Global Justice & Human Rights Watch. (2007). Caste Discrimination against Dalits or So-Called Untouchables in India. New York: CHRGI & HRW)

- SCs are under-represented in the ownership of enterprises. SCs accounted for 16.4% of India's population in 2001, but owned only 9.8% of all enterprises in 2005, which employed 8.1% of all non-farm workers. (Iyer, L., T. Khanna and A. Varshney. (2013). 'Caste and Entrepreneurship in India', Economic and Political Weekly 48(6), pp. 52-60, at p.54)

- At present, Micro and Small Enterprises (MSEs) constitute an overwhelming majority of the enterprises sector and contribute significantly employment generation. Among registered MSMEs, however, only 10.2% are owned by SC entrepreneurs in rural areas and only in 5.5% in urban areas. Moreover, 98.4% of SC enterprises are micro enterprises. (Development Commissioner, MSME. (2011). Fourth All-India Census of Micro, Small & Medium Enterprises 2006-07. New Delhi: Ministry of MSME, Tables 9.2, 9.3 & 10.1)

- The National Social Security Board was constituted in 2009 and has recommended the extension of some social security schemes to a wider range of workers, including MGNREGS workers, casual and daily wagers. The National Social Security Fund for Unorganised Sector Workers has also been set up, with an initial allocation of Rs 1000 crores.

### ***Continuing Manual Scavenging:***

- Despite a law banning manual scavenging, this degrading practice persists with grave implications on the health of Dalit women engaged in this activity. Very large numbers of Dalits are forced to work as manual scavengers and child workers and are subject to extremely unhealthy working conditions and exploitative labour arrangements, including debt bondage. (CEDAW Committee. (2007). Concluding Comments on India report. UN Doc. CEDAW/C/IND/



CO/3, para. 28; CERD Committee. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para 23)

- Indian Railways is an institution where dry latrines exist in great numbers and a large number of Dalit individuals are engaged in manual scavenging. Despite 11 million passengers travelling by trains every day, at present there are only nine trains with 436 coaches fitted with bio-toilets, while 4,000 coaches are produced annually which could be fitted with new bio-toilets. (Rashtriya Garima Abhiyan. (2012). Analysis and Recommendations in the Context of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill. Bhopal: Rashtriya Garima Abhiyan, pp. 10-11)

- Official data shows that the National Scheme for Liberation and Rehabilitation of Manual Scavengers has ensured the rehabilitation of 770,000 manual scavengers. The Self-Employment Scheme for Rehabilitation of Manual Scavenger originally envisaged rehabilitation of all manual scavengers in alternative occupations by March 2009. Subsequently this deadline was extended up to March 2010. However, 18 states/UTs reported the existence of 118,474 manual scavengers and their dependents who were to be rehabilitated in alternative occupations till end-March 2010. (Planning Commission. (2012). Twelfth Five Year Plan 2012-17. New Delhi: Planning Commission, para. 24.24)

a. According to a survey of the scheme for the rehabilitation of manual scavengers in three states in 2010-11, 76% of people who received benefits under the scheme were not manual scavengers. Moreover, the scheme did not cover many districts where the practice still exists. Additionally, despite 98% of manual scavengers being women, around 51% of scheme benefits went to men. This was all in addition to the problems of bribes, etc. required to access the scheme. (Rashtriya Garima Abhiyan, 2013. 'Violence against Manual Scavengers: Dalit Women in India', Submission to the Special Rapporteur on Violence against Women)

### ***Continuing discrimination in employment:***

- Caste-based discrimination confines Dalits to occupations associated with their caste, often involving the most menial tasks such as 'manual scavenging' or the removal of dead animals. Dalits are generally not accepted for any work involving contact with water or food for non-Dalits

or entering a non-Dalit residence. They are thus excluded from a wide range of work opportunities in the area of production, processing or sale of food items, domestic work and the provision of certain services in the private and public sectors (e.g. office helpers). Limited access to education, training and resources, such as land or credit, further impair their equal opportunities for access to non-caste-based occupations and decent work. (ILO Director-General. (2007). Equality at Work: Tackling the Challenges. Geneva: ILO Office, para. 131)

- Denial to Dalits in the sale and purchase of factors of production (like agriculture land, non-land capital assets and various factors inputs) continues today. The discrimination of the Dalits in the labour markets operates through exclusion in hiring, payment of wages lower than market rates, and unfavorable terms and conditions of work- involving overwork and other forms of extra economic coercions and caste-related obligations. (Namala, A. (2006). Dismantling Descent-Based Discrimination: Report on Dalits' Access to Rights. New Delhi: NCDHR & IIDS)

- A study of 'untouchability' practices in 565 villages across 11 states revealed that 30-40% of SCs were denied work as agricultural labour, nor could they sell their products in the local markets. Around 25-30% of SCs also were not employed in house construction work. (Shah, G. et al. (2006). Untouchability in Rural India. New Delhi: Sage Publications)

- An HMS communication by the ILO Committee of Experts on the Application of Conventions in 2006 noted that the non-discrimination and equality before the law provisions in the Indian Constitution "did not cover private sector employees and that widespread discrimination against Dalits, Adivasis and women in the construction and fishing industries as well as agriculture is alleged"... In practice there is discrimination in employment and wages. In particular Dalits are subject to serious discrimination and are employed in the most exploitative forms of labour. (International Trade Union Confederation. (2007). Internationally recognised Core Labour Standards in India: Report for the WTO General Council Review of the Trade Policies of India. Geneva: ITUC, pp.8 & 12)

- A study among Dalit journalists revealed that many of these journalists stated that caste-based discrimination and



antagonism against them is pervasive in the mainstream media, both print and electronic. They say this phenomenon is more rampant in Hindi and other language media than in the English media. (Ashraf, A. (2013, 13 Aug.). 'Dalits in the Media feel the Sting of Caste Discrimination,' Firstpost)

- Active discrimination also prevails in the urban job market. A 2007 study of patterns of decision making among private sector employers showed that job applicants with 'high' caste Hindu names were more likely to succeed than similarly well-qualified applicants with Dalit names. (Thorat, S. and P. Attewell. (2007). 'The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India', Economic and Political Weekly 42(41), pp. 4141-45)

#### ***Low utilisation of funds for SC development:***

- Major issues relating to implementation of SCSP strategies include that "priority sectors and need-based schemes/programmes for the benefit of SCs/STs, such as education, health, and technical/vocational training have not been devised as per the needs based on equity considerations." (Planning Commission. (2011). Mid Term Appraisal of the 11th Five Year Plan. New Delhi: Planning Commission, para. 8.70)

- Funds are often not allocated under the SCSP in proportion to the population of SCs in the state/country. Moreover, a large amount of funds under SCSP are being allocated for general programmes and schemes, which are not specifically designed for SCs with fixed, realistic targets. (Dalit Arthik Adhikar Andolan. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: NCDHR)

- During 2006-07, the National Safai Karamcharis Finance and Development Corporation disbursed loans to 16,545 beneficiaries (up to Dec. 2006) for various income generating activities in 25 states/UTs. (Planning Commission. Eleventh Five Year Plan 2007-12. New Delhi: Planning Commission, para. 6.10)

## **(7) IMPACT OF MEASURES**

- Dalits remain restricted to caste-based manual labour occupations or congregated around the bottom rung of government services. In 2004-05, 95% of SC/STs were in the unorganised sector, a sector that is synonymous with low wages and lack of employment or social security. The situation has not fundamentally changed in 2013. (Sengupta, A., K.P. Kannan and G. Raveendran. (2008). 'India's Common People: Who are They, How Many are They and How do They Live?', Economic and Political Weekly 43(11), pp.49-63)

- According to the Working Group on the Empowerment of SCs, over 113,450 job opportunities were lost by SCs in the central government in a period of ten years. A decline of 10.07% job opportunities was noticeable. This is in addition to the loss of opportunities in various state government employment sectors. (National Coalition for Strengthening PoA Act. (2012). Joint Stakeholders report on Caste Based Discrimination in India, submitted at 13th Session of the Universal Periodic Review of the UN Human Rights Council – India 2012. New Delhi: NCDHR, para. 31)

- Dominant castes, but not Dalits, have seized new economic opportunities that have opened up in the past 30 years, such as small- and medium-scale industries. This is due to, among other things, Dalits' comparatively low levels of education and health, lack of financial capital, non-labour skills and lesser social networks. (Heyer, J. 2007. 'The Marginalisation of Dalits in a Modernising Economy', Research paper, University of Oxford. Retrieved Jan. 2012 from <<[www.qeh.ox.ac.uk/pdf/pdf-heyer07/heyer07-heyer-works-hop.pdf](http://www.qeh.ox.ac.uk/pdf/pdf-heyer07/heyer07-heyer-works-hop.pdf)>>)

- The market economy has so far failed to transform traditional institutions, such as caste; rather, a re-visioning of caste has occurred. Hence, new forms of caste-based economic exclusion operate to keep Dalits in the same socio-economic position relative to dominant castes. This is despite urban migration, the move among some Dalits into non-traditional occupations, and the reduction in their dependence on dominant caste landlords. Dalits continue to be less successful than dominant castes in moving into new salaried, non-farm employment, despite their growing education levels. (Das, M.B. (2006). 'Do Traditional Axes of



Exclusion Affect Labor Market Outcomes in India?', Social Development Papers, South Asian Series 97. Washington DC: The World Bank)

## **(8) GAPS IN MEASURES**

### ***Legal and Policy gaps:***

- The issue of discrimination in employment has been little addressed by any central or state government, and there is no equality in law that would outlaw caste discrimination in all sectors of employment.
- There is no comprehensive employment policy in the country with a specific policy strategy for the holistic development of employment opportunities among SCs and ensuring non-discrimination in employment.
- There is a lack of a comprehensive employment anti-discrimination framework that adequately addresses the myriad ways in which discrimination operates. The existing legal protections against such discrimination include constitutional provisions mandating equality and a handful of criminal statutes. There is no umbrella anti-discrimination employment statute to regulate the private sector in India. (Sinoy, D. 'Courting Substantive Equality: Employment Discrimination Law in India'. Retrieved Nov. 2013 from <<www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILW/Jackson%20Louis%20Writing%20Competition/Shenoy\_EmploymentLawIndia.pdf>>, p.3)
- Although the Equal Remuneration Act and a smattering of other legislation provide women in private sector workplaces with some measure of protection from discrimination, SCs are excluded from many of these anti-discrimination protections under the existing statutory regime. (Center for Human Rights and Global Justice & Human Rights Watch. (2007). Caste Discrimination against Dalits or So-Called Untouchables in India. New York: CHRGI & HRW, p.26)
- Where employment policies and laws are in place, enforcement and implementation are often lacking or unsatisfactory. Affirmative action measures have assisted a small number of Dalits in obtaining formal jobs, but have failed to lead to more even progress in providing equal opportuni-

ties to all. Purely developmental approaches to improving the lot of the Dalits are insufficient, if the underlying structural causes and caste barriers are not simultaneously addressed. (ILO Director-General. (2007). Equality at Work: Tackling the Challenges. Geneva: ILO, para. 133)

### ***Manual Scavenging Remains:***

- The objective of the complete elimination of manual scavenging by the end of the Sixth Five Year Plan 1980-85 remains unachieved even today, as does complete rehabilitation of those who have left the occupation. The non-implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act to abolish the degrading practice of manual scavenging has contributed to the continuation of this abhorrent practice. Moreover, local government institutions themselves continue to be the largest employers of scavengers who have to sweep floors or clean latrines for a miniscule wage under inhumane conditions.
- Neither the recently passed Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, nor the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules 2013 have concrete measures for rehabilitation that would enable rehabilitation to be implemented in reality. It is still not clear who will formulate the schemes and how they will be implemented. (Wilson, B., Safai Karamchari Andolan, quoted in Jitendra. (2013, 10 Sep). 'Manual Scavenging Prohibition Bill: How Effective', Down to Earth)

### ***Low prioritisation of funding for Economic Development:***

- The bulk of SCSP funds are more for social services (e.g. education, health) that are 'survival in nature'. Large funds are not being allocated for economic sectors that are 'developmental in nature' (e.g. entrepreneurship, employment, land) and would ensure that Dalits obtain access to productive resources for their long-term development and empowerment. (Dalit Arthik Adhikar Andolan. (2013). Scheduled Caste Sub Plan & Tribal Sub Plan: Union Budget Watch 2012-13. New Delhi: DAAA)



## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- NACDOR, in collaboration with the Chamber of Indian Industries (CII), has launched a job portal <<the fairjob.com>> for the disadvantaged sections of the society, including SCs, in January 2013 to increase the participation of Dalits in the private sector.
- Samajik Shaishanik Vikas Kendra (SSVK) or Social Education Development Centre has initiated village funds (gram kosh) in Dalit villages in Bihar. During 1993-94 in Hasaulia village of Madhubani district in Bihar, a conflict arose between land owning dominant caste community and Dalit daily labourers regarding the issue of fair wages. The Dalits boycotted all work for the dominant castes for about eight months. In the period of crisis, gram kosh came to their rescue by providing food grains and other basic livelihood requirements. Finally, the landlords were compelled to agree to give proper wages to the labourers, and the labourers returned to their work.
- Safai Karmachari Andolan (SKA) is a national movement across 26 states that is committed to the total eradication of manual scavenging and the rehabilitation of all scavengers into dignified occupations. SKA works across 26 states. SKA also works with people engaged in 'unclean' occupations such as sewage workers, pit workers and sweepers.
- Rashtriya Garima Abhiyan' (National Campaign for Dignity and Eradication of Manual Scavenging) was started by Dalit women involved in manual scavenging. From initial village level activities in 2001, it is now a national movement aimed at identifying, liberating and rehabilitating all manual scavengers. The campaign has been supported by Jan Sahas, a NGO that protects human rights through capacity building and mobilisation of excluded communities.
- Dalit Arthik Adhikar Andolan, a unit of the National Campaign on Dalit Human Rights, monitors the implementation of the SCSP budget for SCs and engages with the government on issues of budgets and Dalit rights, and calls attention to the need for greater budgetary resources directed towards generating productive resources and decent employment for Dalits.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Dalit Freedom Network, U.K. is engaged in livelihood management microfinance schemes providing loans to Dalits to start small businesses or increase their earning capacity to bring greater economic stability. Fund-recycling is key to the success of these programmes.
- The National Coalition on SCP and TSP Legislation comprises over 350 partners/associations/networks/organisations working on demanding due entitlements in budgets and effective implementation of the current policy of Dalit and Tribal/Adivasi Budgets. The Coalition is spearheading a campaign, 'Sau Mein Pachees Haq Hamara' demanding a due share of the budgets for SC and ST development and to legislate the SCP and TSP.
- The International Labour Organisation in India has been active in recognising Dalits and issues of caste discrimination in employment. It has supported reports on manual scavenging, produced a resource guide on employment of Dalits in the private sector, and made reports on child and bonded labour that mention the prevalence of these forms of bondage among Dalits.

## **(11) RECOMMENDATIONS**

- A comprehensive Employment Policy, covering public and private sector employment, with a special policy emphasis on the Scheduled Castes must be developed. This policy should align with the government's Reservation Policy.
- With the implementation of economic policy reforms, labourers have been at the receiving end. Hence, social security provisions for workers in the unorganised sectors need to be implemented urgently by the central and state governments.
- The Ministry of Labour should undertake a comprehensive survey of the impact of economic reforms on job opportunities as a whole and particularly for SCs and other excluded social groups.
- Time-bound plans for the complete eradication of manual scavenging must be formulated and implemented, along-



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side the strict implementation of the Eradication of Manual Scavenging Acts.

- Adequate and targeted vocational training initiatives need to be developed to equip SC youth with new and alternative, gainful employment opportunities. This must be coupled with methods to reach information on such initiatives to SC communities in rural and urban areas, in order to facilitate their access to such opportunities.
- All government employment schemes for SCs should have the objective of providing a sustainable source of employment and income to poor SCs; i.e. providing assets that generate income for years.
- The SC Sub Plan should be transformed from a Planning Commission policy directive to a legal right, by the enactment of national and state legislation mandating the allocation of adequate funds commensurate with the proportion of SC population to be applied for the direct benefit of SCs, especially in the economic sectors.
- In order to ensure accessibility to the capital market, the Indian Government should establish a National Bank for Scheduled Castes & Scheduled Tribes.
- As per the National SC/ST Commission, the NSFDC and SCDCs should be given the status of Banking Institutions. These institutions need to simplify the procedure for granting loans by removing income ceilings. Further these institutions need to be strengthened financially as well as improving professional calibre of their staff.
- A monitoring mechanism in the form of an Equal Opportunity Commission should be created to monitor the situation of discrimination against Dalits in all arenas, including employment.



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**Guideline 36. The government should adopt measures to enhance affected communities' access to the labour market by introducing or extending reservation policies to the public and private sectors, which should effectively counter the impact of market liberalization and globalization.**

# 36

## EQUAL EMPLOYMENT OPPORTUNITY AND FREE CHOICE OF OCCUPATION

**Dalits continue to be significantly underrepresented in most professional jobs and in the private sector. In particular, Dalit representation in India's high industries, exports, imports and electronic industries sector is dismal. Moreover, public sector divestment is estimated to have left a large number of Dalit employees jobless. While reservations in government jobs exist, this does not yet extend to the private sector.**

### **(1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national governments should take specific legal and policy measures to enhance Dalits' access to the labour market: to be entitled to reservation policies in the public and private sectors; to have all the backlog in vacancies for reserved post filled; to be entitled to reservations in both employment and promotions; to be protected against the adverse impacts of market liberalisation and globalisation.

### **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to just and favourable conditions of work, which ensure fair wages and equal remuneration for work of equal value, safe and healthy working conditions, equal opportunity for promotions, and reasonable limitation of working hours. (Article 7 ICSECR)
- States undertake to eliminate racial (caste) discrimination in all its forms and guarantee the right to everyone, without distinction, to equal enjoyment of the rights to work, to free choice of employment, to just and favourable conditions of



work including remuneration, to protection against unemployment, to equal pay for equal work. (Article 5 ICERD)

- States shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development, protection and enjoyment of rights of certain racial (caste) groups. (Article 2 ICERD)
- States should eliminate discrimination against women in the field of employment to ensure, inter alia, the equal right to work, employment opportunities, free choice of profession and employment, right to safe working conditions. (Article 11 CEDAW)
- States may adopt temporary special measures aimed at accelerating de facto equality between men and women, which shall in no way entail as a consequence the maintenance of unequal or separate standards. (Article 4(i) CEDAW)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should elaborate, adopt and implement plans and programmes of economic and social development on an equal and non-discriminatory basis. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 33)
- States should adopt special measures in favour of descent-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to employment. (CERD. (2002). General Recommendation 29, para. 6)
- States should take special measures to promote the employment of members of affected communities in the public and private sectors. (CERD. (2002). General Recommendation 29, para. 36)
- The State party should also adopt measures to enhance Dalits' access to the labour market, e.g. by extending the reservation policy to the private sector. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 23)

### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The State may make 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. (Article 16(4) Constitution of India)
- The State may make provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in the services under the state in favour of the scheduled castes to the extent of the percentage of reservation provided to the scheduled castes in the services of the state. (Article 16(4A) Constitution of India)
- The State shall, within the limits of its economic capacity and development, make effective provision for securing the rights to ... work. (Article 41 Constitution of India)
- The State shall promote with special care the economic interests of particularly the scheduled castes and shall protect them from social injustice and all forms of exploitation. (Article 46 Constitution of India)
- The Ministry of Social Justice and Empowerment deals with affirmative action for SCs, including the issue of reservations in the private sector.
- Employment generation should be focused on different segments of the labour force - organized, unorganized, rural, urban, educated, uneducated, skilled, unskilled, male, female and youth, and employment should be source of livelihood for all. Nevertheless, priority needs to be accorded to the disadvantaged sections of society such as SC/ST/OBC/minorities/women. (Planning Commission. (2011). Report of the Working Group on Employment, Planning and Policy for the Twelfth Five-Year Plan 2012-17. New Delhi: Planning Commission, p.1)

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- With a view to effective implementation of the reservation policy in Ministry/Department/Public Sector enter-



prises, banks and other organisations, it is time that the main principles of reservation are embodied in an Act of Parliament. The Act should not only clearly enunciate the entire reservation policy in specific terms, but also provide for penal action against those who deliberately fail to implement the same. (National Commission for SCs. (2001). Sixth Annual Report 1999-2000 & 2000-01. New Delhi: NCSC)

- The National Commission for Scheduled Castes reiterates the need to bring about suitable provision for extension of reservations in the private sector for SCs. (National Commission for Scheduled Castes. (2005). First Annual Report 2004-2005. New Delhi: NCSC, para. 5.23)

- The Government should lay down a binding clause at the time of disinvestments of public sector enterprises that the new management shall observe and continue the reservation policy for appointment to various posts. The Commission further recommends that the Government should enact legislation to that effect. (National Commission for Scheduled Castes. (2005). First Annual Report 2004-2005. New Delhi: NCSC, para. 6.8.3)

- The Judiciary, Lok Sabha/ Rajya Sabha Secretariat and Armed Forces should also be brought within the purview of reservation for SCs and STs. (NCSC. (2005). First Annual Report 2004-2005, para. 6.19.2)

- The Government should introduce necessary constitutional amendments to enact affirmative action at all levels in the private sector. (Chandrapal. (undated). Action Points for Development of SCs and STs, Planning Commission. Retrieved 04.11.2013 from <<planningcommission.nic.in/plans/stateplan/scp.../82ACTIONPOINTS.doc>>, para. 82)

- Reservation in private undertakings will ensure fair participation of the SCs in industrial employment. In order to bring transparency in the employment pattern, all firms should be asked to register with equal employment office and provide information of social composition of their employees (Chandrapal. Action Points for Development of SCs and STs. Planning Commission, para. 27)

- There is no transparency in the recruitment system practiced in private sectors and candidates are selected on the basis of religion, caste and nepotism. Till reservation in pri-

private sector is legislated, discrimination in the matter of recruitment should be made punishable in the SC/ST (PoA) Act... In the era of liberalization and privatization, limiting employment opportunities in government and public sectors, there is added justification to introduce reservation for SCs and STs in the private sector and also in all the disinvested ventures. (Chandrapal. Action Points for Development of SCs and STs. Planning Commission, para. 28)

## (6) STATUS OF IMPLEMENTATION OF STATE MEASURES

Dalits concentrated in lower level government posts:

- Currently there is a 15% reserved quota for SCs in all government positions.

- As on 01.01.2011, SCs were congregated in the lower classes of central government employment – 23.0% in Class D jobs (mostly sweepers) as compared with 11.5% in Class A jobs. In other words, a strongly skewed hierarchy in government employment exists wherein Dalits continue to congregate at the bottom of government jobs. (Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Prime Minister's Office, Mr V. Narayanasamy. Reply to Lok Sabha Unstarred Question no. 1979, answered on 05.12.2012)

- In 2010, SC representation in government services in the states/UTs presented a similar pattern of high representation in Group D jobs. This was as high as over 30% representation in Group D jobs in states like Punjab and Andhra Pradesh. The highest Group A job representation for SCs was in Uttarakand (23%) and Karnataka (18.6%). (National Commission for SCs. (2012). 'SCs in Services in States/UTs (2010)', Anusuchit Jati Vani 1(1))

- There is no gender disaggregated data available to indicate the representation of SC women in government services in either central or state government posts.

### ***Not all reserved quotas in government posts filled:***

- Despite a special recruitment drive in place since 2008, by March 2012, various government departments and state-run undertakings could fill only 17,898 of the 30,968 identi-



fied vacancies in the promotion quota, indicating a success rate of only 57.8 percent. The situation was nearly similar in direct recruitment at 59.2%, with the various government departments giving jobs to 27,540 SCs, STs and OBCs as against the identified backlog vacancies of 46,552 posts. The collective success rate was only 58.6 percent over the three-and-a-half year period. (Department of Personnel & Training. (2012). Note from the Department of Personnel & Training to the Cabinet, quoted in Ranjan, A. (2012, 14 Dec.). 'No SC, ST, OBC Candidates for 40 pc 'Backlog Vacancies'', The Indian Express)

- At the very top level of government bureaucracy, out of a total of 149 secretary-level officers, there were no SC officers as of March 2011. At the next rung of additional secretary, out of 108 officers, there is just one SC. Further down, out of 477 joint secretaries, 31 were SCs (6.5%), and out of 590 directors, 17 were SCs (2.9%). (Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012)
- In the most sought after civil services, IAS, IPS and IFS, the proportion of SC officers was below the mandated quotas. Out of 3,251 directly recruited IAS officers, SC officers made up only 13.9 percent. (Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012)
- There were 25,037 'backlog' posts for SCs lying vacant in 73 government departments and bodies. These are positions reserved for SC members that have not been filled over the years and thus have accumulated. They include both direct recruitment and promotion-based positions. Out of these, 4,518 positions were vacant because no candidate was available for promotion. (Reply of Minister of State in the Prime Minister's Office, V. Narayanasamy to the Rajya Sabha question no. 3040, answered on 20-11-2012)

### ***Dalits in the Judiciary:***

- As on 2011, there were only 24 judges belonging to SC and ST communities against a total of 850 judges in all 21 High Courts. In 14 out of 21 High Courts, there was not a

single SC/ST judge. Similarly, there was no SC/ST judge in the Supreme Court, where the strength of judges is 31.

- The Bombay and Delhi High Courts have not been following any reservation policy for the last 61 years. Meanwhile, the Madras and Rajasthan High Courts have no reservation for SC/STs in gazetted and promotional posts. (National Commission for SCs. (2011). Reservation in Judiciary. New Delhi: NCSC, p.7)

### ***No reservation policy for the private sector:***

- The reservation policy is confined to a tiny state-run and state-supported sector, whereas the vast private sector where more than 90 per cent of the SC/ST population workers are engaged are excluded. They therefore remain unprotected from exclusion and discrimination.
- Most people assume that such caste-biases play no role in the burgeoning private sector. But the results of a series of studies done by reputed Indian and American academics, using methods originally developed to study racial discrimination in the United States, point to caste biases in the hiring processes of private companies. (Kumar, A. (2011, July). 'Combating Caste Bias in the Private Sector', The Wall Street Journal, India)

Reservations not applicable to Dalit Christians and Dalit Muslims

- Despite no visible change in their social or economic status as a result of conversion, Dalit Christians and Dalit Muslims are deprived of the benefits of reservation, support and development schemes formulated for their counterparts in Hindu, Sikh and Buddhist religions. This amounts to discrimination by the state on the ground of religion. (Mishra, Ranganath. (2007). Report of the National Commission for Religious and Linguistic Minorities. New Delhi: Ministry of Minority Affairs, Government of India, p.142)

## **(7) IMPACT OF MEASURES**

- Due to the reservation policy in government posts, there has been a striking increase in the numbers of SC government employees. In 1960, there were 2,18,000 SC employ-



ees, which increased to 6,41,000 in 1991 and 5,40,000 in 2003. The corresponding increase in the percentage of SC employees to total government employees increased from 12% in 1956 to about 16% in 2003 – fairly proportionate to their percentage share in population. In 2008, SC employees in central government jobs stood at 19.40 percent.

- Similarly, the number of SC employees in public sector undertakings has increased from 40,000 in 1970 to 2,96,000 in 2003. The number of SC employees in nationalised banks also increased from 55,000 in 1978 (10%) to 1,33,000 in 2004 (17%). In public insurance companies the number of SC employees increased from 14,000 in 1993 (14%) to 20,000 (16%) in 2000. (Thorat, S.K. and C. Senapati. (2007). 'Reservation in Employment, Education and Legislature: Status and Emerging Issues', IIDS Working Paper Series 2(5). New Delhi: Indian Institute of Dalit Studies, p.11)

- In practice, though, reservations benefit less than one percent of the Dalit population. (Sinoy, D. 'Courting Substantive Equality: Employment Discrimination Law in India'. Retrieved Nov. 2013 from <<[http://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILW/Jackson%20Louis%20Writing%20Competition/Shenoy\\_EmploymentLawIndia.pdf](http://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILW/Jackson%20Louis%20Writing%20Competition/Shenoy_EmploymentLawIndia.pdf)>>,p.11)

- In the absence of state measures, the process of globalisation has affected Dalit women considerably. With the introduction of new farming techniques, such as mechanisation for harvesting and transplanting, women have lost their traditional work in the agricultural sector. Food crops have been replaced by cash crops. Horticulture has been introduced by big agribusiness corporations for export purposes. This has deprived Dalit women of their land and the common resources in the village. The globalisation process has increased the feminisation of poverty and this has affected Dalit women in every sphere of their lives. There is also large-scale migration from rural areas to the urban centres in search of better livelihood options. Women are left behind to bear responsibility for the family. More and more female-headed households emerge and most of them are headed by Dalit women. Such situations push the women into further situations of impoverishment, making them more and more vulnerable to all forms of discrimination and violations. (Tamil Nadu Women's Forum. (2007). 'Unheard Voices: Dalit Women', Alternative Report to the

CERD Committee. Retrieved Nov. 2013 from <<[http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/Key\\_Issues/Dalit\\_Women/CERD-India\\_unheard\\_voices.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Dalit_Women/CERD-India_unheard_voices.pdf)>>

## **(8) GAPS IN MEASURES**

- Where employment policies and laws are in place, enforcement and implementation are often lacking or unsatisfactory. Affirmative action measures have assisted a small number of Dalits in obtaining formal jobs, but have failed to lead to more even progress in providing equal opportunities to all. Purely developmental approaches to improving the lot of the Dalits are insufficient, if the underlying structural causes and caste barriers are not simultaneously addressed. (ILO Director-General. (2007). Equality at Work: Tackling the Challenges. Geneva: ILO, para. 133)

- Despite special recruitment drives, there continues to be a huge backlog in the recruitments for SC quota posts in government services.
- Reservation, which constitutes the primary means by which the government addresses caste disparities in employment, currently does not extend to the private sector.
- There has been no government discussion, nor the formulation of a comprehensive employment policy for Dalits, which would address their increasing vulnerability under processes of globalisation and market liberalisation. Nor has there been sufficient attention paid to the differential experiences of Dalit women in employment under globalisation processes, in order to formulate a comprehensive policy response.
- Until Dalit Christians and Dalit Muslims are included in the scheduled caste list, via a Constitutional Amendment, they will continue to be denied access to reservations.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- The Dalit Indian Chamber of Commerce and Industry (DICCI) was established in 2005 to promote entrepreneurship among Dalits.



- NACDOR, in collaboration with the Chamber of Indian Industry (CII), has launched a job portal for the disadvantaged sections of society in 2013 to increase the participation of Dalits in the private sector.
- The National Campaign on Human Rights engages in advocacy to promote reservations in the private sector as well as to promote inclusive policies for the corporate sector.
- The Tamil Nadu Dalit Women's Movement, Tamil Nadu highlights issues of globalisation and economic liberalisation policies and their impact on Dalits, and advocates for a more just economic agenda for Dalit women.

### **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- The All India Confederation of SC/ST Organisations, along with many civil society organisations, is running a campaign to demand reservations in the private sector for SCs and STs.
- The Chamber of Indian Industry has developed a Code of Conduct on Affirmative Action, which is being voluntarily followed by a number of Indian companies. The Code relates to non-discrimination, assistance, and transparency with respect to employees/ applicants/ vendors from the SC and ST communities.

### **(11) RECOMMENDATIONS**

- Recognising the discrimination in various market and non-market areas, legal safeguards against caste-based discrimination are required alongside strategies for fair and adequate access to various markets in the form of a comprehensive reservation policy.
- The Indian government must amend the schedule to the Indian Constitution to ensure that Dalit Christians and Dalit Muslims are also extended scheduled caste status and the protective and promotive measures that attach to that status.
- The government must fill all vacant SC reserved posts with suitable SC candidates and, as recommended by the National SC/ST Commission, provide for reservations in

the private sector, which continues to enjoy government patronage in terms of concessional land, financing, and excise and sales tax relief. This policy should apply to multiple spheres, namely private employment, market, private capital market, agricultural land, private education and housing, access to inputs and services, products and consumer-goods.

- The government should develop a policy to increase the share of Dalit employees in share capital of the private and cooperative sector.
- The government should lay down a legally binding clause at the time of disinvestments of public sector enterprises that the new management shall observe and continue the reservation policy for appointment to various posts.
- The private sector banks and financial institutions should be mandated to have a certain proportion in lending and finance to Dalits/Adivasis business.
- The Central Government must enact a comprehensive Act on reservations, extending reservations in those areas of the public sector so far left out of the ambit of the reservation policy, and also covering the private sector.
- Institutions such as CII, FICCI and ASSOCHAM should lead efforts to ensure that the reservation policy is extended to the private sector. (Taken primarily from National SC/ST Commission reports as well as Delhi Declaration of National Summit on Reservation in Private Sector 2005)



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**38. National and local governments, corporations, labour groups and international labour, financial and development organizations should collaborate to ensure concrete mechanisms for the prevention, identification and eradication of exploitative labour arrangements and the implementation of rehabilitation schemes for forced, bonded and child labourers with special attention to affected communities.**

# 38

## FORCED, BONDED AND CHILD LABOUR

Despite being prohibited under the law, slave-like working conditions remain widespread in India. Those who are bonded, forced and child labourers – unfree labourers – are predominantly from Dalit and Adivasi communities. Dalits are particularly vulnerable to such exploitative labour relationships because of their low socio-economic status and because this labour is also conjoined with caste in the form of caste-based occupations. There has been some change in the nature and incidence of unfree labour in India as a result of various factors, including the impact of social change and social movements, economic modernisation and State interventions. While these processes have impacted positively on labour conditions in traditional agriculture and in some other sectors, the incidence of unfree labour still remains high in segments of unorganised industry, the informal sector and in the relatively modern segments of agriculture.

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

National and state governments, in collaboration with corporations, labour groups and international labour, financial and development organisations, should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination for Dalits in respect of:

- prevention, identification and eradication of exploitative labour arrangements: to be entitled to strict implementation of labour laws; to have a national survey providing up-to-date disaggregated data on the numbers of bonded, forced and child labourers; to have laws in place to regulate the unorganised sector; to have strong monitoring mechanisms for the labour sector to ensure basic rights; to have



time bound action plans in place to eradicate all unfree labour.

- rehabilitation schemes for forced, bonded and child labourers: to be entitled to full and fair rehabilitation from unfree labour; to have adequate budgets set aside for such rehabilitation schemes; to have a specific focus in all rehabilitation schemes on scheduled caste labourers.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- States undertake to bring about, progressively and as soon as possible, the complete abolition of slavery – i.e. the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised – in all its forms. (Articles 1-2 Slavery Convention 1926)
- Forced labour refers to all work or service which is exacted from any person involuntarily under the menace of any penalty. Illegal extraction of forced or compulsory labour should be a punishable offence incurring legal penalties that are adequate and strictly enforced. (Articles 1-2 ILO Forced Labour Convention 1930 (No. 29))
- States undertake to secure the immediate and complete abolition of forced or compulsory labour used as a means of... labour discipline... and as a means of racial, social, national or religious discrimination. (Articles 1-2 ILO Abolition of Forced Labour Convention 1957 (No. 105))
- States parties should take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, which include forced and compulsory labour. (Articles 1 & 3 ILO Worst Forms of Child Labour Convention 1999 (No. 182))
- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. (Article 4 UDHR)
- States parties commit to abolish and abandon debt bondage, serfdom, servile marriage and child servitude. (Article 1 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956)

- The right to work includes the right of everyone to the opportunity to gain her/his living by work which s/he freely chooses or accepts, under decent conditions. (Articles 5-8 ICESCR)

- “Enslavement” is a crime against humanity that falls under the jurisdiction of the International Criminal Court. (Article 7(c)(2) Rome Statute of the International Criminal Court)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should take measures to address the special vulnerability of children of descent-based communities to exploitative child labour. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para 42)
- States should take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination (CERD. (2002). General Recommendation 29, para. 43)
- The Indian State should protect Dalits against exploitative labour arrangements by ensuring the effective implementation of the Minimum Wages Act (1948), the Equal Remuneration Act (1976), the Bonded Labour (System) Abolition Act (1976), the Child Labour (Prohibition and Regulation) Act (1986) and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act (1993). The State should also adopt measures to enhance Dalits’ access to the labour market. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 23)
- The Indian State should ensure the right to decent work and provide sufficient resources to the labour inspectorate to enable regular, independent inspections of health and safety conditions in all sectors. Violations concerning prohibited labour practices, such as bonded labour, manual scavenging and the worst forms of child labour must be stringently prosecuted and employers duly sanctioned. Measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, should be strengthened and significantly expanded to cover all children engaged in the worst



forms of child labour. (CESCR. (2008). Concluding Observations on India report. UN Doc. E/C.12/IND/CO/5, para. 59)

#### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

##### **Legal Entitlements & Offences:**

- Traffic in human beings, begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (Article 23 Constitution of India)
- All citizens, men and women equally, have the right to an adequate means of livelihood; equal pay for equal work for both men and women and that the health and strength of workers, men and women, and the tender age of children are not abused. (Article 39 Constitution of India)
- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, work and a living wage, and conditions of work ensuring a decent standard of life. (Article 43 Constitution of India)
- Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both. (sec. 374 Indian Penal Code)
- Any non-SC/ST person who compels or entices a scheduled caste person to do begar or other similar forms of forced or bonded labour, commits an offence. (sec. 3(i)(vi) SC/ST (PoA) Act)
- The Bonded Labour System (Abolition) Act 1976 criminalises the compulsion of anyone to engage in bonded labour (i.e. forced or partly forced labour under debt bondage or in pursuance of customary or social obligation, or by reason of birth in any particular caste), abolishes all debt agreements arising out of bonded labour, prohibits the creation of new bondage agreements, and obliges the state to ensure the economic rehabilitation of freed bonded labourers.
- The Child Labour (Prohibition and Regulation) Act 1986 prohibits the engagement of children under the age of 14

years in certain hazardous employment and regulates the conditions of work of children in certain other employment. The list of hazardous occupations and processes is progressively being expanded by the Child Labour Technical Advisory Committee constituted under the Act.

##### **Monitoring and Enforcement Actors:**

- District Magistrates/Collectors are responsible for the enforcement of the Bonded Labour System (Abolition) Act. They should identify all cases of bonded labour occurring in their district, free the labourers, and initiate prosecution under the Act. They should also make sure available credit sources are in place so that freed labourers will not be forced into bondage again. (sec. 11 & 12 Bonded Labour System (Abolition) Act)
- Each District Magistrate/Collector should constitute a district-level Vigilance Committee to: (a) advise on the action taken to ensure that the provisions of the Bonded Labour (Abolition) Act are properly implemented; (b) provide for the economic and social rehabilitation of freed bonded labourers; (c) coordinate the functions of rural banks and cooperative societies with a view to channelising adequate credit to freed bonded labourers; (d) monitor the number of offences under the Act; (e) make a survey as to whether any bonded labour exists in the district; (f) defend any suit instituted against a freed bonded labourer or family member for the recovery of any bonded debt. (sec. 13 Bonded Labour System (Abolition) Act)
- A Special Group, chaired by the Secretary, Labour and Employment, has been constituted to review and monitor the implementation of the Bonded Labour System (Abolition) Act. The Group holds periodic region-wise meetings to impress upon state/UT government to effectively implement the Act.
- The Supreme Court, in its order dated 11.11.1997 on writ petition No.3922/85, has requested the National Human Rights Commission (NHRC) to be involved in dealing with bonded labour. The NHRC has therefore constituted a Central Action Group, which holds regular meetings/ sensitisation workshops at various places in collaboration with the Ministry of Labour and Employment, and pursues the matter with the state/UT governments. (Ministry of La-



bour. Schemes – Bonded Labour. Retrieved 08.11.2013 from <<<http://labour.nic.in/content/dglw/Schemes/BondedLabour.html>>>

- A Child Labour Technical Advisory Committee advises the central government on the addition of occupations in the Schedule to the Child Labour Abolition Act.

Rehabilitation of Bonded and Child Labourers:

- In order to assist state governments for the physical and psychological rehabilitation of released bonded labourers, the Ministry of Labour launched a scheme in 1978, funded on a 50:50 basis, for the rehabilitation of bonded labourers. The rehabilitation assistance is Rs. 20,000/- per freed bonded labourer. The scheme also provides for financial assistance to the state governments/UTs for conducting a survey of bonded labourers, awareness generation activities and impact evaluation. Detailed guidelines have been issued to state/UT governments for implementing the rehabilitation scheme, including to integrate/dovetail the scheme with other ongoing poverty alleviation schemes, Special Component Plan for Scheduled Castes, etc. so as to pool resources for meaningful rehabilitation of freed bonded labourers. (National Human Rights Commission. (undated). Know Your Rights Series: Bonded Labour. New Delhi: NHRC, pp. 8 & 9)
- The National Policy on Child Labour 1987 seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and processes in the first instance. The Policy's Action Plan for tackling this problem includes the convergence of general welfare schemes and development programmes for benefiting children wherever possible. For this, a Core Group has been constituted to ensure that the families of child labourers are given priority, and that projects for the welfare of working children are launched in areas of high child labour concentration. (Ministry of Labour and Employment. 'Child Labour Policies'. Retrieved Nov. 2013 from <<<http://labour.nic.in/content/division/labour-policies.php>>>)
- Child labourers engaged in hazardous occupations are to be rehabilitated through the National Child Labour Projects (NCLP) formulated by the Ministry of Labour and

Employment. Guidelines for operationalising NCLPs aim at the withdrawal of children from hazardous occupations, putting them in special schools in order to enable them to join mainstream education or take up any vocation after attaining the age of 14 years. (Comptroller and Auditor General. (2004). Audit Report (Civil) for the year ended 31 March 2004, Chapter III. New Delhi: CAG)

### **Convergence Based approach to Prevention of Bonded Labour:**

- The Central Government, along with the ILO and NHRC, is working on evolving convergence related projects with state/UT governments to prevent bondage by reducing vulnerability to bondage through the promotion of decent work. This approach was piloted in two districts of Tamil Nadu, and is now being replicated in Andhra Pradesh, Orissa and Haryana, with interest being shown from other states as well. This approach centres around enhancing social protection for the identified target group by strengthening access to government schemes, strengthening the capacities of stakeholders to improve living conditions and workplace facilities, and improving recruitment practices and working conditions through social dialogue. (Ministry of Labour. Schemes–Bonded Labour. Retrieved 08.11.2013 from <<<http://labour.nic.in/content/dglw/Schemes/BondedLabour.html>>>)

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- The Supreme Court and the NHRC should devise means to hold the Chief Ministers of the States responsible for the implementation of the Bonded Labour Act and in carrying forward the mandate of the Supreme Court in this regard. One way of doing it is to compel the Chief Ministers, rather than the Chief Secretaries, to file affidavits of compliance on the implementation of the Supreme Court's mandate issued to the states in this regard. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour set up by the National Human Rights Commission. New Delhi: NHRC, p.13)



- The provisions of SC/ST (Prevention of Atrocities) Act 1989, wherever the victims of bonded labour system are SCs/STs, should be stringently applied. (National Human Rights Commission. (2007). Guidelines delivered at National Workshop on Elimination of Bonded Labour System and Child Labour, 27 June 2007. Retrieved 11.11.2013 from <<[http://www.nhrc.nic.in/documents/LibDoc/Bonded\\_Labour\\_E\\_i.pdf](http://www.nhrc.nic.in/documents/LibDoc/Bonded_Labour_E_i.pdf)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### **Majority of bonded and child labourers are Dalits:**

- The inadequate implementation of bonded labour laws can be seen in the continuing prevalence of the practice. According to the Ministry of Labour, a high proportion of the bonded labourers are SCs (61.5%) and STs (25.1%). SCs/STs constitute a major share among the bonded labourers because, being a socially relegated group with no physical and human assets, they are often trapped by the debt burden and taken as bonded labourers. They have no means to redeem their situation and are subject to exploitation by the higher castes. Most are found in agriculture, brick kilns, domestic work, and also in industries like power looms, handlooms, rice mills, sericulture and silk weaving, woollen carpets, fish processing, and construction. (National Commission for Enterprises in the Unorganised Sector. (2007). Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector. New Delhi: NCEUS, pp.105-06)
- By the end of 2009-10, bonded labourers numbered 50,792 in the state of Odisha, of which 13,904 were SCs. Of this total, 9,013 bonded labourers were released and 47,056, including 13,121 SCs, were rehabilitated in various economic activities. Rs. 18.26 crore was spent for these activities. (Planning and Coordination Department. (2011). Economic Survey 2010-11. Bhubaneswar: Government of Odisha, p.18)
- Around 83% of rehabilitated bonded labourers belong to SC (39.9%) and ST (43.6%) communities. The proportion of those belonging to the SC community to the total rehabilitated bonded labourers varied from 61.3% in Uttar Pradesh to 15.6% in Rajasthan. (SEEDS. (undated). Study of Bonded Labour Rehabilitation Scheme under Centrally

sponsored Bonded Labour System (Abolition) Act, 1976 in the States of Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. New Delhi: Planning Commission, p.17)

- The incidence of child labour and out-of-school children was also clearly associated with the socio-religious status of the household. Hindu SCs stood third after STs and Muslims in terms of child labour in 2004-05. (National Commission for Enterprises in the Unorganised Sector. (2007). Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, p.102)

### **Low conviction rates under the laws:**

- The NHRC has found that “the prosecution of offenders under the bonded labour system has, in fact, been neglected in every state reviewed.” In its 2004-05 report, it cited cases in Uttar Pradesh where “prosecution aspects remain totally neglected” and in Madhya Pradesh where prosecution powers were only being used “reluctantly”. It stressed the need for the prosecution of offending employers.
- The 2008 Committee of Experts report describes the prosecution process under the 1976 Bonded Labour Abolition Act as having “serious and ongoing deficiencies”. The Government of India reported to the ILO Conference Committee in 2008 that, since 1976, there have been 5,893 prosecutions initiated and convictions obtained in only 1,289 cases. (Anti-Slavery International. (2008). Information on India’s Compliance with ILO Convention No.29 on Forced Labour. London: Anti-Slavery International, p.7)
- Despite the legal prohibitions in place, including the 1993 Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, the 1976 Bonded Labour System (Abolition) Act and the 1986 Child Labour (Prohibition and Regulation) Act, the prevalence of bonded labour, the worst forms of child labour and other exploitative labour conditions remains in India. There is insufficient enforcement of existing labour legislation at the federal and the state levels, as well as the lack of awareness among employers on the existing rules and standards. (CESCR. (2008). Concluding Observations on India report. UN Doc. E/C.12/IND/CO/5, para. 19)



### **No Data provided on sentences despite acknowledging low convictions:**

- The Indian Government does not provide statistics on the sentences passed in bonded labour cases, without which it is impossible to assess whether the legal penalties are really adequate and are strictly enforced. The government itself acknowledges that the number of prosecutions is low and says this could be explained in part by the existence of informal village-level systems of dispute resolution. This system is biased against bonded labourers as these bodies are often dominated by 'high' caste landowning community members. The weaker social status of bonded labourers means the agreements reached rarely benefit them. Reports are common of bonded labourers being summoned and made to approve a written statement that they were never bonded, there is no dispute with their employer and agree that the accounts are now settled. (Anti-Slavery International. (2008). Information on India's Compliance with ILO Convention No.29 on Forced Labour. London: Anti-Slavery International, p.8)

Little financial assistance for conducting surveys to identify bonded labourers:

- Under the Centrally Sponsored Plan Scheme for the Rehabilitation of Bonded Labour, the government should provide financial assistance to state/UT governments to conduct surveys for the identification of bonded labour. During 2009-10, financial assistance was provided only to Madhya Pradesh and Sikkim. During 2010-11, no financial assistance given to any of the states and during 2011-12 financial assistance was given only to Karnataka, Uttar Pradesh and Andhra Pradesh. (Statement referred to in reply to Lok Sabha Unstarred Question No.2268 for 11.03.2013 by Meneka Gandhi, Pulin Bihari Baske, S.R. Jeyadurai, D.B.Chandre Gowda and Mausam Noor regarding bonded labour. Retrieved 08.11.2013 from <<<http://labour.nic.in/upload/uploadfiles/files/Divisions/Parliament/lu2268%282%29.pdf>>>)

### **Central Assistance for rehabilitation of bonded labourers:**

- The Central Assistance released to the state governments for the rehabilitation of bonded labourers in 2009-10 was

Rs. 34.33 lakhs, in 2010-11 was Rs. 89.95 lakhs and in 2011-12 was Rs. 472.99 lakhs. The question remains if these amounts are adequate, given the large number of bonded labourers remaining in the country today. (Statement referred to in reply to Lok Sabha Unstarred Question No.2268 for 11.03.2013 by Meneka Gandhi, Pulin Bihari Baske, S.R. Jeyadurai, D.B. Chandre Gowda and Mausam Noor regarding bonded labour. Retrieved 08.11.2013 from <<<http://labour.nic.in/upload/uploadfiles/files/Divisions/Parliament/lu2268%282%29.pdf>>>)

- The NHRC quoted the Secretary, Ministry of Labour and Employment as stating on 28 June 2007 that "no data on the freed bonded labour is available and how their rehabilitation has taken place is still a question." Where bonded labourers are rehabilitated, they do not always receive the full rehabilitation amount. In many cases women, who are bonded alongside their husbands, are not included in lists of released bonded labourers and thus do not receive any rehabilitation.

- There have been reports of corruption in the issuing of rehabilitation packages, where bonded labourers have had to pay large bribes. Field research in Orissa and Chhattisgarh found cases in which released bonded labourers were forced to pay a bribe of between Rs.500 -700 in order to get the rehabilitation package. Even when the bribe was paid, it took three to six months to receive the assistance. In other cases, the time between release and rehabilitation has been one year. (Srivastava, R.S. (2005). 'Bonded Labour in India: Incidence and its Pattern', Working Paper. Geneva: International Labour Office, pp. 8-9)

### **Governments denying the existence of Bonded Labour:**

- In Punjab, where the state government has till recently denied the existence of bonded labour, the NHRC has been pursuing complaints regarding bonded labour and has upheld these complaints in a few cases. The NGO Volunteers for Social Justice (VSJ) has filed over 2,000 cases on behalf of both local and migrant bonded labourers released from agriculture, brick kilns and other sectors mainly in Punjab. A majority of the cases referred to SC bonded labourers (59% of complaints made to the NHRC pertained to SCs). Between 1998 and 2004, the VSJ was able to secure



the release of 1,832 bonded labourers through the intervention of the commissions, courts and district administration, but rehabilitation took place in only four cases. (Srivastava, R.S. (2005). 'Bonded Labour in India: Incidence and its Pattern', Working Paper. Geneva: International Labour Office, p. 7)

- 'Lower' caste women often suffer double and triple discrimination because of their caste, class and gender. They are discriminated against through the payment of unequal wages, or work in slave-like conditions in bonded labour. (Special Rapporteur on Violence against Women. (2002). Integration of the Human Rights of Women and the Gender Perspective: Violence against Women. UN Doc. E/CN.4/2002/83, para. 53)

### **Dalit Children in Bondage:**

- In 2003, Human Rights Watch released a study on bonded child labour in the silk industry. In Kanchipuram district, Tamil Nadu, some 40,000-50,000 children work in bondage. Most are Dalits or 'low' caste. (International Trade Union Confederation. (2007). Internationally recognised core labour standards in India: Report for the WTO General Council Review of the Trade Policies of India. Geneva: ITUC)

- Dalit children are forced into bonded labour by dominant castes all over India, as per a study conducted by the Campaign against Child Labour among 111 bonded labourers in Tamil Nadu. Dalit children were treated like slaves. Some owner or businessman forced them to work for a 20 hours a day and provided a spoiled or poor quality food just to keep them alive. (Pratiksha. (2013, 17 June). 'Dalit children forced into bonded labour'. Retrieved Nov. 2013 from <<[www.newsrepublic.in/2013/06/17/dalit-children-forced-int-o-bonded-labour/](http://www.newsrepublic.in/2013/06/17/dalit-children-forced-int-o-bonded-labour/)>>)

- Hybrid cottonseed production is highly labour intensive and children, particularly girls, are engaged in most of its operations. Children are employed on a long-term contract basis through advances and loans extended to their parents by local seed producers, who have agreements with the large national and multinational seed companies. Children are made to work long hours and are paid less than market and official minimum wages. They are also exposed to the

poisonous pesticides. Most of the children working in cottonseed farms belong to poor SC, ST and backward caste families. (Venkateswarlu, D. (2010). Seeds of Child Labour – Sign of Hope. Retrieved Nov. 2013 from <<<http://www.indianet.nl/pdf/signsofhope.pdf>>>)

## **(7) IMPACT OF MEASURES**

- Many Dalits are still engaged in occupations of cleaning, landless labouring and leather work, as well as in the most exploitative forms of labour such as agriculture, manual scavenging and sewerage work. Landless labourers work all across India for just some rice or wages far below the minimum wage. Dalit women are paid even less. Many of these workers end up in bonded labour after taking up loans. However, offences against Dalits are not dealt with adequately and the majority end in acquittals. Exploitation of labour is at the very heart of the caste system. Dalits also comprise the majority of agricultural, bonded and child labourers in the country. Dalit women in India suffer from deeply rooted structural discrimination, including forced prostitution. (Human Rights Watch & Centre for Human Rights and Global Justice. (2007). Hidden Apartheid: Caste Discrimination against India's "Untouchables". New York: HRW & CHRGI)

## **(8) GAPS IN MEASURES**

- Lack of data on Bonded Labour: There has been no country-wide survey to enable an authentic assessment of the magnitude of the problem, and to specifically know how many SC women and men are caught in bondage. Besides a national survey to be undertaken by the Ministry of Labour or National Sample Survey Organisation, there is a strong case for state-specific surveys in view of the regional peculiarities of the problem. This should include data on the rehabilitation of freed labourers. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour set up by National Human Rights Commission. New Delhi: NHRC, p. 4)

- Failure of Government to enforce Legal Provisions: The failure of state/UT governments to enforce the provisions of the Inter-State Migrant Workmen (Regulation of Em-



ployment and Conditions of Service) Act 1979, the Contract Labour (Regulation and Abolition) Act 1970 and the Minimum Wages Act 1948 is the most important causal factor of bondage of migrant workers. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour set up by National Human Rights Commission. New Delhi: NHRC, p. 5)

- Long time gap between identification and release of bonded labourers: In most cases there is a long time lag between the identification and the release of bonded labourers, with adverse effect on the prosecution of the offenders. Release is found to be incomplete and a mere paper formality in many cases, as it is confined to the physical freedom of the victim without ensuring her/his freedom from debt and further exploitation. It has been noticed in several cases that even after the bonded labourer has been identified and released, s/he has not been issued the release certificate. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour set up by the National Human Rights Commission. New Delhi: NHRC, p. 7)

- Often women left out of rehabilitation packages: In many cases women who are bonded alongside their husbands are not included in lists of released bonded labourers and thus do not receive any rehabilitation package. (Srivastava, R.S. (2005). 'Bonded Labour in India: Incidence and its Pattern', Working Paper. Geneva: International Labour Office, p. 8)

- Lack of clarity among the government functionaries: The field level functionaries and even their supervisors in the Departments responsible for bonded labour are found generally lacking in clarity about the definitional aspects of bonded labour work, despite the clarifications issued by the Supreme Court. Efforts to identify fresh cases of bondage and monitor the conditions of released labourers and detect cases of relapse have been lacking in almost all the states/UTs. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour, pp. 6-7)

- Lack of response by government functionaries to the complaints: The authorities are found lacking in their response to the complaints of bonded labour brought to their notice. Instead of acting promptly on such complaints and effecting the identification and release of the bonded la-

bourers, they are even found helping the keepers of bonded labourers in arranging the dispersal and disappearance of bonded labourers after hurriedly settling their accounts. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour, p. 7)

- Prosecution of the culprits not initiated: As per the Bonded Labour Abolition Act, bonded labourers should be swiftly rehabilitated irrespective of the fact that the person who held them in bondage – the 'master' – has been charged or not with the offence. However, often cases are not being initiated against these masters citing that if the case is registered, the released bonded labour cannot be rehabilitated until the case is settled, which may take years. This happens because masters are generally rich and influential people and enjoy political backing. Hence, there is hardly any co-relationship between the number of bonded labourers released and rehabilitated and the few cases registered against the masters. (SEEDS. (undated). Study of Bonded Labour Rehabilitation Scheme under Centrally sponsored Bonded Labour System (Abolition) Act 1976. New Delhi: Planning Commission, p.4)

- The NHRC investigated and found that the district bonded labour vigilance committees "were non-existent or defunct and, where they had been revived, they were not doing work." (Human Rights Watch. (2003). Small Change: Bonded Child Labour in India's Silk Industry. New York: Human Rights Watch, p.47)

- There are state, district and tehsil-level Vigilance and Monitoring Committees for bonded labour and meetings more or less take place regularly, but it appears that the decisions taken at these meetings are not taken seriously in some states. (SEEDS. (undated). Study of Bonded Labour Rehabilitation Scheme under Centrally Sponsored Bonded Labour System (Abolition) Act, p.5)

- Delay in the release of funds for rehabilitation: The centrally sponsored Bonded Labour Rehabilitation Scheme depends on the release of the matching share (50%) by the state/UT governments, which is either not done or done late and done inadequately. Delay in submission of the utilisation certificates by the District Magistrates to state/UT governments and by the latter to the central government is also a common cause of slow progress in the release of finances under the CSS, which adversely affects the rehabili-



tation of bonded labourers. (Expert Group on Bonded Labour. (2001). Report of the Expert Group on Bonded Labour, pp. 9-10)

- No coverage of domestic workers: The Child Labour (Prohibition and Regulation) Act does not include domestic workers, many of whom are Dalit children who work in inhuman conditions.

- Gaps in implementation of Child Labour Abolition Act: The Act does not envisage the complete elimination of child labour, does not cover all children aged up to 18 years, and many employers escape penal provisions under the guise of children engaging in family activities. The implementation of the Act is inadequate and ineffective. In Andhra Pradesh, there has been no systematic survey of child labourers and no annual action plan drawn up for the rehabilitation of child labourers. Instead of rehabilitation, all out-of-school children are treated alike for enrolment in the special schools for ex-child labourers. Rehabilitation of children under the National Child Labour Project (NCLP) is mismanaged. Monitoring at the state level is absent. (Auditor General Andhra Pradesh. Audit Report (Civil) for the year ended 31 March 2004, Chapter III. Hyderabad: AGAP)

- The NHRC has found that, at least in Andhra Pradesh, the government has not made credible efforts to ensure exemplary punishment of employers who use child labour. This lack of accountability results from the fact that dominant caste community members dominate local political bodies, the police and the judiciary, bonded labor vigilance committees, and child labour committees responsible for enforcing relevant laws. Apathy and corruption also contribute to a denial of the problem by many government officials. In some cases, the violations against Dalit children result from gaps in the law. For example, Dalit children are forced to work in industries considered 'polluting', such as the leather industry, which is outside the Act because the Act does not cover home-based work or consider the leather industry hazardous. (Human Rights Watch & Centre for Human Rights and Global Justice. (2007). Hidden Apartheid: Caste Discrimination against India's "Untouchables". New York: HRW & CHRJ, p.89)

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Volunteers for Social Justice, a Dalit organization in Punjab, highlights the nature of bondage among local agricultural and brick kiln labourers, mostly drawn from the Dalit castes. The organisation has filed over 2,000 cases on behalf of both local and migrant bonded labourers released from agriculture, brick kilns and other sectors mainly in Punjab, and pushed for their rehabilitation.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Vimukti Trust (VT) works towards the eradication of bonded labour in Karnataka. The Trust also addresses several other rights that have a direct relevance to the life of bonded labourers, such as the rights to minimum and equal wages, work, social security and social welfare, education, health, shelter, food and drinking water. As a strategy for effective community mobilisation, all the activists recruited by VT are from Dalit communities. These activists are capacitated to form and register their own societies, while informal groups of Dalit youth have also been promoted. These groups have joined together since 2006 into the movement called Jeevika.

- Following the lead of Vimukti Trust/Jeevika to organise a National Consultation on Bonded Labour in 2007, a National Alliance on Bonded Labour (NABoL) has been promoted to bring together various organisations and movements working on bonded labour.

## **(11) KEY RECOMMENDATIONS**

- An immediate investigation should be launched into the enforcement of the Bonded Labour System (Abolition) Act, Child Labour (Prohibition and Regulation) Act and other relevant laws. Such an investigation should address whether authorities have failed to enforce the Acts. If found to have ignored the laws or behaved negligently, those authorities should be appropriately disciplined.

- The Central Government should take time-bound, adequate steps to enforce the various labour laws, such as



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those relating to bonded labour system, minimum wages, equal remuneration, child labour and inter-state migrant labour, which have a bearing on forced, bonded and child labour prevalent among Dalits. In particular, the government should ensure the effective implementation the bonded/forced labour related provisions of the SC/ST (PoA) Act.

- The performance of various laws related to the labour laws should also be intensively monitored at the central, state and district levels. The Ministry of Social Justice and Empowerment should associate itself with such monitoring at the central level, if it is already being done by Ministry of Labour, particularly in respect of atrocity-prone states. State Secretaries in charge of SC welfare should do likewise in respect of atrocity-prone districts/areas in their respective states.
- State/UT governments should ensure that all states and districts not only establish bonded labour vigilance committees, but also oversee these committees to ensure that they function according to the law and have a sufficient number of qualified investigators to guarantee the implementation of the law.
- The identification of bonded, forced and child labourers, their release and rehabilitation should be allotted high priority in the duties assigned to the District Magistrates/Collectors.
- State/UT governments should identify endemic areas that supply child labour from SC families as priority areas for measures to eradicate child and bonded labour. These areas are also likely to have a high incidence of bonded labour, low wage labour and would also be pushing a large number of unorganised labourers into migration outside the state. As these features are linked to high levels of poverty and exploitation, these areas are most likely to be prone to higher incidence of violence against SCs as well.
- The Ministry of Labour, in consultation with the Ministry of Social Justice and Empowerment, should sponsor a study on the state-wise status profile of released and rehabilitated bonded and child labourers and those released but not rehabilitated within a specified time frame so that the rehabilitation of bonded/child labourers released earlier, but not yet been assisted, and those who have relapsed into

bondage due to unsatisfactory rehabilitation efforts may be taken up on priority.



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**Guideline 39. National and local governments should take all necessary measures to ensure the highest attainable standard of physical and mental health, equal access to healthcare and a safe health environment for members of affected communities. Governments should pay special attention to child malnutrition and high maternal mortality rates in affected communities.**

39

HEALTH

Dalits consistently enjoy lower physical health levels than the general Indian population, while no disaggregated data is available to show their representation in terms of those affected by mental health issues. Dalit women and children are especially vulnerable to disease and infection due to their relative lack of health education as compared to men, and the dangers of pregnancy/childbirth and early life malnutrition. Despite this, healthcare centres are often not placed near Dalit localities and there is an urgent need to improve the quality of healthcare delivery services, especially in rural areas where many Dalits reside. Aside from issues of poverty that preclude access to healthcare or poor living conditions that contribute to ill-health, caste identity is still an important determinant in accessing health care services and anganwadi (crèche) services for this community.

#### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should take specific (i) legal, (ii) policy, (iii) programmatic, and (iv) budgetary measures to ensure equal access, non-discrimination, freedom to exercise right, and security of life for Dalits in respect of:

- Equal rights to access the highest attainable standard of physical health: to be entitled to affordable healthcare located at a reasonable distance; to be guaranteed access to a safe health environment; to freely access health institutions without discrimination; to receive health education and information, including on sexual and reproductive health; to have special attention paid to adequate healthcare for pregnant Dalit women and to raising Dalit children's nutritional status.



- Equal rights to access the highest attainable standard of mental health: to be entitled to affordable treatment for mental illness; to have access to adequate psychological aid; to be able to freely access mental health institutions; to be treated equal to other caste patients and provided with quality care by mental healthcare professionals; to be provided with mental health education.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to the highest attainable standard of physical and mental health, paying particular attention to child development, environmental safety, disease control, and effective medical delivery systems. (Article 12 ICESCR)
- States Parties shall prohibit and eliminate racial (caste) discrimination and guarantee the right of everyone, without discrimination, to public health and medical care. (Article 5(e)(iv) ICERD)
- Women have the right to equal access of health care, including family planning and maternal care services. (Article 12 CEDAW)
- Children have the right to the highest possible standard of health and to access to health facilities. Furthermore, every child has the right to a standard of living conducive to physical, mental, spiritual, moral and social development. (Articles 24 & 27 CRC)
- WHO conference participants should advocate for health based on human rights, invest in sustainable health policies, partner with non-governmental and international organisations, build capacity for health policy development, and enable equal opportunity for health for all people. (Bangkok Charter 2005)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should ensure equal access to healthcare for members of descent-based communities, and should involve these communities in designing and implementing health

programmes and projects. (CERD. (2002). General Recommendation XXIX on Descent Based Discrimination, paras 40 & 41)

- The Indian government should also ensure equal access to adequate health care facilities, reproductive health services, and safe drinking water for scheduled castes and increase the number of doctors and of functioning and properly equipped primary health centres and health sub-centres in rural areas. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, paras 13 & 24)
- The Indian government should introduce affirmative action programmes in such areas as health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress. (CEDAW. (2000). Concluding Observations on India Report. UN Doc. A/55/38, para. 75)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Legal rights and offences:***

- No Indian citizen shall, on grounds of caste, be subject to any disability, liability, restriction or condition with regard to the use of places of public resort – which includes state-run hospitals and clinics – maintain wholly or partly out of state funds or dedicated to the use of general public. (Article 15(2) Indian Constitution)
- The Supreme Court has widely interpreted the right to life under Article 21 Indian Constitution to include the right to live with dignity, requiring access to adequate health and nutrition (*Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and Others* (1981) 2 SCR 516), and to a healthy and sustainable environment (*M.C. Mehta vs Union of India* (1987) 1 SCC 395; *Consumer Education and Research vs Union of India* (1995) 3 SCC 42).
- In 2008, the Madhya Pradesh High Court ruled that it is the fundamental right of every woman to survive pregnancy and childbirth and ordered swift implementation of the National Rural Health Mission, including the strengthening of the state's health infrastructure. (*Sandesh Bansal v. Union of India* (PIL) W.P. 9061/2008)



- The Mental Health Act 1987 created national and state level mental health authorities, and outlined a more humane approach to the treatment of mental illness, including the protection of human rights for mentally ill persons. However, no provisions are made for ensuring equal access and treatment for mental health.

- The Indian government will endeavour to raise the level of nutrition and standard of living and to improve public health. (Article 47 Indian Constitution)

#### ***Budgetary outlays and separate health funds for SCs:***

- The National Health Policy 2002 makes a commitment to increasing health expenditures. In terms of making health care access more equitable, section 4.2.1 recommends increasing “the sectoral outlay of the primary health sector.” However, the Indian government continues to spend less than 3% of GDP on health care provisioning, far less than most countries.

- The Scheduled Caste Sub-Plan seeks to improve the living conditions of scheduled castes through provision of drinking water supply ... establishment of such services as health centres,... nutrition centres,... to improve their access to social, educational and other community services. (Planning Commission. (2006). Scheduled Caste Sub Plan: Guidelines for Implementation. New Delhi: Planning Commission, p.16)

#### ***Accessibility of healthcare services:***

- The National Health Policy 2002 acknowledges the disparities between advantaged members of society and disadvantaged ones in accessing and garnering benefits from the public health system, and pledges to improve access and benefits to these vulnerable members. (sections 2.2.2 & 2.2.3)

- The National Rural Health Mission, established in 2005, sets out to provide affordable and accessible health care to the poor in rural areas via improvement in health infrastructure and management systems and involvement of panchayats in controlling local health care facilities. No spe-

cific mention is made about ensuring healthcare for scheduled castes.

- The Rashtriya Arogya Nidhi programme was established in 1997 to give monetary assistance to BPL patients, many of whom are Dalits, suffering from life-threatening diseases and needing medical treatment.

#### ***Maternal healthcare and child nutrition:***

- The National Policy for the Empowerment of Women 2001, under section 6.2, demands equal access for women to healthcare, with a special emphasis on implementing measures that address “the reproductive rights of women to enable them to exercise informed choices, their vulnerability to sexual and health problems together with endemic, infectious and communicable diseases as well as hypertension and cardio-pulmonary diseases.”

- The National Family Welfare Programme, launched in 1951, is a centrally-sponsored scheme aiming to reduce the birth rate and stabilise Indian population growth via programmes aimed at improving maternal and child health, and extending awareness on and access to contraception.

- The National Maternity Benefit Scheme was created in 1995 to provide Rs. 500 cash assistance to BPL pregnant women to be used for pre- and post-natal care services.

- The Reproductive and Child Health Programme, established in 1997, aims to provide primary healthcare services to women in the reproductive age group and to young children, with a special focus on family planning and immunisation. Strategies include giving importance to disadvantaged areas by improving the infrastructure of family welfare services.

- The Janani Suraksha Yojana scheme, launched in 2003, aims to reduce maternal and infant mortality rates and to increase institutional deliveries in BPL families. BPL pregnant women are given Rs. 500 per live birth for up to two children, with additional cash incentives to deliver in a medical facility.

- The National Policy for Children 2013 has a focus on the rights of children to equitable access to healthcare and adequate nutrition. This includes through affirmative action



measures safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those who are marginalised or disadvantaged; and to ensure that all children have equal opportunities.

- The Department of Women and Child Development initiated the National Plan of Action for Children in 2005 to ensure environments conducive to the growth, development, and protection of all children. The goals of the Plan pertain to a decrease in infant and maternal mortality, an improvement in nutrition for women and children, and the promotion of sanitation and safe water supplies. No specific mention is made of SC women and children.
- The Integrated Child Development Service started in 1975 the anganwadi programme to care for new-born babies and to ensure the vaccination of all children under 6 years of age.
- The Ministry of Health and Family Welfare launched the Universal Immunisation programme in 1985, which aims to provide safe and efficient immunisation to all infants and pregnant women.
- The Midday Meal Scheme became a centrally-sponsored scheme in 1995. It aims to provide meals to school children in an effort to improve their nutritional status, and also to encourage children from disadvantaged sections to attend school.

#### ***State Government initiatives on health:***

- There appear to be no targeted healthcare schemes at the state government level for SCs.
- Gujarat has introduced Chiranjeevi Yojana, a cashless health financing scheme for maternity services for BPL women, wherein the state pays registered obstetricians for these services.

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- Improve recruitment & deployment in under-served areas: State governments need to simplify the recruitment procedures and rules for contract employment in order to

provide trained medical staff in under-served areas. State governments could also enforce a mandatory two-year rural posting to under-served areas before the awarding of the graduate degree. (National Health Policy 2002, para. 4.5.1.2)

- Improve health delivery systems: The Supreme Court has been critical of the efficacy of health delivery systems across state borders and recommends an improvement in transferability of health rights, especially for poor, migrant workers (many of whom are Dalits), across state lines. (W.P.(C) 8853/2008, Laxmi Mandal vs. Deen Dayal Harinagar Hospital & Others; W.P.(C) 10700/2009, Jaitun vs. Maternity Home MCD, Jangpura & Others – joint judgement given 04.06.2010, p.47)

State governments should introduce schemes for compulsory annual medical examination of SCs in rural areas, which would be implemented by mobile health units. (Ministry of Health and Family Welfare. (2006). Annual Report 2005-06. New Delhi: Government of India, p.236)

- Prioritise provision of primary healthcare needs: Given the disparity in healthcare accessibility for SCs, their developmental needs should be identified according to the order of priorities. Among the immediate developmental needs, top priority should go to provision of minimum needs including health centres in scheduled caste colonies/concentrations. (Planning Commission. (2006). Scheduled Caste Sub Plan: Guidelines for Implementation. New Delhi: Planning Commission, p.21)

- Access to schemes must be even across states and in rural and urban areas: The National Health Policy acknowledges that the shortfall of doctors in the country affects rural communities (where the majority of Dalits live) particularly harshly as compared to urban areas. It therefore recommends entrusting some limited public health functions to nurses, paramedics and other personnel from the extended health sector after imparting adequate training to them. (para. 2.5.1)

- Increase involvement of civil society organisations in national healthcare system: In order to utilise the skills of civil society organisations in contributing to healthcare debates and the delivery of public health services on an increasing scale, disease control programmes should ear-



mark not less than 10% of the budget in respect of identified programme components, to be exclusively implemented through these institutions. (National Health Policy 2002, paras 2.17.1 & 4.17.1)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Availability of healthcare services:***

- The Ministry of Health and Family Welfare reported in 2010 that approximately 50,000 Village Health and Sanitation Committees had been set up, which did not meet their goal of having such committees set up in 600,000 villages by 2008. Furthermore, the coverage of Mobile Medical Units had increased to 363 districts in 2009-10 from 310 units in 2008-09, but this falls far short of the Ministry's goal of 100% of the 600+ districts in India having mobile medical units by 2009. This signals a failing in the National Rural Health Mission to deliver on its goals of significantly increased accessibility to the health infrastructure for rural-based citizens, many of whom are Dalits. (Ministry of Health and Family Welfare. (2010). Annual Report to the People on Health. New Delhi: Government of India, p. III; (2004). National Rural Health Mission: Meeting people's health needs in rural areas. Framework for Implementation 2005-2012. New Delhi: Government of India, pp.11-12)
- Moreover, the state provisioning of medical services in rural areas is biased: the higher the percentage of rural SCs in a district population, the lower the level of public services. (Betancourt, R. and Gleason, S. (2000). 'The Allocation of Publicly-Provided Goods to Rural Households in India: On Some Consequences of Caste, Religion and Democracy', World Development 28(12), pp.169-182)
- As of 2006, despite the prescription of mental health rights under the Mental Health Act 1987, there were only 36 state-run mental health facilities in the country. This is indicative of the government's low commitment to providing care, diagnosis and treatment for those with mental illnesses. (Kapur, M. (2006, 30 Dec.). 'Dysfunctional Mental Hospitals: Where the Cure is to Kill', Tehelka)

- In spite of dedicated funding from the Scheduled Caste Sub-Plan to improve sanitation infrastructure, SCs often have limited or no access to functioning toilets. Statistics show that only 23.7% of SC households have toilet facilities within their premises as compared to 42.3% of general category households. (Singh, D. (2009). 'Development of Scheduled Castes in India – A Review', Journal of Rural Development 28(4), p.538)
- As of 2007, only 10.53 lakh anganwadi centres were sanctioned nationwide, as compared to the 14 lakh required to be sanctioned by December 2008. Only 7.81 lakhs centres were operational by 30/09/2006. This marks a failing of the Integrated Child Development Service to fully implement the anganwadi programme aimed at promoting early childhood health. (People's Union for Civil Liberties vs. Union of India and Others, 09/07/2007, Writ Petition 196/2001)

### ***Accessibility of healthcare services & legal offences:***

- Most of the SC population are wage earners, but the amount they spend on education and health is almost as equal to the all India average. The high capability poverty measure (CPM) rate for the SCs is indicative of their low access to basic health care facilities. (Menon, S. and Q. Contractor. (2001). 'Dalits and Health', paper presented at the World Conference against Racism, Sept. 2001, p. 6)
- A study of violence against Dalit women in four states found that 17 women had experienced caste-class abuse and medical negligence when approaching government and private medical institutions regarding such services/ailments as operations, child deliveries, body injuries/ailments due to assaults and an ordinary fever. Several women also reported being coerced into family planning operations, after which they experienced various health complications. However, in only one instance of medical negligence did the police file a case and made an arrest. (Irudayam, A. et al. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence. New Delhi: Zubaan)
- A national study on health services found that caste identity was important in accessing resources such as health and anganwadi services both in terms of the health service provider and recipient. Caste discrimination was reported in these services from almost all the study villages. In some



instances, separate anganwadis in the 'upper' and 'lower' caste localities was a practical solution without, however, resolving the issue. (C. Sathyamala et al. (2012). 'Public Report on Health Some Key Findings and Policy Recommendations', *Economic and Political Weekly* 47(21), pp.43-54)

- In a study done of 28 village anganwadis in Madhya Pradesh, it was found that in 23 anganwadis, Dalit children were forced to sit in separate lines. Furthermore, 76 out of 82 parents said their children were made to bring their own eating utensils. The uneven implementation of the anganwadi programme leaves SC children especially vulnerable to malnutrition and disease. (Jan Sahas Social Development Society. (2009). *Exclusion and Inclusion of Dalit Community in Education and Health: A Study*. Dewas: JSSDS, p.17)

- Dalit women and children are especially vulnerable to disease and infection due to their relative lack of health education as compared to men, and the dangers of pregnancy/childbirth and early life malnutrition. Approximately 77% of SC women are forced to give birth to their children at home due to severe poverty. Even though the National Maternity Benefit Scheme and the Janani Suraksha Yojana Scheme aim for safe institutional deliveries, enough has not been done to meaningfully affect the rate of maternal mortality among SCs. (Singh, D. (2009). 'Development of Scheduled Castes in India – A Review', *Journal of Rural Development* 28(4), pp.539-540)

- The private healthcare sector provides superior services that are out of reach for most SCs because of the prohibitive cost of treatment at such facilities. "The private sector's predominance in the health sector has led to inequities in access to healthcare. Hospitalisation rates among the well-off are six times higher than those among the poor." Such disparities in access reflect the failures of the SC Sub Plan and the Rashtriya Arogya Nidhi financial programme. (Ministry of Health and Family Welfare. (2010). *Annual Report to the People on Health*. New Delhi: Government of India, p.22)

- Even though there are several schemes to provide BPL citizens with monetary assistance for health care services, remuneration is oftentimes not paid. Because of this, many SCs cannot afford to use public healthcare facilities when necessary, and therefore go untreated. In Madhya Pradesh, 23% of Dalit women surveyed were deprived of the Janani

Suraksha Yojna scheme money. (Jan Sahas Social Development Society. (2009). *Exclusion and Inclusion of Dalit Community in Education and Health: A Study*. Dewas: JSSDS, p.26)

### **Health Education:**

- Health education is severely lacking amongst Dalits, which leads to increased risk of STIs/STDs and other contagious and life-threatening illnesses. 55.3% of SC women and 80.8% of SC men had knowledge of HIV/AIDS, while 72.7% of dominant ('forward') caste women and 89.6% of dominant caste men had such knowledge. The National Health Policy's focus on increasing health education and awareness has not come to fruition. (International Institute for Population Sciences and Macro International. (2007). *National Family Health Survey III 2005-06*. Mumbai: IIPS)

## **(7) IMPACT OF MEASURES**

- Measurable gap in health levels between SCs and other castes: The third National Family Health Survey 2005-26 provides disaggregated data on SC health:

- o 47.9% of SC children are underweight as compared to the all-India average of 42.5%.

- o 15.5 % of SC women aged 15-19 have had a live birth versus an all-India average of 13% for the same age group.

- o 39.7% of SCs receive all basic vaccinations, while the country average is 45.14%.

- o 58.3% of SC women were anaemic, while only 51.8 of non-SC/ST/OBC women were anaemic.

- SC women and children remain particularly affected by disparities in healthcare: "The rate of infant mortality is much higher in case of SCs (66.4) ... than the national rate (57) ... In the neo-natal period ... the mortality rate is much higher among SCs (46.3) than the total neo-natal mortality rate of 39. The child mortality (death of child between first and fifth birthday) rate is higher in ... SCs (23.2) [than] the total child mortality rate of 18.4 in India. The possibility of the child dying before fifth birthday is higher among the



SCs (88.1) than the other castes.” (Singh, D. (2009). ‘Development of Scheduled Castes in India – A Review’, Journal of Rural Development 28(4), p.533)

## **(8) GAPS IN MEASURES**

- There is a lack of disaggregated data to measure impact of state health programme on SCs.

No legal and programmatic provisions specifically for SC health rights:

- There is a need to improve existing legislation on health-care to include provisions to protect Dalits’ right to health. Specifically, at present there is no mention in the SC/ST (Prevention of Atrocities) Act of the right to health, and prosecution of those who actively discriminate or commit crimes against Dalits, including through medical negligence, in the healthcare sector.
- SCs in general, and SC women and children in particular, are often overlooked in health policies and programmes, or in their implementation. In spite of several nationally sponsored programmes for child and maternal health, there are no programmes specifically directed at these SC demographics to ensure their wellbeing and to focus on problems specific to them.
- In terms of mental health, disaggregated data is not available on the prevalence of mental health problems among Dalits, nor have there been any legal/legislative measures or mechanisms established to deal specifically with Dalits’ mental health such as subsidised treatment programmes.
- Different states enforce health laws and policies to different extents, which causes problems of transferability when patients cross state borders like SC migrant workers. This needs to be addressed by national legislation delineating how policies transfer across state lines.

### ***Denial of benefits of health schemes:***

- There are no specific measures detailing the ways in which Dalits are to be remunerated for incurred medical expenses where they are denied the benefit of government healthcare schemes despite their eligibility. The Madhya

Pradesh High Court has noted, “Given that the budget outlay of the schemes is in several hundreds of crores, it is indeed surprising that there is no inbuilt component for reparations.” (W.P.(C) 8853/2008, Laxmi Mandal vs. Deen Dayal Harinagar Hospital & Others; W.P.(C) 10700/2009, Jaitun vs. Maternity Home MCD, Jangpura & Others – joint judgement given 04.06.2010, p.42)

- Some sort of financial delivery assurance mechanism needs to be implemented for the various budgetary schemes designed to provide financial assistance to SCs for health-related expenses. Too often the money is not being received by SC patients, and their ability to access health-care services is negatively affected as a result of the poor delivery system.

### ***Lack of adequate training for health workers:***

- There is an alarming lack of qualified health professionals in rural areas. Programmes should be put in place to encourage such professionals to work in rural areas, or to make a period of rural practice mandatory for all doctors.
- There is a lack of sensitivity training being administered to community health workers such as ASHAs and ANMs. This would go a long way in putting an end to discriminatory practices especially against SC women and children.

### ***Gap in monitoring by NCSC and NHRC:***

- The fact that violations of SCs’ right to health in various forms have not been investigated by bodies such as the NHRC and the NCSC signals a failure in the national monitoring bodies.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Dalit Solidarity provides comprehensive health care for rural villages in Tamil Nadu.
- The Dalit Freedom Network has established a Nurses Training Programme and a Dalit Hospital Project in Hyderabad.



- Dalit Solidarity's First Responders programme provides first aid training to volunteers who then give emergency care to villagers in Tamil Nadu.
- The Dalit Freedom Network has started both regional and mobile health clinic programmes to provide preventive, diagnostic and curative health care services.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Care India's Madhya Pradesh Tribal Project, SEHAT focuses on improving the health and nutrition status of SC/ST women and children in 500 villages by strengthening the system that addresses malnutrition.

## **(11) RECOMMENDATIONS**

### ***Strengthen Existing Legislation***

- The SC/ST (PoA) Act should be amended to include the following provisions:
- "discriminates against or humiliates a child belonging to a Scheduled Caste or Scheduled Tribe ... in an anganwadi."
- "discriminates against or humiliates any person belonging to a Scheduled Caste or Scheduled Tribe ... in a health care institution or in otherwise providing health services to the public." (National Coalition for Strengthening SCs/STs (POA) Act. (2009). Enforcement of SCs & STs (Prevention of Atrocities) Act: Proposed Amendments, New Delhi: NCSPA, p.36)

### ***Increase Health and Hygiene Education***

- The Ministry of Health and Family Welfare should take up a concerted drive on reproductive health issues in those areas where the literacy level of SC girls is below 30%. There is a greater need of awareness generation among SCs, specifically women, regarding anti-natal care, postnatal care and other areas of health and hygiene to protect them from morbidity and mortality.
- Basic health education along with adequate facilities should be given in all Dalit localities, about hygiene, safe drinking water and basic sanitation facilities. Panchayats

and local NGOs should be involved in this process of awareness generation to make it a mass campaign.

- The government should undertake a public awareness campaign to de-stigmatise mental illnesses and to thereby make it acceptable for people, especially SCs, to seek treatment. This can also be achieved by adding a mental health component to all health education programmes.

Create Closer Bonds between NGOs and the National Health Infrastructure

- Close cooperation between the government and civil society organizations in the field of health should be developed in order to extend health awareness and the reach of health education mechanisms to serve those that the government alone has not yet been able to reach.
- Furthermore, NGOs have already set up health delivery systems that provide basic health services to underserved communities. If given support from the government, these NGOs could help to efficiently enlarge the national health care network at little cost to the state.

Improve health care infrastructure

- Anganwadi and primary healthcare centres should have their own dedicated buildings in a public area that is accessible to all members of the community, including Dalits.

Involve the local community in decisions about health care

Dalits should be included in all local-level developmental decision-making committees that touch upon the right to health. Their input must be valued equally with other community members so that Dalit needs can be addressed in a timely an



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**Guideline 40. National, local and international health officials and practitioners should ensure equal treatment for members of communities affected by discrimination on the basis of descent, including access to sanitation facilities and medical insurance and treatment at hospitals.**

# 40

## HEALTH

**Dalits who access government and private health care services often face caste discrimination in terms of receiving medical treatment at the hands of nurses and doctors. While increasing numbers of Dalits may be covered by government medical insurance, enabling their financial access to healthcare, equal emphasis is not laid on ensuring social access. Moreover, in terms of access to sanitation facilities, Dalit houses and habitations consistently enjoy much lower levels of access than the average: nearly half of India's 1.2 billion people have no toilet at home, which rises to nearly 77% for scheduled castes.**

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination, freedom to enjoy right and security of life for Dalits in respect of:

- Equal access to sanitation facilities: to be entitled to adequate sanitation facilities; to have health education to generate a demand for and use of sanitation facilities; to have all dry latrines converted into water-flush latrines; to eliminate manual scavenging; to be guaranteed equal access to a safe sanitation complex in case of inadequate space in home; to have special attention paid to the sanitation needs of Dalit women and children.
- Equal access to medical insurance: to be entitled to free or affordable medical insurance; to have access to information on medical insurance; to be equally pro-



vided with medical insurance cards; to be facilitated to receive reimbursements for hospital fees.

- Equal access to and enjoyment of medical treatment at hospitals: to be entitled to access to the highest attainable standard of medical treatment; to be entitled to affordable treatment for illnesses; to be able to freely access health institutions; to be treated equally to other caste patients by healthcare professionals; to have equal and adequate distribution of medical supplies in healthcare centres near Dalit localities; to ensure quality healthcare provisioning by adequately trained professionals in healthcare centre near Dalit localities.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate food, clothing and housing (and sanitation), and to the continuous improvement of living conditions. (Article 11(1) ICESCR)
- Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. To this end, the state must create the conditions which would assure to all medical service and medical attention in the event of sickness. (Article 12 ICESCR)
- States should take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure equal access to healthcare services. (Article 11(1) CEDAW)
- States should take all appropriate measures to eliminate discrimination against women in rural areas and access to adequate living conditions, particularly in relation to... sanitation; and access to adequate health care facilities, including family planning. (Articles 14(2)(b) & (h)CEDAW)
- States undertake to eliminate racial (caste) discrimination and to guarantee the right to public health, medical care, social security and social services. (Article 5 (e)(iv) ICERD)
- All children have the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States

shall ensure that no child is deprived of his/her right of access to such health care services. (Article 24(1) CRC)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should ensure equal access to health care and social security services for members of descent based communities, and should involve affected communities in designing and implementing health programmes and projects. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, paras 40 & 41)
- Dalits are disproportionately affected by diseases and health problems, and so intensified efforts are required to enforce the Protection of Civil Rights Act 1955 to effectively punish acts of 'untouchability' and to ensure equal access for Dalits to... hospitals. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para. 24)
- The Indian state should study the health implications of manual scavenging on Dalits engaged in this profession and on the community as a whole, and address all the impediments to eradicating this practice, including by putting in place modern sanitation facilities and providing the Dalit women engaged in this practice with alternative means of livelihood. (CEDAW. (2007). Concluding Comments on India report. UN Doc. CEDAW/C/IND/CO/3, para. 29)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Legal rights and offences:***

- All Indian citizens have the right to life and to non-discrimination in access to places of public resort (i.e. hospitals). (Articles 21 & 15(2)(b) Indian Constitution)
- Any non-SC/ST person who obstructs access for a SC to any place of public resort – which includes government hospitals and clinics – commits a punishable offence. (sec. 3(1)(xiv) SC/ST (PoA) Act)



- Any person who refuses to admit any person to a hospital or dispensary on the grounds of 'untouchability' commits a punishable offence. (sec. 5 PCR Act)

- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 prohibits insanitary latrines and employment of manual scavengers. It stipulates the responsibility of local authorities to survey insanitary latrines, ensure the elimination of such latrines and provide sanitary community latrines. (secs. 4 & 17)

### ***Health policies and schemes:***

- The Health Policy 2002 expresses concern about the persistence of inequities in provisioning and use of health care facilities, and health outcomes especially for the socially disadvantaged sections of society. A principle objective of this policy was to evolve a framework for reducing these inequities and allows the disadvantaged sections of society a fairer access to public health services. (paras. 2.2.2 & 2.2.3)

- Under the National Rural Health Mission (NRHM), a Village Health and Sanitation Committee is to be formed in every revenue village, responsible for the overall health related activities of the village, for creating awareness about health programmes and for developing a Village Health Plan. No mention, though, is made of addressing discrimination in access to healthcare.

### ***Sanitation schemes:***

- The Indian government launched the Central Rural Sanitation Programme (CRSP) in 1986 with the primary objective of providing sanitation facilities so as to improve the quality of life of rural people and also provide privacy and dignity to women.

- The Total Sanitation Campaign (TSC), initiated in 1999, is a comprehensive programme to ensure sanitation facilities in rural areas, with a broader goal to eradicate the practice of open defecation. It supports the Central Rural Sanitation Programme in making the programme more demand driven and people centered.

- Nirmal Gram Puraskar Yojna, launched in 2003, is an incentive scheme that offers awards to fully sanitised and

open defecation free village panchayats, blocks and districts.

- The Integrated Low Cost Sanitation for Liberation of Scavengers Scheme (ILCS) aims to eliminate the dehumanising practice of physically clearing away human excreta in urban areas by converting existing dry latrines into low cost pour flush latrines and to construct new ones where none exist.

- Under the Pay and Use Toilet Scheme, central government assistance is available through the Housing and Urban Development Corporation to urban local bodies for the construction of toilets for footpath and slum dwellers who are unable to construct their own toilets.

### ***Medical Insurance scheme:***

- Rashtriya Swasthya Bima Yojana (RSBY) was launched in 2008 to provide health insurance coverage for five members in below poverty line (BPL) families. A special focus is to be on SC/ST families. Beneficiaries are entitled to hospitalisation coverage up to Rs. 30,000/- for most of the diseases that require hospitalisation. Pre-existing conditions are covered and there is no age limit.

- The state of Tamil Nadu has introduced a comprehensive health insurance scheme from 2012 to provide insurance coverage for life threatening ailments to the poor. The scheme covers a number of diseases and includes diagnostic procedures.

## **(5) NATIONAL RECOMMENDATIONS**

- Universal health coverage means ensuring equitable access for all Indian citizens in any part of the country, regardless of income level, social status, gender, caste or religion, to affordable, accountable and appropriate, assured quality health services (promotive, preventive, curative and rehabilitative) as well as services addressing wider determinants of health delivered to individuals and populations, with the government being the guarantor and enabler, although not necessarily the only provider of health and related services. (High Level Expert Group. (2011). High Level Expert



Group Report on Universal Health Coverage for India. New Delhi: Planning Commission, p.3)

- It is recommended that time-bound action plans should be prepared to provide them basic civic facilities like water supply, electricity, sanitation at par with other sections of the society. (National Commission for SCs. (2005). First Annual Report 2004-2005. New Delhi: NCSC, para. 3.2.27)
- Often it is found that the children of safai karmacharis (most of whom are Dalits) are more likely to be malnourished because they lack minimum basic facilities such as access to clean water, proper health care and adequate sanitation. Initiatives to improve their overall conditions and education should be the top priority of the government. (National Commission for Schedule Castes. (undated). Report on the Plight of Safai Karmacharis and Recommendations/Proposals to improve their Plight. Retrieved Nov. 2013 from <<<http://ncsc.nic.in/files/Residence%20School%20and%20hostels.docx>

## **(6) IMPLEMENTATION OF NATIONAL MEASURES**

### ***Access to medical treatment:***

- Violations of Article 21 Indian Constitution are seen at different strata in the healthcare sector in the form of discrimination against Dalits by health professionals. Health professionals refuse health services to SCs/STs, refuse to make house calls to Dalit neighbourhoods or homes, refuse to touch SCs/STs, make hasty or false diagnoses, spend less time addressing the needs of SC/ST patients, make Dalits wait longer before they are examined or operated on, and are negligent in disseminating information about health camps or programmes. In one study of 11 states, in 21.3% of surveyed villages, Dalits were refused entry into private health centres or clinics. In 30-40% of villages, health workers refused to visit Dalit villages. And in 15-20% of villages, Dalits were refused entry to public health facilities, or if admitted, experienced discrimination during treatment. (Shah, G. et al. (2006). Untouchability in Rural India. New Delhi: Sage Publications)

- Dalits are often refused admission to hospitals, or access to health care and treatment in violation of their rights to the highest attainable standard of health and social services. In a number of cases those who are admitted receive discriminatory treatment. (Center for Human Rights and Global Justice & Human Rights Watch. (2007). Caste Discrimination against Dalits or So-Called Untouchables in India. New York: CHRJ & HRW, p.12)

- Dalit patients often experience discrimination when health workers refrain from touching them from fear of 'pollution'. For example, pharmacists/chemists dispense medications using intermediaries so as not to have to touch Dalit patients. Laboratory technicians refuse to touch SC/ST patients when doing x-rays, taking blood, and performing other tests. In one study, 94% of SC children surveyed discrimination in the form of touch when accessing health care. More than 93% of Dalit children have experienced discrimination at the hands of ANMs (Auxiliary Nurse Midwives) and c workers, while about 59% of children experienced discrimination from doctors. (Acharya, S.S. (2010). Access to Health Care and Patterns of Discrimination: Study of Dalit Children in Selected Villages of Gujarat and Rajasthan. New Delhi: IIDS & UNICEF, p.16)

- In Andhra Pradesh, a study of 30 SC/ST persons living with HIV/AIDS in two districts revealed their ill-treatment at ART centres: they were denied medicine, faced unnecessary delays in receiving medicines or testing, and faced verbal abuse upon making queries or expressing doubts. All noted that they were prevented from using the toilets and drinking water at the health centre. Those who travelled 4-5 hours to reach the centre and, therefore, asked for any priority treatment to prevent their having to return once more and incurring additional costs, were ignored or faced verbal abuse. (D. Leslie Martin and Ch. Issac. (2011). Study to Understand Perception of SC/ST PLHAs in Utilisation of ART Services in Andhra Pradesh. Secunderabad: Sakshi Human Rights Watch)

- A study in 24 villages of Madhya Pradesh showed that the ANMs do not visit the Dalit colonies in village, whereas they visit the non-Dalit colonies regularly and make health facilities available there. Sometimes they sit at the anganwadi centre only, which is often located in the dominant caste locality, and pregnant Dalit women have to walk to the centre for their health checkups. Moreover, 46% of



Dalit women said that the ANMs do not touch them during the checkups, and 28% of women reported ANMs using caste names and abusing them. Due to the failure of the ANM to visit Dalit colonies, 42% of Dalit women did not get the required injections during their pregnancies. (Jansahas Social Development Society. (2009). Exclusion and Inclusion of Dalit Community in Education and Health: A Study. Bhopal: JSDS)

- A study undertaken in Vizianagaram district of Andhra Pradesh revealed that around 77.2% of respondents had no information regarding the structure and functioning of the Village Health and Sanitation Committees (VHSCs). A majority (75%) of the Dalit respondents said that the VHSCs do not give any importance to Dalit issues. While 55% of men interviewed said that VHSC members did come and inquire about the health-related issues of Dalits, only 4.3% of women said that this was true. Moreover, 74.4% of respondents said that there was hardly any participation by the Dalit community in the VHSCs.

- Out of the 44 VHSC members interviewed, only 29 members said importance is given to the health issues of SCs. Only 36 (81.1%) knew that Rs.10, 000/- is allocated for Village Health Fund and has to be used for the implementation of the village health plan. Only 1 VHSC member said that there are activities in the plan to create awareness among Dalits on health and sanitation. (Sesharatnam, P. and P. Chittibabu. (2012). 'Still some way to go: Communitisation of Health Services among Dalit Community'. Andhra Pradesh: People's Action for Rural Awakening)

#### **Access to Sanitation:**

- According to the 2011 National Census, the national sanitation coverage is 46.9%, whereas rural sanitation coverage is just 30.7%. For rural Dalits, it is below 23%. Nearly half of India's 1.2 billion people have no toilet at home, which rises to nearly 77% for SCs.

- As per the Census 2011 Houselisting and Housing data, there are 794,000 dry latrines in the country, 73% in rural areas and 27% in urban areas. Apart from these, there are 1,314,652 toilets where human excreta is flushed into open drains and 497,236 toilets where human excreta is cleaned up by animals. In total, there are over 2,600,000 dry la-

trines in the country where the practice of manual scavenging still continues.

#### **Access to Health Insurance:**

- Many evaluation studies of the RSBY national medical insurance scheme do not provide details on the number of SCs receiving the benefits of RSBY. In a recent study of RSBY implementation in Chhattisgarh, though, it was noted that SCs (who represent 12.8% of the population in the state) formed 17.03% of RSBY registered households and 14.57% of households who had undergone hospitalisation. This number was attributed to greater initiatives taken to cover a large section of SC and ST below poverty line households in enrolments under the scheme. (Council for Tribal and Rural Development. (2012). 'Evaluation of 'Rashtriya Swasthya Bima Yojana scheme' in Chhattisgarh', submitted to State Nodal Agency RSBY Chhattisgarh. Raipur: CTRD)

### **(7).IMPACT OF MEASURES**

- Data from the National Family Health Survey-III (2005-06) clearly highlight the caste differentials in relation to health status. The survey documents reduced access to maternal and child health care for SCs and STs, with reduced levels of antenatal care, institutional deliveries and complete vaccination coverage among SCs. Stunting, wasting, underweight and anaemia in children and anaemia in adults are higher among SCs. Similarly, neonatal, postnatal, infant, child and under-five statistics clearly show a higher mortality among the SCs and STs. Problems in accessing health care were higher among the SCs. The National Family Health Survey-II (1998-99) documented a similar picture of lower accessibility and poorer health statistics among the 'lower' castes. (Jacob, K.S. (2009, 22 Aug.). 'India - Caste and Inequalities in Health', The Hindu)

- Around 16% of Dalits have no access to doctors or clinics, and only 58% of SC children have been immunised. (Guha, R. (2007). 'Adivasis, Naxalities, and Indian Democracy', Economic and Political Weekly 47, pp. 3305-3312)

- Reports show that SCs and STs are disproportionately affected by hunger and malnutrition, infant, child and ma-



ternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water borne diseases. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, para.24)

- The risks of mortality before the age of five years are higher in girls than in boys among SCs as compared to others; and in the rural areas of Uttar Pradesh, one of the poorest states in India, than in urban Kerala. (Shiva Kumar, A.K. et al. (2010, 18 Sept.). 'Inequalities in Access to Health Services in India: Caste, Class and Region', Economic and Political Weekly 45(38))
- Lesser access to sanitation among Dalit households as compared to other households continues, as per the latest 2011 Census data. This has knock-on effects in terms of greater health issues for Dalits.

## **(8). GAPS IN MEASURES**

- Inequalities in health status are the most grave and inadmissible of all inequalities as it has a direct impact on an individual's right to life. Yet there is negligible data available on Dalit and health. (Menon, S. and Q. Contractor. (2001). 'Dalits and Health', paper presented at the World Conference against Racism, South Africa, Sept. 2001, p.3)
- Village level workers associated with public services like anganwadi workers, nurse, ASHA workers, etc. often do not regularly visit Dalit colonies are not sensitive to the health needs of Dalit communities so as to allow them equal access to such services.
- The structure for monitoring public services such as healthcare centres in villages exists in which supervisors are appointed at the cluster level and officials are appointed at block level to monitor the services from time to time. However, they do not give any information to the monitoring committee on the services and any shortcomings, including discriminatory access. (Jansahas Social Development Society. (2009). Exclusion and Inclusion of Dalit Community in Education and Health: A Study. Bhopal: JSDS)
- Existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging from the country. These evils are inconsistent with the

right to live with dignity. (Lok Sabha Secretariat, LARR-DIS. (2013). Manual Scavengers: Welfare and Rehabilitation, Reference Note No. 18/RN/Ref. Aug./2013, p.17)

- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 has proved ineffective in eliminating manual scavenging and the construction of insanitary latrines. State governments routinely deny the existence of manual scavengers altogether or claim that a lack of water supply prevents them from constructing flush latrines. The law has not been adopted in every state and it had not been enforced in any state. Still today, the Act's penal sections are very rarely implemented.

## **(9) COMMUNITY RESPONSE**

- Various groups including Rashtriya Dalit Mahila Andolan, National Confederation of Dalit Organisations, Safai Karmchari Andolan, etc. have demanded the enactment of the law to provide constitutional status to the right to sanitation so that it becomes a legal right.

## **(10). WIDER SOCIETY RESPONSE**

- The Jan Swasthya Abhiyan, part of the world-wide network called the People's Health Movement, mobilises health activists, non-governmental organisations and academics around the concerns of equity, quality, accountability and regulation of health care. The movement also campaigns for the need to recognise health as a right and action on the social determinants of health so as to ensure comprehensive primary healthcare for all.
- Under the Right to Sanitation Campaign, social activists organise a range of programmes across 14 Indian states around the themes of 'missing toilets' and the 'crisis of sanitation' in the country.
- Sulabh International Social Service Organisation, a non-profit voluntary organisation working in 29 states/union territories, 1019 local bodies, 1050 towns and 400 districts, has constructed over a million sulabh shauchalayas (environmentally friendly two-pit, pour-flush compost toilets) all over the country, in addition to about 6,000 pay-and-use



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community toilets, which are used by 10 million people daily.

## **(ii). KEY RECOMMENDATIONS**

- The government must strengthen the enforcement of existing legal prohibitions of discrimination and ‘untouchability’ practices and, in addition, consider enacting comprehensive administrative, civil and/or criminal anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, specifically prohibiting discrimination in employment, social security, housing, healthcare and education.
- The government must identify specific programmatic measures to protect Dalits’ equal right to health, including through ensuring discrimination-free access to medical treatment, and through eradicating the inhuman practice of septic tank cleaning and other hazardous tasks performed by manual scavengers.
- Awareness must be built among the Village Health and Sanitation Committee about the health issues of Dalits in order to ensure their active participation in the formation and functioning of these committees and also formulation of village health plans and their implementation. This would substantially aid Dalits’ access to health care.

Time bound plans must be developed to bridge the gap and ensure Dalits’ equal access to sanitation facilities in their

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**Guideline 42. National and local governments should take all necessary measures to eliminate discriminatory practices that cause affected communities to suffer from inadequate food, water, sanitation, clothing and housing.**

# 42

## ADEQUATE FOOD, WATER, SANITATION, CLOTHING AND HOUSING

**Dalits continue to face numerous ‘untouchability’ practices and discrimination, which affect their equal rights to food, water, sanitation, clothing and housing. They are forced to stand in separate queues at some public distribution (ration) shops, or given lesser quality grains in such shops. They are prevented from using common water taps on par with other castes in many villages. Their residential areas are often the last to receive sanitation facilities. Dalits are still expected not to wear good clothes, as this is seen as their showing equal status with others. They also continue to be residentially segregated in both villages and towns. Those trying to rent houses in dominant caste areas often face outright denial of housing based on their caste. Moreover, when Dalits contest this discrimination in order to enjoy a decent standard of living, they often face violence.**

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The Indian national government and state governments should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination, freedom to exercise right, and security of life for Dalits in respect of:

- Adequate food, water, sanitation, clothing and housing: to be entitled to access to these basic necessities without facing ‘untouchability’, discrimination and violence; to be not segregated into specific areas for housing; to be entitled to equal rations in public distribution shops; to be ensured food security at all times; etc.



## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to an adequate standard of living for her/himself and her/his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. (Article 11(1) ICESCR)
- The human right to water forms part of the right to an adequate standard of living, and is indispensable for leading a life in human dignity. It is a pre-requisite for the realization of other human rights” (CESCR. (2003). General Comment 15: The Right to Water. UN Doc. E/C.12/2002/11)
- States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without discrimination, to their social, economic and cultural rights, including housing. (Article 5(e) ICERD)
- Every child has the right to a standard of living adequate for the child's development. States shall take measures to assist parents to implement this right and shall, in case of need, provide material assistance and support, particularly with regard to nutrition, clothing and housing. (Article 27(1) &(3)CRC)
- States should undertake all necessary measures for the realisation of the right to development and shall ensure, inter alia, equal opportunity in access to basic resources, food, housing, employment... (Article 8(1) Declaration on the Right to Development 1986)

## **(3) INTERNATIONAL RECOMMENDATIONS**

- The Indian state should introduce a strategy to promote food security; further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas; ensure that every household enjoys the right to safe drinking water and sanitation. (Human Rights Council. (2012). Report of the Working Group on the Universal Periodic Review. UN Doc. A/HRC/21/10, paras. 136, 138 & 139)
- States should take steps to identify those descent-based communities under their jurisdiction who suffer from caste discrimination and private and public segregation, including in housing, access to public sources of food and water.

Further, States should undertake to prevent, prohibit and eliminate practices of segregation against Dalits in housing, and take measures against discriminatory practices of local authorities or private owners with regard to access to housing by Dalits. (CERD. (2002). General Recommendation 29: Descent based Discrimination, paras 1, 15 & 39)

- The Indian state should intensify efforts to enforce the Protection of Civil Rights Act 1955, especially in rural areas, including by effectively punishing acts of ‘untouchability’, take effective measures against residential segregation, and ensure equal access for Dalits to water sources. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, para. 13)
- The Indian state should ensure equal access to ration shops, and safe drinking water for scheduled castes. (CERD. (2007). Concluding Observations on India Report, para. 24)

## **(4) NATIONAL STANDARDS, MEASURES & MECHANISMS**

- No citizen shall, on the grounds of caste, be subject to any disability, liability, restriction or condition with regard to— (b) the use of wells, tanks, bathing ghats, roads and places of public resort. (Article 15(2) Indian Constitution)
- The 12th Five-Year Plan aims to bring SC men and women on par with their non-SC/ST counterparts, in terms of all developmental indices viz.—education, health, nutrition, housing, income generation and employability. (Planning Commission. (2012). Draft Twelfth Five-Year Plan, Scheduled Castes: Strategy for the Twelfth Plan. New Delhi: Government of India, p.232)
- Certain livelihood-related crimes committed by dominant castes against Dalits are punished under the SC/ST (PoA) Act, such as: wrongfully dispossessing a SC from her/his land or premises or interfering with the enjoyment of her/his rights over any land, premises or water (sec. 3(1)(v)); and corrupting or fouling a water source ordinarily used by SCs (sec. 3(1)(xiii)).
- It is a punishable offence to enforce any social disability on a person on the grounds of ‘untouchability’ with regard to access to any public restaurant; the use of any river,



stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience'; the construction, acquisition or occupation of any residential premises in any locality. (secs. 4(i), (iv) & (viii) PCR Act)

- The Supreme Court has interpreted Article 21 of the Indian Constitution, specifying the right to life, to include the right to live with dignity, requiring access to adequate nutrition, clothing and shelter (Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi and Others (1981) 2 SCR 516). Other judicial interpretations have included similar socio-economic rights, such as a healthy and sustainable environment (M.C. Mehta vs. Union of India (1987) 1 SCC 395; Consumer Education and Research vs. Union of India (1995) 3 SCC 42) and adequate food (People's Union for Civil Liberties vs. Union of India and others (1997) 3 SCC 433).

#### **4A. Specific to Food**

- The purpose of the National Food Security Act 2013 is to provide for food and nutritional security in a human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity. No mention is made of equality and non-discrimination in access to food.

- Every state government may, by notification, constitute a State Food Commission for the purpose of monitoring and review of implementation of the National Food Security Act. The State Commission shall consist of at least one SC person. (sec. 22(c) National Food Security Act 2013).

- The Target Public Distribution System (TPDS) scheme encourages social audits, with a Fair Price Shops (FPS) Committee set up to include representatives of the TPDS groups as well as SC panchayat members to monitor the functioning of the FPS. (Department of Food and Public Distribution website. Retrieved 20.10.2013 from <<<http://dfpd.nic.in/?q=node/16>>>)

- The Midday Meals Scheme (MMS), established in 1995 to provide midday meals for school-going children from classes 1 to 8, will be expanded to cover pre-primary schooling in a progressive manner and private unaided schools, particularly in the SC/ST concentrated areas. (Planning Commission. (2012). Draft Twelfth Five-Year Plan, Sched-

uled Castes: Strategy for the Twelfth Plan. New Delhi: Government of India, p. 72)

- Voluntary agencies should not discriminate on any basis, including caste, in the provisioning of the midday meals scheme. (Ministry of Human Resource Development. (2006). Final Guidelines on the National Programme of Nutritional Support to Primary Education, para. 3.9.1 (i))

#### **4B. Specific to Water**

- The National Water Policy 2012 states that local governing bodies should be involved in planning of water projects. In this, the unique needs and aspirations of the scheduled castes should be given due consideration. (National Water Policy 2012, para. 9(6))

- The National Rural Drinking Water Programme (NRDWP) aims to provide adequate and safe drinking water to the entire rural population. The NRDWP has special provisions to ensure focus on the coverage of the SC population with potable water supply. The State/ UTs are required to earmark and utilise at least 25% of the National Rural Drinking Water Program (NRDWP) funds for drinking water supply to habitations dominated by SCs. Where the percentage of SC population in a particular state is higher, additional funds can be utilised. (Central Statistical Organization. (2011). Millennium Development Goals: India Country Report 2011. New Delhi: Ministry of Statistics and Programme Implementation, p. 107)

#### **4C. Specific to Housing and Sanitation**

- The core focus of the National Urban Housing and Habitat Policy 2007 is the provision of 'Affordable Housing For All', with special emphasis on vulnerable sections of society such as SCs. (para. 1.29)

- The Indira Awaas Yojana (IAY) scheme aims at helping rural people below the poverty line (BPL) belonging to SCs/STs, among others, in the construction of dwelling units and the upgrading of existing unserviceable non-permanent houses by providing assistance in the form of a full grant. (IAY website. Retrieved 24.10.2013 from <<[http://iay.nic.in/netiay/more\\_benefcry.htm](http://iay.nic.in/netiay/more_benefcry.htm)>>)

- One objective of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) is the provision of basic services to the urban poor, including improved housing, water



supply and sanitation, and ensuring delivery of other existing universal services of the government for education, health and social security. No priority is given for SC urban deprived households. (JnNURM website. Retrieved 24.10.2013 from <<<http://jnnurm.nic.in/wp-content/uploads/2011/01/PMSpeechOverviewE.pdf>>>)

- The National Urban Sanitation Policy 2008 envisions all Indian cities and towns becoming totally sanitized, healthy and livable, with a special focus on hygienic and affordable sanitation facilities for the urban poor and women. No specific priority is given to SCs. (p.7)
- The Rural Sanitation and Hygiene Strategy 2012-2022 aims at the complete elimination of open defecation; the operationalisation of systems for safe management of solid and liquid waste; and addressing inequalities in access with special attention to vulnerable groups; and cooperation among public sector agencies concerned with rural development, health, environment and vulnerable sections.
- The goal of the Total Sanitation Campaign (TSC) is to achieve universal sanitation coverage across rural India by 2017 through the provision of toilets for the entire rural population. The TSC notes that the provisioning of sanitation facilities for SCs/STs is an integral part of the programme. Adequate priority is given for construction of individual household latrines for SCs/STs, especially for those SC/ST habitations neglected in any region, as well as the construction of community toilets for these communities. (Ministry of Drinking Water and Sanitation. (2012). Annual Report 2011-2012. New Delhi: Government of India, p.75)

## **(5) NATIONAL RECOMMENDATIONS**

- Time-bound action plans should be prepared to provide SCs with basic civic facilities like water supply, electricity, sanitation... (National Commission for Scheduled Castes. (2005). First Annual Report 2004-05. New Delhi: NCSC, para. 3.277)

## **(6) IMPLEMENTATION OF NATIONAL MEASURES**

### **6A. Specific to Food**

- While the midday meals are offered in primary schools across the country today, caste discrimination against Dalit children is still prevalent. One study across the three states of Andhra Pradesh, Rajasthan and Tamil Nadu noted 37% of Dalit respondents describing caste discrimination during the midday meals. This discrimination included separate seating; separate meals for SC children; dominant caste children refusing to eat meals prepared by a Dalit cook; and/or inferior or insufficient food given to Dalit children. (Thorat, S.K. and Lee, J.G. (2006). 'Dalits and the Right to Food: Discrimination and Exclusion in Food-related Government Programmes', Working Paper Series 1(3). New Delhi: Indian Institute of Dalit Studies)
- Dalit also encounter discrimination in access to the government's public distribution system (PDS) shops selling subsidised food rations. One study across five states running PDS shops showed that over 70% of these shops are located in dominant caste localities and 81% are run by dominant castes. Moreover, Dalits faced discrimination in terms of the lower quantity of rations they received (40% of respondents), the higher price they paid for the rations (28%), and caste-based favouritism displayed by the PDS shop dealers (48%) – e.g. preferential service to dominant caste customers over Dalit customers. (Thorat, S.K. & Lee, J.G. (2006). 'Dalits and the Right to Food: Discrimination and Exclusion in Food-related Government Programmes')
- A large proportion of manual labourer households, SC/ST households, households with little or no land, as well as households in the lowest income classes are excluded from the PDS today. (Swaminathan, M. (2008). 'The Case for State Intervention', UN Chronicle 45(2-3))

### **6B. Specific to Water**

- According to the government, the prevailing trend suggests the attainability of almost 100% coverage of safe drinking water by 2015 in both rural and urban areas. The MDG goal of halving the proportion of households without access to safe drinking water from the 1990 level (34%) by 2015 (to 7%) has already been attained by 2007-08, much before the target timeline. (Central Statistical Organization. (2011). Millennium Development Goals: India Coun-



try Report 2011. New Delhi: Ministry of Statistics and Programme Implementation, p.23)

- According to the Joint Monitoring Programme Report 2012 by WHO and UNICEF, India was on track to achieving its MDG target of safe drinking water. To ensure equitable access, specific percentages of the National Rural Drinking Water Programme allocations were earmarked for SC and ST concentrated habitations. (Working Group on the UPR. (2012). Report of the Working Group on the Universal Periodic Review, 13th UPR Session India. UN Doc. A/HRC/21/10 (89))

- Despite various government flagship programmes like the National Rural Drinking Water Program and Total Sanitation Campaign, Dalits still lack access to water on par with others. A 2004 government report notes that only 7% of SC households had water sources within the premises, as compared to 45% of all households. (National Campaign on Dalit Human Rights. (2008). Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) to the Committee on Economic, Social and Cultural Rights on the Implementation of ICESCR. New Delhi: NCDHR, para. 161)

- In 2011, only 21% of SC households have drinking water sources located in or near the houses and only 29.4% of SC households enjoy tap water from a treated source. While the Census data shows that only 2.9% of SC households continue to draw water from rivers, canals, ponds, lakes or other sources (not taps, hand pumps, wells, tube wells or boreholes), no mention is made of whether all these sources provide potable drinking water. (Office of the Registrar General. (2013). Census of India 2011: Household Tables. New Delhi: Government of India, HH-6 SC)

- In relation to the National Rural Drinking Water Programme focus on SC concentrated habitations, as on 1.4.2011, out of the total 2,79,200 SC concentrated habitations in the country, 2,05,420 habitations were fully covered with regard to drinking water, 58,887 were partially covered and 14,893 were quality affected. (Ministry of Drinking Water and Sanitation. (2012). Annual Report 2011-2012 on the National Rural Drinking Water Program. New Delhi: Government of India, p.20)

- In some instances, stigma – the perception that one is ‘dirty’ – is attached to a person’s social identity, especially in

relation to one’s caste...In terms of water and sanitation provision, Dalit habitations are often systematically excluded... Dalits have been unable to collect water from shared wells or have been fined for drinking from a common water tap, and Dalit women have reportedly had to wait in a separate queue until non-Dalits have fetched water. Large-scale violence and physical attacks by members of the dominant caste have been reported where Dalits attempted to access facilities in areas inhabited by the dominant castes. (de Albuquerque, C. (2012). Report of the Special Rapporteur on the human right to safe drinking water and sanitation: Stigma and the realization of the human rights to water and sanitation. UN Doc. A/HRC/21/42, paras. 13, 22 & 32)

- In the absence of state focus on addressing discrimination related to policies for basic services such as water, violence continues to persist whenever Dalits assert their equal rights to water, food, etc. For example, a study in four states of 500 Dalit women’s experiences of violence noted that the second predominant cause for violence was when Dalit women questioned the caste hierarchy and asserted their rights by trying to access water rights or the public distribution system (PDS) ration shop on equal par with dominant castes. (Irudayam, Aloysius et al. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan)

- An 11-state study of rural ‘untouchability’ practices revealed that Dalits in over half of the villages were not allowed equal access to water facilities. Much more prevalent, however, were social sanctions against inter-dining, which were found in around two thirds of the villages. (Shah, G. et al. (2006). Untouchability in Rural India. New Delhi: Sage Publications)

- Given forecasts of rising water shortages in many parts of the country, coupled with mounting summer temperatures, whoever holds power in the local community will command and enjoy water use rights. Trends across Gujarat are that increasing water scarcity has re-ignited caste feelings, with dominant castes laying claim to what limited water supply is available. (Irudayam, A. and J. Mangubhai. (2003). ‘Water Battlegrounds on Caste’. Retrieved 10.09.2013 from <<[www.dalit.de/details/dsid\\_hintergrund\\_wasser\\_recht.pdf](http://www.dalit.de/details/dsid_hintergrund_wasser_recht.pdf)>>)



- Privatisation of water will further lead to discrimination and will make water more inaccessible to Dalits. (Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p.37)

### 6.3 Specific to Housing and Sanitation

- Despite laws prohibiting discrimination, Dalits continue to be discriminated in the housing market. Further, atrocities against Dalits lead to displacement and their staying in slums. Among the total population in the slums, Dalits and Muslims together account for 55% of the total population. (Antony, M. and G. Maheswaran. (2001). Social Segregation and Slums of Delhi. New Delhi: Indian Social Institute)
- In 2011, 62.1% of SC households continue to lack toilet facilities and resort to open defecation, and only 32.9% of SC households have toilets within their homes. (Office of Registrar General. (2013). Census of India 2011: Household Tables. New Delhi: Government of India, HH-8 SC)
- Dalit women in Rajasthan endure considerable health risks, owing to a lack of, or caste discrimination in access to sanitation facilities. (Programme on Women's Economic, Social and Cultural Rights. (2007). Dalit Women in Rajasthan: Status of Economic, Social and Cultural Rights. New Delhi: PWESCR)
- For 2011-12, Rs330 crores (22% of total allocation of Rs 1500 crores) was reserved for SCs and Rs150 crores (10% of total allocation) is reserved for STs. Out of this, Rs352.87 crores has been released to states for SCs/STs. The progress achieved under the Total Sanitation Campaign for SCs/STs is also being monitored. (Ministry of Drinking Water and Sanitation. (2012). Annual Report 2011-2012. New Delhi: Government of India, p.75)

### 7 IMPACT ON THE BENEFICIARIES

- The Indira Awas Yojna (IAY) rural housing scheme for BPL families, especially SC families, has failed to reach the poorest of the poor, including the landless (many of whom are SCs). (Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p.9)

- The midday meal scheme started in 1995-96 in a few districts with 33.4 million children covered that year, and increased to 105.0 million children across the country in 2000-02. The number of SC children covered under this programme, however, has fallen from 22,638,260 in 2003-04 to 22,004,919 in 2004-05, causing concern in the context of reported caste discrimination. (Social Watch. (2006). Citizens Report on Governance and Development 2006. Delhi: Pearson Education-Longman)
- The National Family Health Survey results show that in 2008-09, over 91% of households had access to an improved source of water, an increase from 68.2% in 1992-93. However, compared to 45.2% of total non-SC/ST households having drinking water facility within the premises, only 27% of SCs had this facility within the premises. (Wada na Todo Abhiyan. (2012). The World We Want: Looking Beyond 2015- Voices from India. New Delhi: WNTA, p. 27)

### 8 GAPS IN MEASURES

- There has been no comprehensive survey undertaken to ascertain the current extent of discrimination faced by Dalits in access to basic amenities such as housing, water, food, clothing and sanitation. Moreover, while the government reports on the number of SC household provided with such amenities in the Census, no specific mention is made as to the quality of amenities such as drinking water sources.
- Despite the fact that both the PCR Act and SC/ST (PoA) Act specify legal offences of 'untouchability' and atrocities against SCs related to denial of access to basic amenities like housing, water, etc., few cases have been book under these provisions.
- The National Water Policy 2012 lacks a human rights approach and focuses more on water as an economic good. Furthermore, it favours privatisation of water while calling for the government to withdraw from its role as service provider. This is a dangerous trend given continuing discrimination against Dalits in access to water. (Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p.37)



- The National Rural Drinking Water Programme does not have a special provision for SCs that will prioritise their equal access to water.
- Similarly, the National Urban Sanitation policy does not have a special provision for SCs that will prioritise their equal access to sanitation.
- The National Food Security Act 2013 does not specifically mentioned SCs as vulnerable households or as a priority community for focus in terms of the right to food.
- The Millennium Development Goals of India do not specifically mention equality as an indicator and thus mandate the targeting of Dalits and other excluded groups in government programmes to fulfill these goals. Hence, the country report on the MDGs only generally shows the attainment/success of the country and not of specific communities vis-à-vis the goals.
- The housing built under the JNNURM scheme for economically weaker sections, including many Dalits, is generally on the peripheries of urban areas, very far from people's workplaces, schools and hospitals, and is thus not viable and does not meet the criteria of adequate housing either. No comprehensive housing scheme exists for the urban poor yet. (Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p. 6)
- An evaluation done for the Planning Commission has found lack of quality control under the Indira Awas Yojna scheme. The safety of residents and lack of sanitation remain serious concerns under the scheme. (National Human Rights Commission. (2012). 'Submission to India's Second Universal Periodic Review'. In Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p.9)

## **(9) DALIT COMMUNITY RESPONSE**

- A Dalit women's group in the Mainpura community in north-west Patna has been working with WaterAid to secure better access to water and sanitation. The group has managed to ensure each house has its own water supply and concreted area outside for the latrine. (Sell, S. (2013, 25

Sept.). 'Access to clean water: How Dalit communities in India are Fighting for Change', The Guardian)

- A coalition of Dalit and Adivasi organisations are calling for a central legislation on the SC Sub Plan and Tribal Sub Plan, which would direct a proportion of the total Plan budget outlays at the central and state levels-equivalent to the proportion of SC/ST population - to be set apart for these two Sub Plans. These funds would be used only to implement schemes with the objective of bridging the socio-economic gap between SCs/STs and the general population, with a focus on access to basic amenities like food, water, sanitation and housing. (Working Group on Human Rights in India. (2012). Human Rights in India: Status Report 2012. New Delhi: WGHR, p. 151)

## **(10) WIDER SOCIETY RESPONSE**

- Wada Na Todo Abhiyan is a national campaign to hold the government accountable to its promise to end poverty, social exclusion and discrimination. The campaign focuses on ensuring that the concerns and aspirations of Dalits and other excluded communities are mainstreamed across programmes, policies and development goals of the central and state governments, including regarding equal access to and enjoyment of basic amenities.

## **(11) KEY RECOMMENDATIONS**

- Establish access to adequate housing, food, water and sanitation as legal entitlements, providing a basis for individuals and groups to hold governments and other stakeholders accountable for realizing the rights.
- Prioritise access to basic food, water, sanitation and housing services for the most marginalised groups of people, specifying SCs as one of these groups, in all related policies.
- Develop a time-bound plan of action to ensure adequate and discrimination-free housing, water, food and sanitation facilities are provided to all Dalit households.
- Ensure that all infrastructure programmes supported by state institutions facilitate Dalit communities to access water, food, sanitation, land, irrigation and social infrastruc-



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ture proportionately and without discrimination. (National Campaign on Dalit Human Rights & Indian Institute of Dalit Studies. (2005).Dismantling Descent Based Discrimination: Report on Dalits' Access to Rights. New Delhi: NCDHR and IIDS, p. 50)

- Implement laws and undertake specific campaigns to prevent, prohibit and eliminate practices of segregation directed against Dalits, including in housing, food (e.g. mid-day meals scheme) and drinking water provisioning.
- Take strict legal measures against the discriminatory practices of local authorities or private owners with regard to Dalits' residence and access to adequate housing.
- Take strict legal measures against anyone who discriminates or practices 'untouchability' against Dalits in relation to midday meals provisioning in schools, the public distribution system, and access to water.
- Facilitate the genuine participation of Dalit communities and civil society organisations in decision making on water and sanitation, and in monitoring the discrimination-free implementation of schemes such as the midday meals scheme.

Offer incentives and subsidies – government loans, grants, etc. – to Dalits to operate public distribution system shops that may be located in the Dali

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**Guideline 43. National governments and local authorities should ensure affected communities due entitlement to land and protect against forced eviction.**

# 43

## ADEQUATE LIVELIHOOD RESOURCES (LAND)

**In a context where land entitlement correlates with wealth, power and social status in rural areas, Dalits continue to be primarily landless. They have been excluded from land ownership in order to retain their labour for others. Moreover, even when Dalits are granted land title, for example under government land reforms programmes, they often are not able to enjoy actual possession over the land due to threats or encroachment by dominant castes. Land disputes are a primary cause of violence or socio-economic sanctions against Dalits. In addition, they are one of the most vulnerable communities when it comes to forced evictions from their often meagre land holdings due to development and other projects.**

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The Indian national government and state governments should take specific legal, policy, programmatic and budgetary measures to ensure equal access, non-discrimination, freedom to exercise right, and security of life for Dalits in respect of:

- Entitlement to land: to be entitled to own land, either individually or jointly with others; landless Dalits to be granted adequate land title in order to eke out a decent livelihood in rural areas; to be entitled to government lands on which Dalits have lived for a number of years; to be allowed to freely determine and enjoy use of the land.
- Protection against forced eviction: to be entitled to police or administrative protection against the temporary or permanent removal against one's will from one's



house or land, without the provision of, or access to, appropriate forms of legal or other protection; to be treated equally before the law in the event of a land case being filed.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of their property. (Article 17 UDHR)
- The State shall take all appropriate measures to eliminate discrimination against women in rural areas, in particular, by ensuring that women enjoy equal treatment in land and agrarian reform as well as in land resettlement schemes. (Article 14(g) CEDAW)
- The State should undertake all necessary measures for the realisation of the right to development and ensure, inter alia, equality of opportunity for all in their access to basic resources (such as land)... (Article 8(i) Declaration on the Right to Development)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- The Indian state should ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the SC/ST (Prevention of Atrocities) Act. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, para. 20)
- Given that SCs/STs in particular are adversely affected by displacement due to development projects, the Indian state should take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands are provided with adequate compensation and/or offered alternative accommodation. (CESCR. (2008). Concluding Observations on India Report. UN Doc. E/C.12/IND/CO/5, paras 31 & 71)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Legal rights and offences:***

- The State shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to serve the common good. (Article 39(b) Indian Constitution 1949)
- It is a punishable offence for a non-SC/ST to wrongfully occupy or cultivate any land owned by, or allotted to, a SC/ST; or to dispossess a SC/ST of their land or otherwise interfere with their enjoyment of rights over any land; or to force them to leave their home or village. (secs. 3(i)(iv), (v) & (xv) SC/ST (PoA) Act)
- The Supreme Court has ruled that land belonging to SCs/STs cannot be bought by non-SC/STs (as per the state tenancy laws), including companies, as such transactions are unconstitutional. The state government, therefore, can repossess the lands and return the lands to the original SC/ST owners. (State of Rajasthan and Others vs. Aanjaney Organic Herbal Pvt. Ltd. Civil Appeal No. 6743 of 2012)

### ***Ensuring women's equal access to land and rehabilitation in case of displacement:***

- The Eleventh Five-Year Plan was to carry out a range of initiatives to enhance women's land access, including direct transfers to them through land reforms, anti-poverty programmes, and resettlement schemes. In case of displacement, a gender sensitive rehabilitation policy that includes equitable allocation of land to women would be devised. (Planning Commission. (2007). 11th Five-Year Plan 2007-2012. New Delhi: Government of India, para. 6.3.2)

### ***Ensuring access to housing land:***

- The Government of Haryana in 2008 introduced the Mahatma Gandhi Gramin Basti Yojna to ensure the allotment of 100 sq. yards free residential plots to SC families in all the villages in the state. The plots of land are either provided out of panchayat lands, or lands available either by



way of exchange or acquisition. Basic infrastructure, such as roads, are provided along with housing land.

#### ***Funding for agricultural land purchase:***

- The National Scheduled Castes Finance and Development Corporation, under the Ministry of Social Justice and Empowerment, provides economically poor sections of SCs whose annual family income is below Double the Poverty Line limit (i.e. up to Rs 40,000/- for rural areas and up to Rs 55,000/- for urban areas) with credit towards the purchase of agricultural land. Out of funds notionally allocated on the basis of SC population for the number of schemes implemented by this Corporation, 40% of the total funds have been allocated for SC women both in physical and financial terms.

#### ***Five-Year Plans and Land Reforms and Related Programmes:***

- Since the First Five-Year Plan in 1951, the Planning Commission has laid considerable emphasis on the need of land reforms for the large agriculture-based population. The aims of land reforms are: to achieve high agricultural productivity; and eliminate all exploitation and ensure social justice within the agrarian system to provide security for agriculturalists and assure equality of status and opportunity for the rural population. (Integrated Sustainable Energy and Ecological Development Association. Land Reforms in India, Booklet no. 86.<<www.inseda.org>>)
- The Indian Government's 20-Point Programme also prioritises monitoring the distribution of wasteland to the landless and also land tenure for urban poor families, many of whom are Dalits.
- The National Rural Livelihood Mission, launched in 2011, aims to increase land under cultivation with the poor, reduce cost of cultivation and increase farm-incomes. Its efforts towards social inclusion and attacking poverty target SCs. (Ministry of Rural Development. (2011). National Rural Livelihood Mission: Framework for Implementation. New Delhi: Government of India)

#### ***State Government initiatives on land reforms:***

*(Land is a state subject, so state governments enact their own laws and policies regarding land entitlements and land (re)distribution.)*

- With the introduction of land ceiling legislation in 1972, a ceiling on land holdings for a family with five members was introduced in 19 States and 3 Union Territories. The government is to take ceiling surplus land and redistribute it among landless agricultural labourers, with priority given to SCs/STs.
- No specific provisions exist for SC tenants in state tenancy laws, which protect tenants in terms of rent fixing and security of tenure subject to a limited right of resumption by landowner.

#### ***National Land Reforms Council:***

- A National Council on Land Reforms was set up in 2008 to, inter alia, look into issues of: (i) continued possession and effective uses of land distributed earlier to SCs under various programmes/ legislative interventions; and (ii) availability of land for distribution to SCs/STs/landless families. In all these, care would be taken to ensure preferential/ joint ownership by women. (Planning Commission. (2008). 11th Five-Year Plan, Vol. 1. New Delhi: Government of India, para. 6.42)
- In 2013, a draft Land Reforms Policy has been promulgated that talks of effective safeguards for SC lands.

#### ***Resettlement and Rehabilitation:***

- The National Policy on Resettlement and Rehabilitation, notified in 2007, lays down immediate provisions for resettlement and rehabilitation of project-affected families. It provides that each affected ST family, followed by SC families, shall be given preference in allotment of land-for-land, if government land is available in the resettlement area (7.21.3); and SC-affected families enjoying reservation benefits in the affected area shall be entitled to such benefits at the resettlement area(s) (7.21.11).

*(NB: The proposed Land Acquisition, Rehabilitation and Resettlement Bill of 2011 envisages certain special provisions for rehabilitation and resettlement of displaced SCs/STs, including land grants, extension of reservations to resettlement areas, and financial assistance.)*



### ***Budgeting on Land Resources:***

- The Scheduled Caste Sub-Plan (SCSP) enables the earmarking of funds across all government ministries specifically for SC welfare and development. This includes the Departments of Land Resources and Rural Development, both of which fall under the Ministry of Rural Development that deals with land reforms.

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- A National Land Reforms Policy would provide a policy framework for action by the Centre, States and Panchayati Raj institutions and for bringing in accountability at each level. (Department of Land Resources. (2009). Report of the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms. New Delhi: Ministry of Rural Development, para. 4.1)
- Dalits should be protected against alienation of their lands in a manner similar to the protective mechanisms set up for Adivasis (STs) under the Fifth Schedule Areas, wherein Dalit lands cannot be transferred or sold to non-Dalits. (Planning Commission Expert Group. (2008). Development Challenges in Extremist Affected Areas. New Delhi: Government of India, para. 5.2.10)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Dalit women's equal access to land unknown:***

- No disaggregated information is available regarding the direct transfers to Dalit women of land entitlements through land reforms, anti-poverty programmes and resettlement schemes.

### ***Housing land:***

- Under the Government of Haryana's Mahatma Gandhi Gramin Basti Yojna, the government identified 325,000 SC eligible families in 2008, out of the total of 566,699 fami-

lies. No information is available, however, as to how many SC families have actually received their plots of land.

### ***Land Reforms:***

- "The corpus of land of SCs is very weak and much below their population based entitlement, and whatever they have is in the process of getting eroded... [M]ost of the SCs are still without any access to land rights and it needs to be rectified." (Department of Land Resources. (2009). Report of Committee on State Agrarian Relations and the Unfinished Task of Land Reforms. New Delhi: Ministry of Rural Development, para 5.4.1)
- The state governments so far have declared 2.7 million hectares surplus, out of which 2.3 million (87%) hectares were taken possession of and 1.9 million hectares were distributed to 5.5 million households (37% to SCs). There has been no further progress in the implementation of land ceiling legislation in the states. (Department of Land Resources. (2009). Report of the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms, para 2.1.1)
- Waste or barren land that belongs to the government is increasingly intended for industries and Special Economic Zones, and the landless poor (many Dalits) are fast losing the 'right' they had, namely to hope that the land would be distributed to them. Planning Commission Expert Group. (2008). Development Challenges in Extremist Affected Areas. New Delhi: Government of India, para. 1.8.5)
- In Punjab, Dalits form nearly 33% of the rural population, but own only 2.3% of the land. Yet, in 2009, only 17 acres of surplus land was transferred to SCs and before that, none at all. (Ramakrishnan, V. and A.A. Mahaprashasta. (2009). 'Victims Always', Frontline 26(4))
- Fifty years of land reforms in Tamil Nadu have merely seen substantial transfers of land ownership from 'upper' castes to 'middle' and 'lower' castes, while access to land remains very poor for SCs. Moreover, 56% of government land redistributed up to February 2010 went to dominant castes, despite government guidelines prioritizing land for SC agricultural labourers. Moreover, the National Commission for SCs has criticised the state government for its failure to retrieve lands appropriated from Dalits by dominant castes. (Athreya, V. and Chandra, R. (2000). 'Dalits and



Land Issues', *Frontline* 17(2); Dorairaj, S. (2010). 'Facing Flak: The National Commission for Scheduled Castes Criticises Tamil Nadu for Poor Implementation of Dalit Welfare Measures', *Frontline* 27(6); Revenue Department. (2011). Policy Note 2010-11. Chennai: Government of Tamil Nadu)

- The National Council on Land Reforms was to hold its first preliminary planning meeting only in 2012, four years after the constitution of the Council. This meeting would review the over 300 recommendations on land reforms prepared by the Committee on State Agrarian Relations and the Unfinished Task of Land Reforms. The Ministry of Rural Development, however, has not given any details on whether this meeting took place and the outcomes of the meeting and especially the 20-point land reforms agenda that was to be tabled for discussion.

### ***Problems with land purchases:***

- While schemes for land purchase implemented by Scheduled Caste Development Corporations have ensured some access to land for Dalits, they have been plagued with problems such as: allowing landowners seeking to sell land to initiate and control the process; failing to anticipate and budget for the need for improvements and technical assistance; identifying beneficiaries after the land is purchased; permitting beneficiaries to take on unmanageable debts; and establishing often unreasonable repayment schemes. (Hanstad, T. (2006). 'Improving Land Access for India's Rural Poor: A Review of Past Efforts and Recommendations for the Road Ahead'. Paper presented at National Seminar on Reforms in Land Policy for Accelerated Growth, New Delhi, 5-6.01.2006)

### ***Legal Land Rights Violations and Evictions:***

- Between April 1999 and December 2006 in Andhra Pradesh, a total of 110 atrocities against Dalits occurred that were related to land. (Sakshi Human Rights Watch-A.P. (2007). *Dalit Human Rights Monitor 2003 – 2006*. Secunderabad: Sakshi, pp. 52-63)
- A study showed that in scores of villages in western Uttar Pradesh, Dalits were unable to occupy land with title allotted to them because of intimidation and in some cases even physical prevention by dominant castes. Moreover, sections of the police and the administration were hand-in-glove

with the dominant castes. Such was their allegiance to the caste interests that even repeated orders from the Chief Minister's Office to the District Magistrates to ensure Dalits' land occupation failed to have any effect in a number of cases. (Ramakrishnan, V. and A.A. Mahaprashashta. (2009). 'Victims Always', *Frontline* 26(4))

- The CERD Committee is concerned "about reports that Dalits are often denied access to and evicted from land by dominant castes, especially if it borders land belonging to such castes..." (CERD. (2007). *Concluding Observations on India Report*. UN Doc. CERD/C/IND/CO/19, para. 20)
- The CESCR Committee is "deeply concerned about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining, and that the members of... scheduled castes are adversely affected by such displacement from their homes, lands and sources of livelihood." (CESCR. (2008). *Concluding Observations on India report*. UN Doc. E/C.12/IND/CO/5, para. 31)
- A number of disputes concerning rights of the poor (including many Dalits) in government land, rights of tenants, rights in ceiling surplus land, etc. are the subject of special laws, which provide for adjudication by quasi-judicial tribunals. Even in these fora, matters drag on for years with the landlord continuing in possession on the basis of stay orders, causing erosion in the poor persons' faith in the establishment. Planning Commission Expert Group.(2008). *Development Challenges in Extremist Affected Areas*. New Delhi: Government of India, para. 1.13.4

### ***Resettlement and Rehabilitation:***

- From 1947 to 2011, the total number of people displaced due to development projects (PAPs) has been (at least) 60 million people. Most are STs (over 40%) and then SCs and then other poor (around 40%). (Planning Commission. (2011). *Draft Approach Paper for the Twelfth Five-Year Plan*. New Delhi: Government of India; Fernandes, W. (2011, 24 Nov). 'Development-induced Displacement and Human Rights', *Seven Sister's Post*)
- The National Human Rights Commission's monitoring found that "usually those displaced are given neither ade-



quate relief nor the means of rehabilitation.” (NHRC, India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review, 2011)

of Laxmanpur-Bathe and establish a long term end to the physical and extra-physical violence of caste and landlordism in Bihar. This verdict, however, was subsequently overturned in the High Court and all accused acquitted. (Laxmanpur-Bathe Verdict: The Long and Elusive Wait for Justice, 14-04-2010.<<www.pragoti.in/node/3886>>, accessed 09-10-2012)

### **Budgeting on Land Resources:**

- The allocations for schemes such as minor irrigation, asset creation, housing and land distribution under the SC Sub Plan are mainly notional in nature, as they show supposed benefits accruing for the development of SCs from general schemes without any actual targeting towards SCs. (Planning Commission. (2006). SCSP Guidelines. New Delhi: Planning Commission, para 5.4)
- Under the National Rural Livelihood Mission, the social justice component, which includes land distribution to the poor, is weak beyond its fiscal target due to the lack of special guidelines for the SC Sub-Plan to ensure targeted benefits towards SCs. (Planning Commission. (2011). Report of Working Group on NRLM. New Delhi: Planning Commission)

### **(7) IMPACT OF MEASURES**

- Majority of Dalits still lack land entitlements: Only 38% of SCs compared with 61% of dominant castes operated land holdings in 2004-05. The majority of SCs (62.0%) are landless, and a little over one-third operate small areas (0.1-2.5 ha). Barely 2% operate more than 2.5 ha of land. Dalits also have more limited access to irrigation than non-SC/STs, with most (77% of SCs) enjoying little or no access as compared to 63% of non-SC/STs. (NSSO. (2005). National Sample Survey 61st round, 2004-05. New Delhi: Government of India)
- Dalit Women remain without equal access to land: Despite their concentration in rural areas, Dalit women’s own significantly lower levels of land in their names. In 2000-01, only 10% of operational land holdings among SCs at the all-India level were owned by SC women. Women were likely to own land only if they headed households or were an only child. (Department of Agriculture and Cooperation. (2001). Agricultural Census 2000-01. New Delhi: Ministry of Agriculture)
- Majority of Dalits remain landless labourers in rural areas: Without land, the majority of Dalits as compared to dominant castes remain landless, daily wage labourers. The level of urbanisation and diversification of work in favour of non-farm activities is lower among SCs than non-SC/STs. These facts indicate that the persistently high poverty of Dalit households is closely associated with, inter alia, low levels of ownership of capital assets like land. (Planning Commission Expert Group. (2008). Development Challenges in Extremist Affected Areas. New Delhi: Government of India, para. 1.3.4)
- This landless labourer categorisation is especially applicable to Dalit women, given that the mechanisation of agriculture has curtailed more ‘male’ jobs than ‘female’ jobs in the agricultural sector. Hence, in 2001, 57% of SC women compared with 29% of dominant caste women across India were agricultural labourers. (National Census of India 2001)

In 2010, a district sessions court in Patna, Bihar finally pronounced a verdict in the Laxmanpur-Bathe carnage, in which 58 Dalits (including 27 women and 10 children) were brutally killed by the Ranvir Sena (a private army of dominant caste Bhumihar landlords) on 1 December 1997 ostensibly over the control of 50 bighas of land. Sixteen convicts were awarded the death penalty and 10 others received life imprisonment and Rs. 50,000 fine. Laxmanpur-Bathe was one of the series of caste massacres witnessed in Bihar during the 1990s, part of a long history of agrarian conflict and feudal landlordism in central Bihar. The Court, however, did not make a mention of the need for comprehensive agrarian reforms in the state to bring justice to the Dalit victims



## **(8) GAPS IN MEASURES**

### ***Little Budgeting for Dalit Land Rights:***

- In the Indian Government's 2009-10 National Budget, the amount spent on wage labour, school education, basic health, shelter, nutrition and primary necessities for Dalits was 62.44% of the total SC Sub Plan. In sectors where the dominant castes-classes dominate, such as land and asset building, the allocation under the SC Sub Plan was only 37.56%. State budgets present a similar trend. (Ramakrishnan, V. and A.A. Mahaprashashta. (2009). 'Victims Always', Frontline 26(4))

### ***National Council on Land Reforms yet to meet:***

- Despite over four years of existence and two years since a comprehensive report on land reforms was prepared by its Committee, the National Council on Land Reforms has yet to meet in order to discuss and adopt an agenda on land reforms.
- The 11th Five Year Plan makes no other mention of land reforms (aside from the mention of constituting the National Council on Land Reforms), let alone specifically in relation to SCs.

### ***Gap in monitoring and intervention by NCSC and NHRC:***

- Despite the fact that disputes over land rights are behind a large number of atrocities against Dalits, and the acknowledged link between land, employment and poverty in rural areas, the National Commissions have failed to specifically inquire into the situation of land reforms vis-à-vis Dalits, nor to take up Dalit land rights as a priority issue for intervention.

### ***Forced Evictions, Rehabilitation and Resettlement:***

- The Rehabilitation and Resettlement Policy 2007 is silent on the issue of forced acquisition of lands, much of it being SC/ST lands. There is also no inclusion of the affected persons in the social and environmental impact as-

essments, and several provisions related to SCs/STs are expressed as 'the government may', i.e. non-obligatory. While disaggregated data on the number of SC/ST project affected families will be collected, inadequate safeguards are built into the policy. e.g. affected families have to be continuously living in the affected area, which is often not the case where SC families are forced to migrate periodically in search of work. (Asian Human Rights Commission. (2007). 'India's failed National Rehabilitation and Resettlement Policy, 2007', AHRC Weekly Review, 19.12.2007)

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- The National Federation of Dalit Land Rights Movements is a national network of over 250 Dalit movements, organisations and networks across 17 states that are committed to ensuring equal land and livelihood rights for Dalit communities in the country.

- A key component of Navsarjan Trust's work in Gujarat is a land rights campaign to enable Dalits to gain access to land entitlements. Navsarjan takes legal action to combat unlawful land encroachments, and to make sure land is given to those Dalits who are entitled to it. This involves supporting legal action, holding community meetings and training programmes to educate people about their land rights, and facilitating community groups to work on land rights. As a result, over 5000 acres of lands have been legally awarded to hundreds of Dalit landless labourers and farmers.

- A campaign by the Dalit Samakhya movement, including the identification of government surplus lands via district land records, facilitated over 25,000 Dalit women in Andhra Pradesh to make applications for land in 2008. This followed a Government Order that assignment of government land to landless poor for agricultural purposes would be granted within 3 months of an application.

- Booshakthi Vedike of REDS in Tumkur district, Karnataka has been revitalising Dalit panchayats in the district to strengthen self-governance among the Dalit community. As a result, different Dalit panchayats and their communities have taken up land struggles. For example, Dalits in Chamrajnagar District have managed to regain 642 acres of land.



- The Dalit Bahujan Shramik Union in Andhra Pradesh has been involved in land struggles with the Dalit community. They raise awareness on land rights among Dalits; support struggles by Dalits to claim lands taken by the government under land ceiling laws but still lying in the hands of landlords or falsely claimed by other castes; and help Dalits to identify and apply for land grants for vacant government land and bhoodan lands.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Ekta Parishad organises rural communities, especially ST, landless and small farmers (many who are Dalits), around the issue of long-pending land reforms and legal entitlements for the landless. In 2007 and again in 2012, they have mobilised masses of landless and small farmers to march on Delhi to demand: the implementation of land reforms; the creation of a land pool to distribute surplus land among the landless to help them earn their livelihood; the right to shelter (piece of land for the homeless to build a home); and the creation of fast track courts to dispose of land related cases.
- A number of social movements such as Adivasi Mukti Sangathan, Kisan Adivasi Sangathan, Narmada Bachao Andolan, Chhattisgarh Mukti Morcha and Bharat Jan Andolan organise people on the core issue of entitlements and rights of Adivasis and local communities (many of whom are Dalits) over the forest and natural resources, including land.

## **(11) RECOMMENDATIONS**

### ***Strengthen Existing Legislation***

- The SC/ST (Prevention of Atrocities) Act should be amended to include the following punishable offences: (i) Appropriating farm and non-farm produce; (ii) Fabricating false evidence regarding ownership and use of land; (iii) Ransacking and destroying houses and household items, farm or non-farm produce, landed property, etc.

- Implement sec. 4 SC/ST (PoA) Act by initiating proceeding against government officials for wilful negligence if they prevent or do not protect Dalits from land rights violations by dominant castes.

### ***Ensure Supportive Laws, Policies and Structures***

- A national land reforms policy should be formulated and implemented across the country.
- An Agricultural Land Ceiling Act should be implemented and all planning should start from the level of land available to Dalits.
- The state should reserve land resources for Dalits, with all lands allotted to Dalits (SCs) being non-transferable under any circumstances to non-SC/ST persons.
- The state should ensure security of tenure to Dalits through creating supportive legal structures (such as Special Land Tribunals or Fast Track Courts) for deciding land disputes between Dalits and Others, and for those Dalits who have their lands encroached upon by non-Dalits or face long delays in acquiring land title.
- The National Land Reforms Council should be set up and given statutory powers to direct state governments and other agencies to carry out a comprehensive land reform agenda. It should be accorded the power to coordinate with other ministries and departments.

### ***Identify Lands Available for Distribution to Dalits***

- A time-bound survey is required of all land under cultivation of SCs, culminating in the grant of title to those who do not have title and the identification of surplus and ceiling lands.
- In those villages where no land is available especially in SC dominated areas, land should be purchased and allotted to homeless SCs for construction of houses under Indira Awas Yojana.
- The Government of India should launch a centrally sponsored scheme to allocate at least 10 to 15 cents of land to each houseless rural poor (many of whom are Dalits) on a



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priority basis. Although there should be search for available government land and ceiling surplus land for this purchase, it is most feasible to purchase land from the market and allocate them to the homeless poor.

Implement Special Schemes that Prioritise Land Entitlements for Landless Dalits:

- Special schemes should be implemented that prioritise reallocation of surplus, including ceiling, land to landless Dalits (5 acres), with the land title registered in Dalit women's names or as joint title.
- Side plots should be allotted to Dalits for entrepreneurial ventures like motels, service stations, truck terminals, etc. and this process closely monitored with adequate redress systems in place.
- Encourage and promote collective farming among Dalits.
- Schemes to allot housing plots to Dalits should operate on an exclusive basis under the SC Sub Plan.
- A Land Bank should be instituted, wherein ceiling surplus land is purchased by the state and allotted to deserving SC families in the same area. The Land Bank would operate the market route to acquisition of land, with the lands being inalienable.

***Protect Existing Land Entitlements:***

- Arrest the process of pauperisation of marginal and small farmers by addressing issues such as debt burden, mortgaging and distressed selling of land and the provision of an adequate support base for sustaining agriculture.
- The government should undertake a mass programme to evict illegal encroachers on Dalits' lands and to give possession to the eligible Dalit landowners.



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**Guideline 46. National and local governments should take all necessary measures to ensure equal access to free quality primary and secondary education for all children from affected communities, as well as equal opportunity to receive tertiary education. Effective special measures should be enacted for affected communities in admissions to public and private higher education institutions.**

# 46

## EDUCATION

**Discrimination against Dalit children in the educational system is widespread. Alienation, social exclusion and physical abuse are present at all levels of education. The forms of structural discrimination and abuse that Dalit children face in schools, colleges and universities are often so stigmatising that they are forced to drop out. Illiteracy and dropout rates among Dalit children from school remain very high, and a number of Dalit children also continue to not enroll in schools at all. Legislation on the issue is limited, however, and measures to address the issue are often inadequately implemented.**

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should take specific (i) legal, (ii) policy, (iii) programmatic, and (iv) budgetary measures to ensure equal access, non-discrimination, freedom to exercise right, and security of life for Dalits in respect of:

- Equal access to primary and secondary education that is free and is of quality: to be entitled to free education; to have schools with adequate infrastructure facilities; to have teachers regularly attend classes and teach; to be taught using teaching methods that support children to critically reason and address different learning needs; to be free from discrimination in schools
- Equal opportunity to receive tertiary (higher) education: to be entitled to special coaching classes to support entry into tertiary education; to have access to educational and vocational information and guidance; to be able to access scholarships for tertiary education; to have access to hostel facilities; to have counsellors in ter-



ary education institutions to give advice and support in dealing with tertiary education; to be free from discrimination in tertiary education institutions

- Admissions to public and private higher educational institutions: to be entitled to affirmative action in order to access government and private higher education institutions.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- Everyone has the right to education. Primary education shall be free and compulsory for all. Secondary education shall be available and accessible to all by every appropriate means. Tertiary education shall be equally accessible to all, on the basis of capacity. (Article 13 ICESCR)
- Every child has the right to education and states parties shall make primary education free and compulsory for all; develop different forms of secondary education, including general and vocational education, and make them available and accessible to every child, including financially accessible; make tertiary education accessible to all on the basis of capacity by every appropriate means; encourage regular attendance at schools and the reduction of dropouts. (Article 28 CRC)
- States parties shall eliminate discrimination in education that has the purpose or effect of nullifying or impairing equality of treatment in education and in particular (a) depriving any person/s of access to education; (b) limiting any person/s to education of an inferior standard; (c) maintaining separate educational systems or institutions for persons (subject to Article 2); or (d) inflicting on any person/s conditions which are incompatible with human dignity. (Articles 1 & 3 UNESCO Convention against Discrimination in Education 1960)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- The Indian state should take effective measures to reduce dropout and increase enrolment rates among Dalit children and adolescents at all levels of schooling, combat classroom segregation and discrimination against Dalit pupils, and en-

sure non-discriminatory access to the midday meal scheme, adequate equipment, staffing and quality of teaching in public schools, as well as physical access by Dalit pupils to schools in dominant caste neighbourhoods. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, para. 25)

- The Indian state should look into the continuing disparities in the educational status of scheduled caste women and the limited access of these women to higher education. The Committee urges the government to introduce affirmative action programmes in education so as to create an environment conducive to the progress of Dalit women and girls. (CEDAW. (2007). Concluding Comments on India Report. UN Doc. CEDAW/C/IND/CO/3, para. 32)

- The Indian state should strengthen the enforcement of existing legal prohibitions of discrimination and, in addition, consider enacting comprehensive legislation guaranteeing the right to equal treatment and protection against discrimination... in education. (CESCR. (2008). Concluding Observations on the India State Report. UN Doc. CESCR E/C.12/IND/CO/5, para. 52)

- The Indian state should continue to make efforts to achieve universal free and compulsory primary education by, inter alia, taking further initiatives to... target disadvantaged and marginalised groups in particular... (CESCR. (2008). Concluding Observations on the India State Report. UN Doc. CESCR E/C.12/IND/CO/5, paras 80-81)

- States should adopt special measures in favour of Dalit communities in order to ensure their enjoyment of rights to... education; combat multiple discrimination faced by Dalit women in education; prevent, prohibit and eliminate practices of segregation in education. (CERD. (2002). General Recommendation 29: Decent-based Discrimination, paras 6, 12 & 15)

- States with Dalit communities should ensure that public and private education systems do not exclude children on the basis of descent; reduce school dropout rates for all children, in particular for Dalit children and within that Dalit girls; combat discrimination and harassment of Dalit students. (CERD. (2002). General Recommendation 29, paras 44-46)



- Governments should remove known barriers to the enrolment and retention in school of young and teenage girls belonging to all castes that are discriminated against. (Special Rapporteur on the Right to Education. (2006). Girls' Right to Education. UN Doc. E/CN.4/2006/45, paras. 80–85 and 140).

#### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

##### ***Legal and policy measures:***

- The state shall provide free and compulsory education to all children aged 6–14 years in such manner as the state may, by law, determine. (Article 21A Indian Constitution)
- The state may make special provisions for the advancement of scheduled castes (such as reservations). (Article 15(4) Indian Constitution) Thus, for example, in centrally-controlled higher educational institutions 15% of the seats are reserved for SC students.
- The state should promote with special care the educational interests of scheduled castes. (Article 46 Indian Constitution)
- Education was included in the concurrent list of the Indian Constitution in 1976 and, therefore, both the governments of states/union territories and the centre have the responsibility to provide resources to improve education delivery in the country. (Seventh Schedule, List III—Concurrent List, sec. 25: “Education”, Constitution of India)
- Every child aged 6–14 years has the right to free and compulsory elementary education. To this end, schools with adequate infrastructure facilities and qualified teachers are to be available; children are entitled to free textbooks, writing materials and uniforms; the government should ensure that children from disadvantaged social groups are not discriminated against and prevented from pursuing and completing elementary education; a minimum 25% reservation in Class 1 should be provided to children from disadvantaged groups in private schools; special bridge courses and residential bridge schools should be in place for out-of-school children to bring them into elementary education; the government should ensure good quality education in

conformity with the constitutional principles; etc. (Right of Children to Free and Compulsory Education Act 2009)

- The Indian Supreme Court has upheld the validity of the Right of Children to Free and Compulsory Education Act, which mandates 25% seats for disadvantaged children like Dalits in private schools in order to mitigate segregation in the education system. (Society for Unaided Private Schools of Rajasthan vs. Union of India (2012). SC Writ Petition 95 of 2010)
- The National Policy on Education (NPE) 1986/1992 emphasises education as an agent of basic change in the status of disadvantaged groups like scheduled castes (SC). The Policy focuses on equalisation of their education levels with non-SCs via a number of strategies including scholarships; recruitment of SC teachers; constant micro-planning and verification of access, retention and completion of education for SC children; provision of hostel facilities and residential schools; and constant innovation to find methods to enhance their educational inclusion.
- The 12th Five-Year Plan acknowledges that Dalit children's dropout from schools is higher than the national average. The Plan thus calls for a sharper focus on disadvantaged social groups in its shift in strategy from a focus on inputs and increasing access and enrolment, to the teaching–learning process and its improvement in order to ensure adequate learning outcomes.

##### ***Government schemes:***

- The Integrated Child Development Services (ICDS) scheme is being universalised and its Pre-School Education component strengthened to ensure universalisation of early childhood education of children, particularly those belonging to socially disadvantaged groups, for improving access to formal schooling.
- The central government's Sarva Shiksha Abhiyan (SSA) focuses on universal enrolment in schools through improved access and targeted interventions for out-of-school children. Funds are allocated to each district for special innovative activities for socially disadvantaged children like SCs, teacher sensitisation programmes are conducted, etc. The SSA Implementation Framework suggests interventions for inclusion of Dalit children such as: establishing norms of behaviour for teachers and students; timely detec-



tion of the forms of discrimination practised by either teachers or students. (Department of School Education and Literacy (2011). Framework for the Implementation of SSA based on RtE Act. New Delhi: DSEL, para 2.3.1)

- The National Programme of Nutritional Support to Primary Education (Midday Meal Scheme) is a centrally-sponsored scheme operational from 1995, which currently provides cooked lunches to all children studying in classes 1-8 in government and government aided schools. The objective is to enhance school enrolment and attendance, and also improve children's nutritional levels.
- The Kasturba Gandhi Balika Vidyalaya (KGBV), launched in 2004, requires the setting up of residential schools from Class 6 onwards for girls belonging predominantly to SC, ST, OBC and minority communities.
- The Mahila Samakhya programme was launched in 1989 to translate the goals enshrined in the National Policy on Education into a concrete programme for the education and empowerment of women in rural areas, particularly women from socially and economically marginalised groups.
- The central government-sponsored Babu Jagjivan Ram Chhatrawas Yojna scheme aims to provide hostel facilities to scheduled caste boys and girls studying in middle schools, higher secondary schools, colleges and universities.
- The central government-sponsored Scheme for Strengthening Boarding and Hostel Facilities for Girl Students, launched in 1993-94, has the main objective to retain girls in secondary schools. Girls in the age group of 14-18 years, studying in classes 9-12 and belonging to SCs, STs, OBCs, minority communities and below poverty line families are the focus of this scheme.
- The central government also has launched a Special Education Development Programme for scheduled caste girls with low literacy levels in 1996-97. A package of educational inputs are provided through residential schools for these girls, primarily in low Sc female literacy districts in the states of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh.
- Central government-sponsored schemes of Pre-Matric and Post-Matric scholarships to SC students exist to support Dalit children's education.

- In 2007 a Scholarship for Top-Class Education was introduced, under which meritorious SC students falling under the income ceiling of Rs 2 lakhs per annum are provided financial assistance for pursuing professional and specialised courses in 182 identified higher institutions.

#### ***Budgetary and other measures:***

- Under the Scheduled Castes Sub Plan, the Ministry of Human Resource Development allocates around 20% of its Plan budget for SC school education alone. A similar sizeable allocation is made for higher education for SCs.
- The University Grants Commission has issued the UGC (Promotion of Equity in Higher Educational Institutions) Regulations 2012 and UGC Grievance Redress Regulations in 2012 to promote equity and address discrimination in higher educational institutions.

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- Apart from improving the availability of educational facilities for scheduled castes, emphasis should also be given to improving the quality of education so as to not produce educated illiterates who are unable to obtain gainful employment.
- Privatisation of education, especially higher education, has serious implications for the large majority of students, especially predominantly poor scheduled castes. The marketisation or commercialisation of education should be totally regulated in the interests of educational equality and excellence.
- Coaching and allied schemes, along with remedial coaching, need to be strengthened and extended, as well as the undergraduate services for SC students for pursuing higher education. (National Commission for SCs. (2005). First Annual Report 2004-05. New Delhi: NCSC)
- While there has been a decline in the percentage of out-of-school children across gender and social categories,... SC children need greater and focused attention. (Planning Commission. (2012). Draft 12th Five-Year Plan (2012-2017). New Delhi: Planning Commission, para. 21.8)



- Education of scheduled caste children must be a priority, which necessitates both flexibility of approach and avoidance of discrimination. There must be an active campaign, in which syllabi and curriculum are checked to avoid prejudice, teachers are sensitised and instances of discrimination are punished. This also requires grievance redressal mechanisms at the school and also higher levels. In addition, scholarships should be increased and provided to more scheduled caste children, along with other provisions such as free textbooks up to Class 10. (National Knowledge Commission. (2009). Report to the Nation 2006-2009. New Delhi: Government of India, para. 3.7)
- A deprivation index, which accounts for the multidimensionality of differences of caste, gender, region, type of schooling, etc. that persist, could provide weighted scores to students and the cumulative score could be used to supplement a student's school examination score. After adding the score from the deprivation index, all students could compete for admissions to higher educational institutions. (National Knowledge Commission. (2009). Report to the Nation 2006-2009, p.77)

## (6) STATUS OF IMPLEMENTATION OF STATE MEASURES

### *Literacy and enrolment levels:*

- Despite the professed government focus on SC education, the India-level literacy rate for SCs continues to be lower than that of other castes: as per the 2011 census, the SC literacy rate was 66.1 overall, 62.8 in rural areas and 76.2 in urban areas. This was much less than the general literacy rate of 73.0. Gender-wise, the literacy rate for SC women (56.5) was much lower than for SC men (75.2), women in general (64.6) and men in general (80.9).

In January 2012, 25 Dalit children from Karandiapatana village in Kendrapada district, Orissa were forced to obtain school leaving certificates and get admitted into another school after facing abuse and threats from dominant caste villagers, as part of a continuing land dispute in the village. (Times of India. (2012, 19 Jan). 'Dalit children 'ousted' from school in Kendrapada')

- The gross enrolment ratio for SC children in elementary education today is reasonably high (132.0 in classes 1-5, dropping to 92.3 in classes 6-8), in keeping with the national average, though gender disparities remain. The enrolment ratios, however, drop significantly at the secondary and senior secondary levels for SC students (only 70.9 in classes 9-10, and 38.3 in classes 11-12). Moreover, enrolment does not necessarily translate into SC children regularly attending school at any level. (Ministry of Human Resource Development. (2012). Selected Educational Statistics 2010-11. New Delhi: Government of India)

- The number of out-of-school children aged 6-13 years in rural areas is officially estimated at 4.53% and in urban areas as 3.18%, though this figure is contested as lower than the reality. While SC children represent 21% of all children, they represent 29.20% of those out of schools. (EdCil & Social and Rural Research Institute. (2010). All India Survey of Out-of-School Children of Age 6-13 Years and Age 5. New Delhi: Government of India)

- In terms of higher education, SCs continue to lag behind other social groups. The 2001 Census showed only 3.4% of SC men and 1% of SC women had a graduate degree. According to the NSSO 64th Round data for 2007-08, the gross enrolment ratio in higher education in rural areas for SCs was 8.3, lower than for OBCs (11) and 'higher' castes (17). This was especially the case for rural SC women, whose enrolment ratio stood at 6 as compared to 8.4 for all women. For urban areas, the gross enrolment ratio was 20.5 for SCs, as compared to 25.2 for OBCs and 38 for 'higher' castes.

- This trend is further confirmed by the eligible enrolment ratio (EER), which is the proportion of higher secondary education students who have joined the higher education system. In 2004-05, the EER was only 51% for SCs. (University Grants Commission. (2008). Higher Education in India: Issues related to Expansion, Inclusiveness, Quality and Finance. New Delhi: UGC)

### *Caste discrimination and exclusion:*

- A study of 'untouchability' practices in rural areas of 11 Indian states found that caste practices persist in education, such as segregation in eating, drinking water or seat-



ing in classrooms in public schools, aside from discrimination and ill-treatment from non-Dalit teachers or students. (Shah, G. et al. (2006). *Untouchability in Rural India*. New Delhi: Sage Publications)

- In 2012, 41 independent monitoring institutes submitted reports to the MHRD about instances of discrimination and untouchability during the midday meals in 186 schools across the states of Rajasthan, Madhya Pradesh, Orissa, Uttar Pradesh and Gujarat. SC children are routinely segregated from other children while eating and food cooked by SC cooks is often refused by many children or their parents. There are also cases where Dalit students are served from a distance, and several students bring their own plates for fear of utensils being touched by Dalit classmates. (Vishnoi, A. (2012, 26 Nov). 'Report says caste, gender discrimination rampant', Indian Express)

- Research on violence against Dalit women and girls in four states of India revealed that Dalit girls have either stopped mid-way through their schooling, or have suffered mental tension due to instances of discrimination, verbal abuse and harassment, threats of assaults as well as actual assaults on them by dominant caste teachers and students. (Irudayam, A. et al. (2011). *Dalit Women Speak Out: Caste, Class and Gender Violence in India*. New Delhi: Zubaan)

- The persistence of caste-based segregation of children in primary schools in rural Karnataka can be seen from a 2011 Mangalore University study in 10 taluks where 13.7% of Dalit children stated that their teachers had asked them to sit separately from 'higher caste' children in the classroom. Nearly 33% of Dalit parents said their children cleaned classrooms on a 'frequent' basis and 'during school functions and festivals'. (Rao, Mohit. (2012, 22 Oct). *Discrimination and Social Exclusion: A study on the development experience of Dalits in Karnataka*. The Hindu)

- The SSA Implementation Framework broadly lists continuing forms of exclusion of SC children in education: exclusion by teachers in classrooms, including segregated seating, less attention to SC children, derogatory remarks on their learning abilities linked to their caste, denying SC children equal access to school facilities; exclusion by peer group in classroom and other activities in the schools; exclusion by the system, such as the lack of caste sensitisation trainings for teachers, non-implementation of incentive

schemes for SC children. (Department of School Education and Literacy. (2011). *Framework for Implementation of SSA based on RtE Act*. New Delhi: DSEL, para 3.8.2.3)

- MP Bhalchandra Mungekar, a Commissioner of Inquiry appointed by the National SC Commission, concluded that 35 SC medical students who were failed en masse from Delhi's Vardhman Mahavir Medical College in 2010 had experienced caste discrimination and recommended punishment of the responsible college staff. He noted that discrimination in higher education institutions was being manifested in terms of SC student suicides, failures, degrees delayed for years on end. (Gaikwad, R. (2012, 3 Oct). 'How casteist is our varsity?'. The Hindu)

- Prejudice against, and harassment of, Dalits are equally prevalent in institutions of higher education. The caste bias manifests itself in the way teachers ignore Dalit students and unjustly fail them in exams and in the unwillingness of the university administration to assist and support Dalits. Reportedly, as a grave consequence of this harassment, a disproportionate number of Dalit students have committed suicide in some countries. (Special Rapporteur on Contemporary Forms of Racism. (2013). *Report to Human Rights Council on Racism and Implementation of the Durban Declaration and Programme of Action*. UN Doc. A/HRC/23/56, para. 46)

### ***Increasing privatisation of education:***

- The drive for universal elementary education and has led to the creation or upgrading of many primary and middle schools across the country. However, over 50% of high schools and higher secondary schools today across the country are private and private aided. This has significance for SCs, given their higher poverty levels, and points to a serious issue of access to higher schooling for these communities. (DISE Education Statistics 2010-11)

### ***Recruitment of SC teachers:***

- In terms of the teaching profession, there are currently 816,809 SC teachers in India, forming only 12.7% of teachers. This is less than their percentage share of the population (16.5%). (DISE Education Statistics 2010-11)



### **Education budgets:**

- In 2012-13, Rs 8546 crores was allocated under the SC Sub-Plan out of the total of Rs 45,642 crores for school education under the Ministry of Human Resource Development. These funds under the Sub-Plan are supposed to be utilised for the direct educational benefit of SC children, though much of this remains notional allocations. Similarly, the University Grants Commission in 2012-13 had a budget of Rs 780 crores allocated for SCs under its programmes.
- The Performance Audit of education schemes for SCs/STs such as scholarships, construction of hostels and schools, and provision of remedial and special coaching, operated by the Ministries for Social Justice & Empowerment and Tribal Welfare, revealed deficiencies such as poor utilisation of funds, non-availing of the benefits of schemes by different states, imbalances in the release of funds, unspent balances, delays in the release of funds and diversion of funds, etc. (Comptroller Auditor-General. (2007). Performance Audit of Educational Development of SCs and STs, Report No. 14 of 2007 for the period ended March 2006. New Delhi: Government of India)

### **(7) IMPACT OF MEASURES**

- High dropouts from education: While SC enrolment ratios and numbers entering schools are high, an alarming trend is the high rate of dropouts among SC children: the dropout rate across classes 1-10 was 56.0. In other words, over half the SC children who enter into schools are dropping out before completing class 10. (Ministry of Human Resource Development. (2012). Selected Educational Statistics 2010-11. New Delhi: Government of India)
- Continuing disparities in education: Despite the legal and programmatic efforts by the Indian state to achieve universal primary education, the wide disparity in enrolment and dropout rates in primary schools continue, negatively affecting, in particular,... scheduled caste children. (CESCR. (2008). Concluding Observations on the India State Report. UN Doc. CESCR E/C.12/IND/CO/5, para 40)
- Despite the fact that 'upper caste' Hindus are only 33% of the urban Indian population, they represent 66% of all

professional and higher degree holders. By contrast, the most underrepresented community in higher education are the SC Hindus, who form 13% of the urban population and yet only 4% of university graduates. Higher education, as a universal resource, is out of reach of many Dalits, who suffer from resource discrimination; i.e. the lack of resource endowments to access higher education. (Deshpande, Satish. (2006). 'Exclusive Inequalities: Merit, Caste and Discrimination in Indian Higher Education Today', Economic and Political Weekly 41(24))

- Poor educational outcomes: The National Achievement Survey 2012, conducted by NCERT for class 5 students in 27 states and 4 union territories, found that SC students underperformed compared to general students across all subjects.
- Of the 9.60 lakh SC students who passed their higher secondary exams, only 31.91% scored first division marks (above 60%) as compared to 40.34% for all students, while 29.76% of SC students scored below 50%. In other words, SC students continue to perform much lower than students in general and, therefore, are less likely to access higher education.

### **(8) GAPS IN MEASURES**

- Inadequate information about Right to Education Act: The government's Shikshya ka Haq Campaign between November 2011 and 2012, in reality, has not reached many communities, nor has the campaign given adequate focus to issues of non-discrimination and social inclusion. Hence, for example, a 2013 study by the Centre for Social Equity and Inclusion among five marginalised communities in ten areas across Delhi, many of whom are Dalits, revealed that almost no community members knew about the Act. Those who did know about the Act do so solely due to the efforts of civil society organisations.
- Absence of legal penalties for discrimination in education: Currently, no specific measures exist to address the multiple forms of discrimination against SC children in schools, such as the establishment of norms of behaviour or inclusion of such discrimination under the SC/ST (Prevention of Atrocities) Act or similar protective social legislation.



- Inadequate representation of Dalits as teachers: The overall representation of Dalit teachers in the education system is much lower than their percentage of the Indian population. This has multiple implications, not least in terms of the visibility of role models in education as well as teacher support to Dalit children in education.
- Absence of schemes tailored to Dalit students' needs: Despite the emphasis in various government schemes on closing the social gaps between marginalised communities such as Dalits and others in education, education planning continues to take place without adequate consultation of Dalit children and communities as to their specific needs in education.
- Absence of special measures to ensure access by Dalits to private higher educational institutions: Currently, there are no special measures in place, such as reservations, to facilitate admissions for SC students into private higher educational institutions.
- Inadequate monitoring, accountability and grievance redress mechanisms: The Right to Education Act has inadequate monitoring, accountability and grievance redress mechanisms. Despite the creation of the National Commission for the Protection of Child Rights, along with state counterparts, and the responsibility of grievance redress at the local level with the Local Authority, a concrete, strong grievance redressal process and norms are not built into the Act. The Commission does not have strong enforcement powers, and the only alternative for grievance redress is the Local Authority that itself might be in breach of its duties under the Act.
- Gaps in budget implementation: Currently, there is a lack of clear guidelines for states/union territories regarding how funds allocated under the SC Sub-Plan should be planned and utilised; consequently, there is a tendency towards notional allocation and accounting for such funds with only a small percentage (less than 10%) reaching directly to the intended SC student beneficiaries.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Navsarjan Trust in Gujarat runs a human rights education programme that aims to completely eradicate discrimination in government schools, achieve a zero dropout rate, and create educational and personal growth opportunities for Dalit children. Its extra-curricular education centres support Dalit children to raise their voices against discrimination, as well as to promote their education through library access, games and other educational activities such as camps. The organisation also hands out educational kits with books challenging caste and gender discrimination, and to encourage Dalit children's critical thinking abilities.
- NACDOR and Rashtriya Dalit Mahasabha are involved in Bundelkhand Shiksha Abhiyan, which addresses the problems of low literacy among Dalits, especially Dalit girls; the mal-functioning of government primary schools where most Dalit children study; discrimination against Dalit children in schools; the lack of motivation amongst the Dalit children and their parents for education. This is achieved by awareness building and mobilisation of the Dalit community; monitoring of the government primary schools via Village Dalit Education Committees, involving the local institutions of panchayat governance; and advocacy at the local/state/national levels.
- Many universities and colleges today have Dalit and Adivasi students' forums that provide education and career advice, information and support to Dalit and Adivasi students, create awareness to strengthen movements against caste discrimination in higher education, and support and strengthen Dalit and Adivasi youth leadership.

## **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Centre for Social Equity and Inclusion in Bihar works on issues of equity and inclusion of marginalised children such as Dalit children in education. Their activities range from promoting inclusion activities in government schools; to monitoring equity, non-discrimination and inclusion of Dalit children in schools; promoting Ambedkar students' forums among Dalit school students to voice their concerns in education; and advocacy and lobbying with the state government for a more equitable and inclusive, quality education system in the state.



- All India Catholic Students' Federation (AICUF) engages university/college students for social awareness and analysis, to foster activism towards social change and the transformation of society. One focal community is the Dalits, to give more space to these students and highlight their issues within education and society.
- Nari Gunjan in Bihar runs two hostels primarily for Dalit Musahar girls, in order to provide a supportive environment for their learning and additional educational support while the girls study in government schools.

## **(ii) RECOMMENDATIONS**

- The Ministry of Human Resource Development must encourage state governments to constitute 'Equity Working Groups', bringing together government and civil society organisations to continuously evolve strategies to promote the inclusion of Dalit children in education.
- A Central Government Order or Advisory should be issued on non-discrimination in schools, and states should institutionalise mechanisms to address all forms of discrimination.
- The NCERT should identify and develop activity-based modules to promote diversity, equity and social inclusion in classrooms and schools, and these should be included in teacher training modules. Time should be allocated within the school schedule for such processes and activities.
- An appropriate equity module for the training of school management committee should be formulated and shared with the states and through the Sarva Shikshya Abhiyan scheme.
- Taking into account the specific limitations of SC communities when it comes to accessing education, more residential schools of improved quality from class 6 onwards should be made available, especially for SC girls.
- Funds allocated under the Scheduled Caste Sub Plan (SCSP) should be used more effectively, as per their mandate, for directly benefiting Dalit students and reducing the gap between them and other communities in education, as well as addressing discrimination and other disabilities in education.
- The NCPCR, which is institutionalising the social auditing of schools, should upscale this process and incorporate discrimination, equity and inclusion issues in it.
- The MHRD should organise a national consultation to develop a basket of schemes to be implemented under the 'equity fund' for SCs, utilising SCP funds, and evolve guidelines to the states to develop innovative action under the equity fund.
- Given the important engagement by Dalit civil society organisations in education in various capacities, better consistent and accountable collaboration between the government and these organisations can strengthen the implementation of the Right to Education Act as far as Dalit children are concerned.
- Gender and caste disaggregated data should be made available each year on learning outcomes at all major levels of education in order to track issues beyond access and retention in education.



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**Guideline 48. National and local governments should review and eliminate language in school textbooks that conveys or encourages stereotypical and prejudicial beliefs, attitudes, and actions against Dalits and ensure that the content of education and curricula reflect the contributions of Dalits and emphasise the need to eliminate discrimination based on work and descent through, among other things, inclusion of human rights education.**

# 48

## EDUCATION

There has been no systematic attempt by the Indian government at either the national or state levels to review the different curricula and textbooks across the country in order to ensure the absence of any caste prejudicial beliefs or attitudes, nor to systematically develop a curriculum of human rights education applicable in all schools that would break caste discriminatory beliefs and attitudes. Instead, several ad-hoc measures have been taken, which need to be strengthened by a comprehensive review process.

### **(i) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The national and state governments should take specific measures to translate the vision of equality envisaged under UN human rights treaties and the Indian Constitution into the curriculum framework and ensure non-discriminatory education. This can be achieved by:

This can be achieved by:

- instituting a review of the language in all textbooks; thereafter eliminating all language that conveys or encourages stereotypical and prejudicial beliefs, attitudes and actions against Dalits, and ensuring that textbooks used in the classroom, the content language and images are gender-sensitive, and critical of social hierarchies and inequalities of all kinds;
- monitoring that the content of education reflects the contributions of Dalits in society;



- ensuring that the content of education emphasises the importance and need to eliminate caste-based discrimination through a stronger orientation toward human rights education.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- State measures in the fields of teaching, education, culture and information can help combating prejudices which lead to racial discrimination and promoting understanding, tolerance and friendship among nations and racial or ethnic groups. (Article 7 ICERD)
- Education of the child shall be directed (among other things) to the development of respect for human rights and fundamental freedoms, the development of respect for the child's own cultural identity, language and values, the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and indigenous persons. (Article 29 CRC)
- Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups. (Article 5(i) UNESCO Convention against Discrimination in Education 1960)

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- Governments should review all language in textbooks which convey stereotyped or demeaning images, language, names or opinions concerning caste-discriminated communities and replace them by language, etc. that speaks to the inherent dignity and equality of all human beings. (CERD. (2002). General Recommendation 29: Descent-based Discrimination, para 48)
- The Indian state should adopt further measures, including education programmes at the national and state levels, to combat severe social discrimination against scheduled

castes. (Human Rights Committee. (1997). Concluding Observations on India report. UN.Doc. CCPR/c/79/Add.81, para 15)

- The Indian state should provide human rights education in schools and in universities, cultivating values of tolerance, social inclusion and participation. (CESCR. (2008). Concluding Observations on the India Report. UN Doc. CESCR E/C.12/IND/CO/5, para 83)
- The Indian state should strengthen its efforts to eradicate caste-based discrimination by intensifying public education and awareness-raising campaigns, and incorporating educational objectives of inter-caste tolerance. (CERD. (2007). Concluding Observations on the India State report. UN Doc. CERD/C/IND/CO/19, para 27)
- The State should take action to ensure that certain caste groups are not stigmatised in the curriculum or in school activities. (Special Rapporteur on the Right to Education. (2005). Conclusion and Recommendations (Accessibility to Education): Report on Girls' Right to Education. UN.Doc. E/CN.4/2006/45, para 140)
- It is recommended to "strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination." (Human Rights Council. (2008). Comments on Universal Periodic Review of India, recc. 13)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

General guidelines for school textbooks and curricula:

- The National Policy on Education (NPE) 1986/1992 envisages a national system of education, with focus on education for equality and removal of caste and gender disparities across all stages of education, and with the purpose of removing social prejudices.
- In particular, the education system has to be based on a national curricular framework, which contains common core components such as constitutional obligations and other content essential to promote values such as egalitari-



anism, gender equality and the removal of social barriers. (National Policy on Education 1986, para 3.4)

- Sec. 29 Right of Children to Free and Compulsory Education Act 2009 emphasises that the elementary education curriculum and evaluation procedures shall conform with Constitutional values and shall make the child free from fear or anxiety and enable freedom of expression.

### **Mechanisms involved directly in the production of textbooks:**

- The National Council on Educational Research and Training (NCERT), established in 1961, has the mandate to assist and advise the central and state governments on policies and programmes in school education, prepare the national curriculum framework, publish model textbooks and supplementary material. NCERT conducts the orientation of state level functionaries and SCERTs for the implementation of new curricula and materials.
- State governments are free to organise education within the national curriculum framework. NCERT textbooks are used in all public schools in the states affiliated to the Central Board of Secondary Education (CBSE), but in other cases the state governments, through the State Institutes of Education or SCERTs, have taken on the responsibility of preparing their own curricula and textbooks.
- In addition, there are large numbers of textbooks published by the private sector, widely used in non-government and religion-based schools, which are free to choose publications, including those published by the private sector. Private schools do not necessarily follow the State Board prescribed syllabi and textbooks until Class 8.

### **National Curriculum Framework:**

- The NCERT reviews its National Curriculum Framework (NCF) for school education every five years, but there is no mechanism to engage with Dalits in the review process consultations.
- The latest NCF of 2005 specifies that:

o the study of social sciences should be from the perspective of marginalised groups, gender justice and a new sensitivity towards Dalit-related issues, and the textbooks aligned with Constitutional values of social justice and equality (p. Ix)

o teachers should be helped in cultivating an understanding of the social and cultural diversity that children bring to schools, and trained to work toward the reduction of caste and gender divides. (p.23)

o In relation to ensuring the curriculum reflects the effective contributions of Dalits in society, children should find examples of the plurality of peoples and ways of life represented in the textbooks that does not oversimplify, label or judge any community. (p.32)

o it is essential for schools to ensure that every voice is heard in the classrooms, so that children develop a critical understanding of their social reality and social inequalities. (p.32)

- The National Curriculum Framework for Teacher Education (NCFTE), released in 2009 by the National Council for Teacher Education (NCTE), calls for teachers to re-conceptualise citizenship education in terms of human rights and approaches of critical pedagogy. They should also promote constitutional values of equality, justice, liberty, fraternity and secularism.

([www.ncte-india.org/publicnotice/NCFTE\\_2010.pdf](http://www.ncte-india.org/publicnotice/NCFTE_2010.pdf)), accessed 01-10-2012)

### **Other mechanisms:**

- NCERT, through its Education of Groups with Special Needs Department (DEGSN), undertakes research, development, training and extension activities related to the issues and problems concerning the education of Dalits and other socially disadvantaged children. It organises training programmes for teachers, teacher educators and policy makers to sensitise and train them in strategies for providing quality education and equal opportunities to such children.



## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

Textbooks and teaching in the school should be free from stereotypes:

- In 2005, the Central Advisory Board of Education (CABE) proposed an independent National Textbook Council (NTC) to monitor textbooks produced across the country. This Council would investigate any complaints from citizens regarding textbooks. Also proposed was for the Standing Committee to be empowered to prepare guidelines and outline the parameters for periodic reviews of textbooks regarding the social content of books as well as their standards, relevance and suitability for the age group. The proposed NTC bill, however, was not passed by the Parliament.

### ***Inclusive practices in education:***

- The curriculum and textbooks need to be intrinsically connected with the child's life outside the school, and should reinforce the child's pride in her language, society and way of life, at the same time affording opportunities for learning about the wider world.
- Interventions for universalising access cannot be limited to school infrastructure, residential facilities or transportation, but must encompass curriculum, including 'hidden' curriculum (i.e. inequalities that operate at the level of everyday classroom practices), pedagogy and assessment. This would be necessary for enabling real access to children disadvantaged in socio-economic, cultural and linguistic terms. (Department of School Literacy. (2011). Framework for the Implementation of SSA based on RtE Act. New Delhi: DSEL, paras 2.3.1 & 2.8.1)

### ***Better training for teachers aimed toward ensuring respect for human rights:***

- The National Curriculum Framework for Teacher Education 2009 suggested the following as part of making teachers overcome their biases against Dalits and equipping them to fight social exclusion of Dalits: training on the philosophy of inclusive education; perspectives of gender eq-

uity, perspectives that develop respect for the rights of all; and orientation to the different kinds of adjustments that schools have to make in terms of curriculum and teaching methods.

([www.ncte-india.org/publicnotice/NCFTE\\_2010.pdf](http://www.ncte-india.org/publicnotice/NCFTE_2010.pdf))

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Education Curriculum***

- On the occasion of the National Curriculum Framework (NCF) review in 2005, NCERT had to correct the curriculum policy set up in 2000, which had "sharply and disturbingly unsettled and eroded the values of equality by naturalising inequalities of caste." (CABE. (2005). Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in School Outside the Government System. New Delhi: CABE, p.2)
- The framework for the implementation of SSA underlines the exclusion of Dalits in the educational system, which is realised through different means including:
  - (i) lack of acknowledgement of Dalit role models in the curriculum or by teachers;
  - (ii) reinforcing caste characteristics in syllabi and textbooks;
  - (iii) lack of sensitisation of teachers in teacher education and training. (Department of School Literacy. (2011). Framework for the Implementation of SSA based on RtE Act. New Delhi: DSEL)

Caste and Dalits' representation in school textbooks and their contribution to society

- Notwithstanding the policy directive that the core values should cut across all subjects, of all the textbooks used in schools, it is only the content of social science textbooks that clearly address the core curricular issues such as the principle of equality. (CABE. (2005). Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in School Outside the Government System. New Delhi: CABE, p. 42)



- In general, in the NCERT textbooks, the caste problem is discussed, but in a moderate way that does not underline the continuing gravity of the current situation. While discrimination is denounced, the gravity of untouchability is not properly underlined.

- The struggles of Dalits and the contribution of Dalits leaders to the development of India is underrepresented. e.g. NCERT's Class 11 textbook does not properly introduce Dr Ambedkar and explain his key role in drafting the Constitution. (Valmiki, O. et al. (2012, 8 June). 'Humour is by no means exempt from prejudice', The Hindu)

- School textbooks reinforce inequalities by adopting the perspective of classes/groups possessing power and privilege and not groups like Dalits. e.g. There are no Dalits among the "great Indians" whose biographies are published by Rashtrathana Publications. Dalits hardly appear in the government books in West Bengal and Madhya Pradesh, or in books by private publishers with a pan-India market. By contrast, there is undue attention paid to the role of minority Brahmin community that does not reflect the social reality. e.g. Though the Arya Samaj is supposed to have opposed the caste system, a textbook produced by DAV for schools across India speaks of learned Brahmins and valorous Kshatriyas, while Shudras are invisible. Caste endogamy is also endorsed in the textbooks of the Bhartiya Vidya Bhawan as maintaining blood purity. (CABE. (2005). Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in School Outside the Government System. New Delhi: CABE, pp. vii, x)

- Although various parliamentarians have objected to Dalit caste nomenclature such as 'Chamar', due to which Premchand's story Doodh ke Daam was removed from an NCERT Hindi textbook, dominant caste markers continue unchallenged in Rajasthan state textbooks. Parliamentarians note that the use of Dalit caste names in textbooks would be un-constitutional, but continue to condone explicit markers of Brahmin identity. (Mehrotra, D.P. 'Education or Indoctrination'. Retrieved 2012 from <<<http://infochangeindia.org/education/education-or-indoctrination/chaste-women-and-learned-brahmins.html>>>)

- In 2013, NCERT has dropped certain objectionable caste references in its history books of classes 8, 9, 11 and 12. Changes include referring to lower castes as 'subordinate

castes' and upper castes as 'dominant castes', while dropping the mention of a lower caste in reference to Kerala social reformer Sri Narayana Guru who spoke against the inequalities of the caste system. (Dhawan, H. (2013, May 28). 'NCERT drops 'objectionable' references from school history textbooks'. Times of India, New Delhi edition)

### **Human rights teaching/teacher training:**

- Human rights has been implemented in the school curricula in several states. The Karnataka Government has introduced human rights issues, including child rights, into the school curriculum. The Madhya Pradesh Government includes human rights in school curricula since 2005-06, and provides 20-day training to teachers on human rights and child rights. The Bihar Government has introduced child rights into the school curricula through the Bihar Curriculum Framework 2006. The Orissa State Government has taken the initiative of imparting training on child rights to teachers. (Ministry of Women and Child Development. (2011). India: Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child. New Delhi: Government of India, p. 186)

- The National Council for Teacher Education states that both pre-service and in-service school teacher training are extremely inadequate and poorly managed in most states. The curriculum, syllabi and textbooks are never critically examined by the teachers; and teacher education programmes provide little scope for student teachers to reflect on their experiences. (Retrieved January 2013 from <<[www.ncte-india.org/publicnotice/NCFTE\\_2010.pdf](http://www.ncte-india.org/publicnotice/NCFTE_2010.pdf)>>)

## **(7) IMPACT OF MEASURES**

- Dalit/caste representation in textbooks: The lack of regulation with respect to textbook content has led to negative impacts in terms of failing to break or even supporting stereotypes and prejudicial beliefs towards Dalits.

- In 2012, following a general objection raised in Parliament and outside Parliament by some groups regarding a cartoon involving Dr Ambedkar, the Thorat Commission was appointed to review the appropriateness of cartoons in six NCERT social science and political science textbooks for Classes 9-12.



([http://www.ncert.nic.in/oth\\_anoun/Notification.pdf](http://www.ncert.nic.in/oth_anoun/Notification.pdf)) The Commission identified 20 educationally inappropriate cartoons and provided suggestions for alternatives. Among these changes, it suggested the removal of cartoons that portrayed Dr. Ambedkar in a degrading way which conveyed negative messages about reservations.

## **(8) GAPS IN MEASURES**

### ***Caste representation in textbooks:***

- So far, no specific law or policy has addressed the problem of Dalits' representation in textbooks. Hence, the content of school knowledge continues to exclude the culture and experiences of Dalits, despite their forming a sizeable proportion of the Indian population.
- The treatment of the caste system in textbooks and curricula suggests that the government's efforts so far have been inadequate; there is a severe lack of public education and awareness of caste discrimination in India, and the treatment of caste discrimination in textbooks and curricula may strengthen caste divisions and prejudices. (Centre for Human Rights & Global Justice and Human Rights Watch. (2007). *Hidden Apartheid: Caste Discrimination against India's 'Untouchables'*. New York: CHRJ & HRW, p. 16)
- The NCF 2005 has failed to address the problem of caste discrimination in an effective way; besides statements of principles (such as equality), the representation of caste is still linked to the dominant caste brahminical perspective. e.g. In the five major concerns outlined in the NCF 2005 foreword, none reflect the legal right to quality education without discrimination.
- The NCF 2005 has been defined as "not cohesive" because "merely talking of equity as a token gesture is not sufficient...There is inequity of caste in our system, but liberals resist admitting it". (Setalvad, T. Retrieved January 2013 from <<[www.indiatogether.org/2005/dec/edu-ncf2005.htm#continue](http://www.indiatogether.org/2005/dec/edu-ncf2005.htm#continue)>>)
- The Mumbai-based NGO KHOJ has reported that even progressive curricula either exclude any mention of caste discrimination, or discuss the caste system in a way that

suggests that caste inequities and discrimination no longer exist. School textbooks may similarly fail to mention caste discrimination, may attempt to justify the origins of caste discrimination, or may attribute the unequal situation of Dalits to their "ignorance, illiteracy and blind faith...because they still fail to realise [the] importance of education in life." (Centre for Human Rights & Global Justice and Human Rights Watch. (2007). *Hidden Apartheid: Caste Discrimination against India's 'Untouchables'*. New York: CHRJ & HRW, p. 109)

- Informally, it is presumed that the syllabi for state board education adhere to the core curricula elements of the NCF 2005, but so far the extent of adherence has never been assessed.
- Textbooks and curricula in schools run by religious and social organisations and private unaided schools are not regulated in any form by state agencies. Therefore, such organisations can exploit the fact of the lack of critical scrutiny of the substance to introduce textual materials that dangerously undermine the struggle of Dalits for equality. (CABE. (2005). *Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in School Outside the Government System*. New Delhi: CABE, p. 9)

### ***Human rights teaching:***

- There is an absence of human rights education in the school curricula in India and generally low quality of education in, and the under-funding of, public schools. (CESCR. (2008). *Concluding Observation on the India State Report*. UN Doc. CESCR E/C.12/IND/CO/5, paras. 41-43)

## **(9) and (10) DALIT COMMUNITY AND WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

- Leading Dalit and non-Dalit writers, scholars and activists have noted that it is necessary to seek fair representation of Dalits and other social minorities in NCERT's various committees, as well as in the Senates and Syndicates of Central and State Universities; and to introspect on why Dalits and Adivasis, despite constitutional provisions for 22.5% reservation, occupy less than 3% of faculty positions.



(Valmiki, O. (2012, 8 June). 'Humour is by no means exempt from prejudice', The Hindu)

## (II) RECOMMENDATIONS

### *Curricula preparation:*

- NCERT should issue a set of national guidelines to ensure that curricular materials scrupulously conform to constitutional values and educational policies and principles, including of equality.
- State governments should be made responsible for monitoring and ensuring that private educational bodies do not flout these values and ideals, reinforcing the caste mentality.

### Curricula content:

- A central government committee should be appointed to develop pedagogical methods/tools for translating 'social inclusion with equity', ensuring the diversity and complexity of diverse groups of children, including Dalit children, and include them in teacher education/trainings.
- Rather than the current NCERT textbook coverage of the caste issue a simple way (e.g. caste system defined as "another example of inequality" (Social and Political Life, Class IV, p. 6)), the textbooks should underline the gravity and pervasiveness of this discrimination with an enriched and more direct language, e.g. by promoting the usage of official expressions like "atrocities".
- Value education should expand its vision to be more inclusive of India's diverse cultures and traditions and to offer a practical understanding of discrimination against Dalits; school education should enable students both to recognize how inequalities of caste persist in Indian society, and to challenge these.
- Students should be made aware of how power structures operate, not just learn to term caste a social problem; caste mobilization should be presented more imaginatively than as narrow identity politics, and should not be subsumed within the nationalist narrative. (CABE. (2005). Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in School Outside the Government System. New Delhi: CABE, p. xii)

- In order to achieve this goal, the state governments should undertake an immediate review of textbooks to root out those that are not based on rigorous research and violate the basic tenets of the Constitution and national educational policy.

### *Teacher training/human rights teaching:*

- Training of teachers at the state, district and divisional levels should contain a basic course on human rights, including a focus on equality and dignity from the perspective of Dalits.
- Objectives like non-discriminatory classroom interaction call for substantial improvement in the identification, selection and training of teachers. Equally important is the need to put in place certain systemic mechanisms to bring about greater professional accountability among teachers. (Ministry of Women and Child Development. (2011). India: Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child. New Delhi: Government of India, p. 175)
- Teacher learning centres (TLC) should be established for teacher trainees to undertake self-directed activities such as analysis of school textbooks and literacy primers and reflection on their own positions on caste and equity. (National Council for Teacher Education. Retrieved March 2013 from <<[www.ncte-india.org/publicnotice/NCFTE\\_2010.pdf](http://www.ncte-india.org/publicnotice/NCFTE_2010.pdf)>>)

### *Monitoring bodies:*

- An independent regulatory mechanism for textbooks should be established as well as a system under which curricula content would be appraised by academic experts (e.g. the National Textbook Council foreseen by CABE in 2005). This mechanism would monitor all school textbooks production and content, curriculum content and ensure that the curriculum and textbooks reflect basic constitutional values such as equality and non-discrimination.
- At the international level, a mandatory procedure on human rights and education should be placed in charge of monitoring curricula and school textbooks content, especially in those countries where caste discrimination persists.



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**Guideline 49. National and local governments should take specific measures to raise awareness both among the public and among government officials, teachers, and media practitioners on discrimination based on work and descent, such as through internal training and public campaigns. Areas of attention should include not only the print and broadcasting media but also alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via internet.**

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# 49

## PUBLIC AWARENESS RAISING AND ELIMINATION OF DISCRIMINATORY CUSTOMS

Little or no public campaigns have been undertaken by the national and state governments on the extent and illegality of caste discrimination and violence. Likewise, trainings for government officials and employees, as well as media practitioners on issues of equity, inclusion and non-discrimination are missing. Many Indian citizens as well as officials, therefore, lack awareness of the extent of caste discrimination and violence, and the rationale for special laws to protect Dalit rights.

### **(G) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, national and state governments should take specific programmatic measures to ensure awareness on caste-based discrimination among (i) the public, (ii) government officials, (iii) teachers, and (iv) media practitioners through:

- internal trainings;
- public campaigns;
- all mediums of information dissemination such as via print and broadcasting media, as well as oral information (theatre/songs, internet).



## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- States have a duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary (...) to ensure that all persons (...) are able to enjoy all those rights and freedoms in practice. (Article 2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly, 1999)
- States should adopt immediate and effective measures, particularly in the fields of (...) 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 this Convention. (Article 7 ICERD)
- With a view to promoting human rights and to countering racialism, the mass media should contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories. (Article 2(3) UNESCO Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, 1978)
- The mass media has an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings, and economic and social progress. (Article IV UNESCO Declaration on Fundamental Principles concerning Contribution of the Mass Media...)
- The first International Congress on the Teaching of Human Rights, held at Vienna in 1978, stated that “human rights education must aim at fostering the attitudes of tolerance, respect and goodwill towards fellow human beings”, and that teaching about human rights is a continuing process and shall embrace all levels of the educational system—from primary school to university level, to profes-

sional education as well as out-of-school or university settings.

## **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS AND OTHER BODIES**

- The Indian state should strengthen its efforts to eradicate the social acceptance of caste-based discrimination, e.g. by intensifying (...) awareness raising campaigns, incorporating educational objectives of inter-caste tolerance and respect for other ethnicities (...) and ensuring adequate media representation of issues concerning scheduled castes, with a view to achieving true social cohesion in India. (CERD. (2007). Concluding Observations on India Report. UN Doc. CERD/C/IND/CO/19, para. 27)
- The Indian state should take preventive measures such as police training and public education campaigns on the criminal nature of acts of violence against Dalits. (CERD. (2007). Concluding Observations on India report, para. 15)
- The state should take measures to raise awareness among media professionals of the nature and incidence of descent-based discrimination. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 20)

## **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

### ***Raising awareness among the Public:***

- In the Eleventh Five Year Plan (2007–12) the Government of India affirmed that it would strive to eliminate all types of discrimination through legislation, affirmative action, awareness generation and changes in the mind-set of the people.
- The Ministry of Social Justice and Empowerment, in charge of schemes and programmes for the welfare of scheduled castes, has setup an Information and Mass Education Cell. This Cell prepares an annual action plan to disseminate information about schemes among target groups,



not for the wider education of the public as regards caste equality.

- The Ministry of Social Justice and Empowerment confers grantson institutions or group of institutions for organising national/state/international workshops/seminars/conferences on specific issues relating to economic and social empowerment of disadvantaged and marginalised sections of society, including Dalits. (Common policy guidelines for sponsoring workshop/seminars/conferences on the subject/area of the Ministry of Social Justice and Empowerment, available at <<<http://socialjustice.nic.in/policy.php>>>)

### ***Raising awareness among Government Officials:***

- While no mandatory human rights training is organised for police personnel, some sporadic initiatives are in place: the Training Division of the National Human Rights Commission organises programmes for government officials, field functionaries, universities, etc., aiming at promoting a rights-based approach to human rights.
- The National Human Right Commission and Indira Gandhi National Open University agreed in 2009 to conduct an Online Training Programme on Human Rights for Police Personnel covering issues related to human rights and best practices. (National Human Rights Commission. (2010). Report of the NHRC to the 15th Asia Pacific Forum for the year 2009-10. Retrieved 10.10.2013 from <<[http://pwn.weebly.com/uploads/7/4/1/0/7410258/annexure\\_13.pdf](http://pwn.weebly.com/uploads/7/4/1/0/7410258/annexure_13.pdf)>>, p.95)
- The National Commission for Scheduled Castes, however, does not offer any similar trainings focused on caste equality.

### ***Raising awareness among teachers:***

- The focus in education should be on the removal of disparities in all areas. Education should foster the development of new values through (...) training and orientation of teachers, decision-makers and administrators, and the active involvement of educational institutions. In this process (...) all possible measures will be taken to promote integration based on appreciation of common national goals and

ideals, in conformity with the core curriculum. (National Policy on Education 1986, paras. 4.1, 4.2 & 4.8)

- In order to make the Constitutional value of equality a reality, teachers should be helped in cultivating an understanding of the cultural and socio-economic diversity of children, and trained to work toward the reduction of the divides based on caste and gender. (National Curriculum Framework 2005, p. 23)
- The National Curriculum Framework for Teacher Education aims to help teachers or potential teachers to develop social sensitivity and consciousness by re-conceptualising citizenship education in terms of human rights and approaches of critical pedagogy. There is a need to make teachers overcome their biases over Dalits, and to equip them with essential tools to fight the social exclusion of Dalits. Teachers are to be trained on the philosophy of inclusive education, gender equity and equal rights for all; and oriented to the different kinds of adjustments that schools have to make in terms of curriculum and teaching methods. (National Curriculum Framework for Teacher Education 2009)
- The National Council on Educational Research and Training (NCERT), through its Education of Groups with Special Needs Department (DEGSN), organises training programmes for teachers, teacher educators and policy makers to sensitise and train them in strategies for providing quality education and equal educational opportunities to Dalit and other disadvantaged children.

### ***Raising awareness among Media Practitioners:***

- The current laws do not enumerate measures such as public campaigns and training to educate media practitioners on caste-based discrimination.



## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

### ***Raising awareness among Public:***

- The National Commission for SCs and STs has given many recommendations on activities to raise awareness on Dalits, affirming that “efforts must be taken immediately to redress this lack of information and awareness.” (National Commission for SCs and STs. (2001). Sixth Annual Report 1999-2000 & 2000-01. New Delhi: NCSCST)
- The state governments should give wide publicity to the scheme of inter-caste marriages through mass media in order to encourage large number of youths for inter-caste marriages. (National Commission for SCs and STs. (2001). Sixth Report 1999-2000 & 2000-01, recc. XI)
- The central and state governments should ensure wide publicity of the Protection of Civil Rights Act so as to improve the awareness about the provisions of the Act even in remote habitations, and to create an impact. (National Commission for SCs and STs. (2001). Sixth Report 1999-2000 & 2000-01, recc. I)

### ***Raising awareness among Government Officials:***

- The central government should request the state governments to ensure that police officials are sensitised on the provisions of the POA Act and the PCR Act in their in-house training programme as well as through special lectures through the state/national SC commissions. (National Commission for SCs. (2005). First Annual Report 2004-05. New Delhi: NCSC, para. 6.28)

### ***Raising awareness among Media Practitioners:***

- The All India Radio stations and Doordarshan Kendras should highlight and give wide publicity to the safeguarding of the rights of scheduled castes and the Commission’s activities, for improving the awareness among the general public in the country about the role of the Commission. (National Commission for SCs and STs. (2001). Sixth Report 1999-2000 & 2000-01, recc. XV)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

### ***Implementation among the Public:***

- Among the social issues mentioned by advertising mechanisms, caste discrimination and untouchability are missing. The Ministry of Social Justice and Empowerment has only two media initiatives to counteract discrimination against Dalits: one is the promotion of a short radio programme entitled “Scheduled Castes students to pursue higher studies”, aired on 18/05/2008 (available at <http://socialjustice.nic.in/radiotvpro.php>). The second is a video telecasted on Doordarshan TV, in which a Dalit gets discriminated during a job interview after having revealed his caste identity (available at <http://socialjustice.nic.in/MSJI/MSJ1.swf>).
- The Ministry of Social Justice and Empowerment is apparently organising awareness camps in the residential areas where sweepers and scavengers reside, to convince them to break away from their traditional occupations and adopt alternative and dignified occupations. (Ministry of Women and Child Development. (2011). India: Third and Fourth Combined Periodic Report on Convention on Rights of the Child. New Delhi: Government of India, section 3B.1.5)
- At the national level, there is no active campaign aimed at raising awareness on caste-based discrimination.
- In most states, the task of spreading awareness about different laws addressing SC rights has been entrusted to the decentralised governance institutions (i.e. panchayats). Awareness campaigns and camps for the better integration of communities are being organised by involving Dalit organisations. Steps are also being taken for supply of posters and copies of the PoA Act to various agencies/ organisations. (Ministry of Women and Child Development. (2011). India: Third and Fourth Combined Periodic Report on Convention on Rights of the Child, sec. 3B.1.5)
- However, looking at the relevant state government websites, at the state level few initiatives seem to have been taken to raise awareness on caste-based discrimination. In Uttar Pradesh and Bihar, with the first and third largest SC populations respectively, no publicity initiatives have being



initiated by the Social Welfare Department and SC/ST Welfare Department respectively.

- West Bengal, with the second largest SC population, has installed Flex Boards displaying provisions of both the PoA Act and PCR Act in each block headquarters and in conspicuous places. Further, handbills containing the provisions of PCR and POA Acts were printed and distributed in all the blocks. (Department of Backward Classes Welfare. (2012). Annual Report 2011-12. Kolkata: Government of West Bengal)

- In other states with a sizeable SC population, direct awareness raising initiatives are few and not so effective. For example, the Andhra Pradesh government initiated an 'anti-untouchability campaign' in 2001 to ensure that Dalits were allowed entry into the village temple and tea stalls, and to draw water from the main village water sources. However, the government did not take steps to protect Dalits against the retaliation of the dominant castes, who then charged Dalits more for tea or stopped hiring Dalit labourers as punishment. (The Telegraph. (2001, 18 Dec.). 'Govt Drive Fails to Lure Dalits'). In 2013, the State SC Commission urged the translation of Dr Ambedkar literature into Telugu, but did not talk of any broader campaign to sensitize the population on caste equality.

- In 2008 in Tamil Nadu, a state-wide campaign was initiated by the Social Justice and Human Rights wing of the state police against 'untouchability' practices. The 2013 Social Welfare Citizens Charter, however, only talks about the promotion of inter-caste marriages. Nothing is apparently being undertaken today to promote caste equality and prevent caste violence.

- In Kerala, in order to curb atrocities against SCs, "awareness camps, and seminars are conducted and booklets widely circulated for creating general awareness against atrocities on Scheduled Castes". The state government also has produced documentaries highlighting the evils of 'untouchability'. (SC Development Department website. Retrieved October 2013 from <<www.kerala.gov.in/docs/pdf/sc\_corporation3.pdf>>)

### **Implementation among Government Officials:**

- In 2009-10, the National Human Rights Commission conducted 47 training programmes aimed at promoting a

rights-based approach for government officials, field functionaries and representatives of NGOs, universities, etc. (National Human Rights Commission. (2010). Report of the NHRC to the 15th Asia Pacific Forum for the year 2009-10. Retrieved 10.10.2013 from <<http://pwtn.weebly.com/uploads/7/4/1/0/7410258/annexure\_13.pdf>>, p. 95)

- The 18 state human rights commissions (SHRCs) vary greatly in resources and willingness to act, and local lawyers and activists describe SHRC staff as inadequate in number and lacking human rights training. (Human Rights Watch. (2009). Broken System: Dysfunction, Abuse, and Impunity in the Indian Police. New York: Human Rights Watch, p. 76)

### **Implementation among Teachers:**

- The Framework for the Implementation of SSA denounces a lack of sensitisation trainings for teachers in the field of human rights and attention to Dalit issues in education. (Department of School Literacy. (2011). Framework for the Implementation of SSA based on RtE Act. New Delhi: DSEL, para. 3.8.2.3)

- The Madhya Pradesh government has included human rights in the school curricula since 2005-06, and has provided 20-day training to teachers on human rights and child rights since 2006-07. The Orissa State Government has taken the initiative of imparting training on child rights to teachers. (Ministry of Women and Child Development. (2011). India: Third and Fourth Combined Periodic Report on Convention on Rights of the Child. New Delhi: Government of India, p. 186)

- The National Council for Teacher Education talks of an 'insidious form of exclusion of scheduled caste children' that prevails in schools and the need for inclusive education. This means bringing in teacher educators who can help teachers reflect on their own caste backgrounds and those of the children they teach, and on equity and justice issues. (NCFTE. (2009). National Curriculum Framework for Teacher Education. New Delhi: NCFTE, pp. 13 & 76)

- Hardly any study has been conducted to ascertain the basic awareness level on rights among teachers, who are supposed to practice human rights inside their classrooms.



One of the rare experiments has been conducted using the Human Rights Awareness Questionnaire on sample Indian teachers. The majority were not well aware of basic human rights that they are expected to promote in their classrooms. (Pandey, S. (undated). 'Human Rights Awareness of Teachers and Teacher Educators: An Investigation'. In Human Rights Education in Asian Schools, vol. 10, pp.167-174)

#### ***Implementation among Media Practitioners:***

- The absence of a univocal regulatory framework for raising awareness among media practitioners makes it difficult to control and monitor respect for the non-discrimination principle within the media. (see Guideline 51 for details)

### **(7) IMPACT OF MEASURES**

#### ***Impact on the Public:***

- There have been no efforts taken to ascertain the impact of the few measures in place, including the weak public campaigns espousing principles of equality and non-discrimination, to raise awareness on caste discrimination and the illegality of 'untouchability' practices.

#### ***Impact on Government officials:***

- A scarcity of trained personnel contributes to the likelihood of abusive behaviour, such as the 'short-cuts' of refusing to register crime complaints to reduce caseloads, and building cases on coerced confessions rather than collection of evidence. (Human Rights Watch. (2009). Broken System: Dysfunction, Abuse, and Impunity in the Indian Police. New York: HRW, p. 76)

#### ***Impact on Teachers:***

- The present integrated model of providing human rights education has not fully succeeded in equipping teachers with awareness and pedagogical skills to identify and expose the hidden agenda of the curriculum, or positively interpret various issues of the school syllabus to promote human rights among students. Since teachers lack basic awareness of human rights, they cannot be expected to practice analysis and action on rights. Consequently, they often become perpetrators of injustice and inequality. (Pandey, S. (undated). 'Human Rights Awareness of Teachers and

Teacher Educators: An Investigation'. In Human Rights Education in Asian Schools, vol. 10, pp.167-174)

#### ***Impact on Media Practitioners:***

- Insufficient measures to generate awareness among the media on the continuation of caste discrimination means that opinion makers, especially media practitioners who primarily in urban areas where caste discrimination is less visible, often do not pay sufficient attention to the rampant and continuing practice of such discrimination in rural areas. (Center for Human Rights and Global Justice & Human Rights Watch. (2007). Caste Discrimination against Dalits or so-called Untouchables in India. New York: CHRGJ & HRW, p.13)

### **(8) GAPS IN MEASURES**

#### ***Gaps in measures for the Public:***

- The strategy for scheduled castes in the Twelfth Five Year Plan does not mention awareness creation on caste discrimination and the need for its elimination.
- So far there has not been any intense and nationwide campaign aimed at raising awareness on caste discrimination, promoting caste equality and specifically reminding the public that caste discrimination is a punishable offence.
- There is a lack of coordination and foresight into the risks involved in the few initiatives adopted on caste discrimination and violence, which leaves each initiative sporadic and unique, instead of creating a coherent and organised framework. In particular, many programmes focus on informing Dalits of their rights, less on informing the wider caste society and generating debates on the illegality and inherent wrongness of practising caste discrimination and violence.
- Policies in favour of Dalits, e.g. policies of reservation, are not accompanied by a strong awareness-raising campaign that can explain the necessity for adoption of such measures, and promote solidarity, respect and understanding among caste groups.
- Alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via internet, are not being used by govern-



ment institutions to promote a caste discrimination-free society.

#### ***Gaps in measures for Government officials:***

- There are no provisions for compulsory training sessions across the country to expose the police and all government bureaucrats to human rights, and in particular to caste equality and the right to non-discrimination.

#### ***Gaps in measures for Teachers:***

- The District Institutes on Education Training do not hold compulsory teacher training courses on equity, inclusion and the need to eradicate caste based discrimination and put in place special measures for Dalit children.
- Documents aimed at raising the awareness of teachers on caste discrimination do not encompass monitoring mechanisms aimed at verifying that the teaching against caste discrimination is effectively diffused.

#### ***Gaps on awareness raising on Media Practitioners:***

- No measures are in place to train and educate media practitioners on caste based discrimination, protective laws and the need for the eradication of this discrimination.

### **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- Many Dalit organisations across the country are involved in raising awareness on caste discrimination and pushing for caste equality and justice at the local, state and national levels. National platforms such as the National Campaign on Dalit Human Rights have been instrumental in pushing the Dalit agenda for equality and justice to the forefront at the national and international levels. The National Federation of Dalit Women has likewise made visible the distinct rights issues affecting Dalit women.

### **(10) WIDER SOCIETY RESPONSE TO GAPS IN IMPLEMENTATION**

#### ***Responses to gaps in measures among the Public:***

- Video Volunteers has launched a campaign to enforce Article 17 of the Indian Constitution and eradicate 'untouchability'. The organisation believes that public awareness campaigns to end 'untouchability' are needed in same way that government campaigns have been successful at raising awareness about other things, like family planning and domestic violence. (Antelava, N. (2012, 11 June). 'Documenting Caste Discrimination in India'. Retrieved April 2013 from <<[www.theworld.org/2012/06/caste-discrimination-india/](http://www.theworld.org/2012/06/caste-discrimination-india/)>> )
- Human rights activist Stalin K. Sent a petition to the National Commission for Scheduled Castes Chair requesting that the NCSC 'undertakes campaigns to raise awareness that 'untouchability' is a crime against humanity. Such campaigns should continue until we have ensured the end of 'untouchability' and caste discrimination.' (Petition retrieved October 2013 from <<<https://www.change.org/de/Petitionen/dr-p-l-punia-chairperson-ncsc-prosecute-these-30-untouchability-offences-article17>>>)

### **(11) RECOMMENDATIONS**

#### ***Awareness raising among the Public:***

- Awareness raising initiatives on caste discrimination at both the national and state levels should be organised with a high degree of coherence and integration, in order to constitute a strong task force aimed at eradicating this discrimination.
- State and local governments should invest resources in making regular public announcements in city public spaces on caste equality and non-discrimination.
- A national campaign against 'untouchability' practices and caste discrimination should be launched, with particularly intense focus on areas where there is evidence of strong caste discrimination and violence.



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- Social media should be extensively used to generate awareness and share information on the status of efforts to eradicate caste discrimination in the country.

- The National Commission for Scheduled Castes should establish annual awards for activists, groups and associations that have done outstanding work in raising awareness on the illegality of caste discrimination and promoting equality and justice.

#### ***Awareness raising among teachers:***

- State governments should declare it mandatory for all teachers to undergo pre-service and in-service training on issues of equity, non-discrimination and inclusion, in order to be able to better serve their students. They should also receive training on pedagogical techniques to impart effective human rights education in their classrooms. All this training should be incorporated by the District Institutes for Education Training into their courses.

- Every state government should establish groups of experts on equity and social inclusion, and organise regular meetings in schools to raise the level of sensitivity on the issue of caste discrimination.

- The Indian state should make further efforts to promote human rights education, including the rights of the child (...) in the curricula for teacher training. (CRC. (2004). Concluding Observations on the India State report. UN.Doc CRC/C/15/Add.228, para. 24(d))

- A more widespread, effective human rights education programme is necessary to ensure proper teaching on these issues; to generate knowledge, skills and attitudes among teachers about human rights; and to equip them with the skills to practice rights within and outside the classroom.

#### ***Awareness raising among Government Officials:***

- Compulsory, intense and regular courses on equity and non-discrimination should be established in order to create a culture that rewards respect for human rights and professional conduct, especially among police and government officials.

- All police departments should be sensitised on the rationale for and provisions under the SC/ST (POA) Act, PCR

Act and the national and international human rights standards. This can be achieved in collaboration with NGOs.



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**Guideline 51. Governments should take special measures to promote due representation in the mass media of affected communities, and carry out sensitization campaigns and awareness raising programme with media representatives. It is recommended that government and other relevant institutions encourage media outlets to profile and publicize abuses faced by descent affected communities, as well as promote tolerance and positive examples of combating descent based discrimination.**

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# 51

## PUBLIC AWARENESS RAISING AND ELIMINATION OF DISCRIMINATORY CUSTOMS

Currently, there is almost no representation of Dalits in the media. While the media does occasionally cover human rights violations against Dalits, analysis of mainstream media representation of Dalit issues reveals how often the caste basis of exclusion and violence is hidden in media reporting. Moreover, little efforts are taken to promote caste tolerance and positive examples of combating caste discrimination.

### (1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

The Indian national government and state governments should take specific legal, policy, programmatic and budgetary measures to:

- ensure due representation of Dalits in the mass media;
- ensure sensitisation campaigns and awareness raising programmes with media representatives;
- encourage the media to cover, profile and publicise human rights violations against Dalits;
- encourage the media to promote tolerance and positive examples of combating caste discrimination.

### (2) INTERNATIONAL STANDARDS AND MECHANISMS

- Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds through any



media...The exercise of the right can be legally restricted to respect the rights or reputations of others, or for protection of national security or of public order, or of public health or morals. (Article 19 (2)-(3) ICESCR)

- States should adopt immediate and effective measures, particularly in the fields of (...) culture and information, with a view to combating prejudices which lead to racial (caste) discrimination and to promoting understanding, tolerance and friendship among racial (caste) or ethnic groups, as well as to propagating human rights principles and standards. (Article 7 ICERD)
- The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings, and economic and social progress. (Articles 2(3) and 4, UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War 1978)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS AND OTHER BODIES**

- A continuing campaign should be undertaken to educate the Indian population on human rights, in line with the Constitution and with universal human rights instruments, and aimed at eliminating the institutionalised thinking of the high-caste and low-caste mentality. (CERD. (2007). Recommendations on India Report. UN Doc. CERD/C/304/Add.13, para. 31)
- The Indian state should strengthen its efforts to eradicate the social acceptance of caste-based discrimination and prejudice, for example by intensifying (...) awareness raising campaigns, incorporating educational objectives of inter-caste tolerance and respect for other ethnicities (...) and ensuring adequate media representation of issues concerning Dalits. (CERD. (2007). Recommendations on India Report, para. 27)

### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- All Indian citizens have the fundamental right to freedom of speech and expression, which has been interpreted by the Supreme Court as including the freedom of the press. However, this right is subject to reasonable restrictions. (Article 19 Indian Constitution)
- “Freedom of speech and of the press lie at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.” (Romesh Thapar v. State of Madras (AIR 1950 SC 124))
- There are no specific laws aimed at ensuring the representation of scheduled castes in the media. Nor are there legal or policy provisions aimed at encouraging the media to cover, profile and publicize Dalit human rights violations, nor to promote tolerance and positive examples of combating caste discrimination.
- Prasar Bharati (Broadcasting Corporation of India) is a statutory autonomous body established under the Prasar Bharati Act 1997 to be the public service broadcaster, under which All India Radio and Doordarshan operate as media units. In the latest Prasar Bharati annual report available (2009), only the Centrally Sponsored and Central Sector Schemes for Education and Socio-Economic Empowerment of Scheduled Castes received publicity in 2009-10.

#### ***Press Regulation:***

- The Press Council of India (PCI) is a statutory, quasi-judicial body established in 1966 and functioning under the Press Council Act 1978 to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies. It is responsible for inquiring into complaints about the press, and can issue warnings and admonish any newspaper, news agency, editor or journalist. The decisions of PCI are final and cannot be appealed before a court of law. There is no provision for SC representation to this 28-member body.
- Newspapers are advised against the use of word ‘Scheduled Caste’ or ‘Harijan’, which has been objected to. “In general, the caste identification of a person or a particular class should be avoided, particularly when in the context it con-



veys a sense or attributes a conduct or practice derogatory to that caste.” (PCI, Norms of Journalistic Conduct 2005, para. 22 (ii))

- An accused or a victim shall not be described by her/his caste or community when the same does not have anything to do with the offence/crime and plays no part either in the identification of any accused or any proceeding. (Norms of Journalistic Conduct, para. 22 (iii))
- Newspapers have a duty to ensure that the tone, spirit and language of a write up is not objectionable, provocative, against the unity and integrity of the country, spirit of the Constitution, seditious and inflammatory in nature, or designed to promote communal disharmony. (Norms of Journalistic Conduct, para. 22 (vi))
- One of the jobs of journalists is also to bring forth to the public notice the plight of the weaker sections of society. They are the watchdogs on behalf of the society of its weaker sections. (Norms of Journalistic Conduct, para. 22 (vii))
- The press should eschew reports on election campaign which tend to promote feelings of enmity or hatred between people on the ground of religion, race, caste, community or language. (Norms of Journalistic Conduct, para. E 2)
- Scurrilous and untrue attacks on communities, or individuals, particularly when this is accompanied by charges attributing misconduct to them as due to their being members of a particular [...] caste, are banned. (Norms of Journalistic Conduct Act, para. A 5)
- Glorification or encouragement of social evils to be eschewed: newspapers should not allow their columns to be misused for writings which have a tendency to encourage or glorify social evils (like caste discrimination) or ostentatious celebrations. (Norms of Journalistic Conduct Act, para. 18(a))

### ***Electronic Media Regulation:***

- Any authorised officer may prohibit any cable operator from (re-)transmitting any programme likely to promote, on grounds of caste disharmony or feelings of enmity, ha-

tred or ill-will between different castes. (Cable Television Networks (Regulation Act) 1995, para. 19)

- Advertisements broadcast by television channels (local cable networks and satellite channels) shall conform to the laws of the country and no advertisement shall be permitted which derides any race, caste, colour, creed and nationality. (Rule 7, Cable Television Networks Rules 1994)
- The Electronic Media Monitoring Centre (EMMC), established in 2008 by the Ministry of Information and Broadcasting, monitors the content of various TV channels beaming over Indian territory and reports any violations of the Cable TV Networks (Regulation) Act 1995 and Rules; it also monitors the content of private FM radio channels.
- An Inter-Ministerial Committee examines all reports concerning the regulation of satellite television content received from the Telecom Regulatory Authority of India (TRAI). Its recommendations on whether a violation has taken place form the basis of the final decision regarding penalties. (Ministry of Information and Broadcasting. (2012). Annual Report 2011-12: Content Regulation of TV Channels. New Delhi: Government of India)

### ***Self-Regulatory Mechanisms on Television Media Content:***

- The Indian Broadcasting Foundation (IBF), established in 1999, governs major broadcasters of general entertainment, non-news television. Its 2011 Content Code and Certification Rules for television content states that such content should not defame communities, or be likely to incite caste violence. At the top of the two-tier complaints redress system, the Broadcast Content Complaints Council (BCCC) has a National SC Commission member as a member. (IBF. Self-Regulatory Content Guidelines for Non-news and Current Affairs Television Channels, p. 10)
- The News Broadcasters Association (NBA) has formulated a Code of Ethics and Broadcasting Standards covering a wide range of principles to self-regulate news broadcasting, and News Broadcasting Standards Regulations. No mention is made of caste and how Dalits are portrayed in the media. The two-tier complaints redress structure includes the News Broadcasting Standards Authority (NBSA), which has no provision for SC representation.



## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- Adequate representation should be given to committed human rights activists, journalists, lawyers, NGO representatives and members of the Dalit community in the media. (National Commission for SCs and STs. (2001). Sixth Report, 1999-2001. New Delhi: NCSCST)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

Due representation of Dalits in the mass media:

- A 2006 survey of 300 senior journalists/editors in 37 print and television media networks found that 90% in the English print media and 79% in television were 'high' castes, who constitute only 16% of the Indian population. By contrast, there was almost no representation of Dalits; nor were any of the 315 key media decision makers Dalits. (Special Correspondent. (2006, 5 June). 'Upper castes dominate national media, says survey in Delhi', *The Hindu*)
- On the one hand, the Central Government controls the biggest networks of both the state-run public radio and TV services in the country. On the other hand, newspapers and magazines are mostly owned by big industrial and business houses belonging to the trading castes. (Dalit Development through Media. Available at [www.ambedkar.org/ssc/development/ddmedia.htm](http://www.ambedkar.org/ssc/development/ddmedia.htm))
- Almost no Dalits work in the Indian press as reporters or subeditors. There are no Dalit editors and no Dalit-run dailies. (Balasubramaniam, J. (2011). 'Dalits and Lack of Diversity in the Newsroom'. *Economic and Political Weekly* 46(11), pp.21-23)
- P.B. Sawant, Chair of the Press Council, in 1999 noted that fairer Dalit representation was beyond the powers of the Press Council because "the print media is run entirely by the private sector". (Jeffrey, R. (2000). *India's Newspaper Revolution*. London: Hurst & Co., p. 169)
- In its 2009-10 annual report, Prasar Bharati states that 'all relevant policy directions and instructions issued by nodal Ministries/Departments for giving reservations and other benefits to SCs/STs/OBs in government services and

personal matters were circulated to all offices and field units of All India Radio for necessary compliance. Liaison officers for SCs/STs/OBCs were appointed to oversee the implementation of statutory instructions for safeguarding the interests of the concerned staff. Special recruitment drives to fill SC/ST/OBC staff vacancies were initiated.

In the Thirunelveli massacre (17 Dalits brutally murdered in police attack in Tamil Nadu in 1999), the media tried to convince the people to believe that the victims of the incident died by drowning in the river and not by the police attack. The Khairlanji massacre in Maharashtra also shows the ugly face of the media towards the Dalit issues, in that the online newspaper DNA (Daily News and Analysis) was the first to give the news eight days after the atrocity took place, and some Hindi language newspapers published the police version of "moral justice" as justifying the atrocity, without any hesitation. (Balasubramaniam, J. (2011). 'Dalits and Lack of Diversity in the Newsroom', *Economic and Political Weekly* 46(11), pp.21-23)

- For 2013, Prasar Bharati programme and transmission executive recruitment online applies for 1238 vacancies: 1) Programme Executive Group-'B': 360 posts, of which 53 posts are reserved for SCs; 2) Transmission Executive Group 'B': 806 posts, of which 79 posts are for SCs; 3) Transmission Executive (Production Assistant) Group 'B': 35 Posts, of which 12 posts are for SCs.
- The problem of caste discrimination is compounded by inadequate media representation of Dalit issues and the lack of Dalit journalists generally...Since caste-based discrimination is not as visible in urban settings, the media do not pay sufficient attention to the rampant and continuing practice in rural areas. (Center for Human Rights and Global Justice & Human Rights Watch. (2007). 'Caste discrimination against Dalits or so-called Untouchables in India', report presented to CERD in reviewing India's 15th-19th Periodic Reports)

### ***Encourage the media to cover Dalit human rights violations:***

- Despite Dalits and Adivasis comprising nearly 25% of the population, the media provides negligible space to their plight/problems...When major incidents of violence take place, they have a news value and are highlighted and, for a



while, followed up with some investigative stories. But there are no sustained campaigns on Dalits' problems, no 'researched' articles on issues which affect them and no conscious and systematic efforts to provide voice to them in their columns. Instead, these communities mostly receive attention when the discussion is focused on backwardness, population growth, lack of entrepreneurship and productivity, thereby perpetuating caste-based stereotypes. (NHRC. (2004). Report on Prevention of Atrocities against SCs: Policy and Performance. New Delhi: NHRC, p.134)

- There are still very few references to Dalits in the media. Analysis of mainstream media representation of Dalit issues reveals how often the caste basis of exclusion and violence is hidden in media reporting; reporting 'masks caste realities and ensures that readers had no sympathy for the victims'. (Balasubramaniam, J. (2011). 'Dalits and Lack of Diversity in the Newsroom'. Economic and Political Weekly 46(11), pp.21-23)

***Encourage the media to promote tolerance and examples of combating caste discrimination:***

- In the absence of media measures aimed at promoting tolerance and positive examples of combating caste discrimination, the rarity of the caste issue appearing on TV was testified by the clamour raised around one episode of the show 'Satyamev Jayate', which entirely focused on caste discrimination.

***Mechanisms of content control:***

- Mechanisms of content control are more the auto-regulation policies of different media. This is because the Information and Broadcasting Ministry says "it is neither possible nor desirable for the government to monitor and regulate the volume and diversity of content provided, which is increasingly getting localized. Any kind of direct control by the government is seen as violation of the right to freedom of speech and expression enshrined in the Constitution." (Media Watch. (2013, 2 Jan). NBA and IBF self-regulations are Ineffective. Available at <<www.indiantelevision.com/headlines/y2k13/jan/jan2.php>>)

- In 2012, no complaint was registered with the Press Council regarding the depiction of Dalits. Moreover, the Council

has limited sanctioning powers. (The Hoot. (2012, 17 Sept.). 'How effective is the Press Council?' Retrieved Sept. 2013 from <<thehoot.org/web/HoweffectiveisthePressCouncil/6292-1-1-9-true.html>>)

- The Broadcasting Content Complaints Council (BCCC) has analysed only two complaints on content concerning caste. In both cases, the Council decided not to uphold the complaint.

One of the complaints was made with reference to a Zee TV programme (aired in 2012) that had pictured SC Bedia caste girls serving Thakurs, a dominant caste, until the point that they could even sexually exploit the girls. Although prima facie the programme violated the non-discrimination regulation, the complaint was disposed of. (Action by BCCC on complaints received from 20.06.2011 to 30.11.2012. Available at <<http://ibfindia.com/pdf/1358756757.pdf>>)

- The self-regulation regime of the News Broadcasters Association (NBA)/ Indian Broadcasting Foundation (IBF) is "neither comprehensive nor deterrent": less than 300 broadcasters are members of these two bodies and the majority is free to flout the Codes. Without a "viewer-centric" approach, attuned to issues such as caste discrimination, the NBA and IBF do little to inspire public confidence in 'self-regulation'. ((2013, 2 Jan.). 'NBA and IBF self-regulations are ineffective: Media Watch'. Available at www.indiantelevision.com/headlines/ y2k13/jan/jan2.php)

**(7) IMPACT OF MEASURES**

***Fair representation of Dalits in the mass media:***

- India's national media lacks social diversity and does not reflect the country's social profile. The exclusion and misrepresentation of Dalit issues in the mainstream media is the direct result of the social exclusion of Dalits in society. (Rediff.com news. (2006, 5 June). 'Upper Castes Dominate Media: Survey'. Retrieved June 2013 from <<www.rediff.com/news/2006/jun/05quotar.htm>>)

- The unfortunate result of the regulatory vacuum in broadcasting has been that millions of Indian viewers are rendered voiceless without any credible grievance redress mechanism against the content-related violations by the



channels, which is adversely affecting their basic rights as consumers of broadcast content. ((2013, 2 Jan.). 'NBA and IBF self-regulations are ineffective: Media Watch'. Retrieved July 2013 from <<[www.indiantelevision.com/headlines/y2k13/jan/jan2.php](http://www.indiantelevision.com/headlines/y2k13/jan/jan2.php)>>)

#### **Encouraging media to publicize Dalit human rights violations:**

- The Chair of the Press Council of India has noted “the way much of the media has been behaving is often irresponsible, reckless and callous. (...) neglecting or underplaying serious socio-economic issues like massive poverty, unemployment, malnourishment, farmers' suicides, health care, education, dowry deaths, female foeticide, etc”. This statement would encompass caste discrimination as well. (Katju, M. (2012, 2 May). 'Media cannot reject Regulation.' The Hindu)

#### **Encouraging media to promote tolerance and positive examples of combating caste discrimination:**

- Insufficient publicity on non-discrimination toward Dalits has left the media itself just with “the powers to comprehend issues concerning the middle class groups and higher caste groups”. (Dalit Bahujan Society. (2008). 'Time and Us, Media: representative politics'. Retrieved Oct. 2013 from <<[castory.wordpress.com/tag/bahujan/](http://castory.wordpress.com/tag/bahujan/)>>)

### **(8) GAPS IN MEASURES**

- Lack of representation of Dalits in the mass media: There is no effective mechanism in place to ensure the fair representation of Dalits in the mass media. Nor do the NBSA or the BCCC ensure any representation of Dalits on their committees.
- Lack of measures to encouraging media to publicise Dalit rights violations and to promote tolerance: The lack of stories on Dalits and more generally on caste discrimination is due to the absence of measures that encourage or ensure that the mass media air programmes on such social themes.
- Limited space within current mechanisms of content control for complaints: No legal recognition is given to the self-regulatory codes evolved by various media bodies and

their decisions, except for the Information and Broadcasting Ministry's ad-hoc practices of forwarding complaints against member channels of NBA/IBF to NBSA/BCCC respectively. Moreover, the Inter-Ministerial Committee has not instituted any separate mechanism for systematically dealing with complaints received against TV channels. ('NBA and IBF self-regulations are ineffective: Media Watch.' (2013, 2 Jan.). Retrieved June 2013 from <<<http://www.indiantelevision.com/headlines/y2k13/jan/jan2.php>>>)

- The content control mechanisms for non-news and current affairs TV channels of BCCC, the Electronic Media Monitoring Centre, as well as the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955 and Cinematograph Act 1952 do not include in their list of complaints issues caste discrimination (Retrieved Oct. 2013 from <<[http://ibfindia.com/pdf/A\\_Guide\\_to\\_the\\_Complaints\\_Process\\_of\\_the\\_BCCC.pdf](http://ibfindia.com/pdf/A_Guide_to_the_Complaints_Process_of_the_BCCC.pdf)>>)

### **(9) DALIT COMMUNITY RESPONSE TO GAPS IN IMPLEMENTATION**

- In 1998, Dalit intellectuals Chandra Bhan Prasad and Sheoraj Singh Becha in presented a memorandum to the Editors' Guild and the Press Council of India entitled “End Apartheid in Indian media –Democratise Nation's Opinion”. They called for the creation of a national commission for democracy in the Indian media, to ensure that by 2005 the caste composition of Indian media organisations was roughly in proportion to the population numbers. (Balasubramaniam, J. (2011). 'Dalits and Lack of Diversity in the Newsroom'. Economic and Political Weekly 46(11), p.22)
- A number of Dalits have created alternative media from which to access information on Dalit issues as well as rights violations. These include “Dalit Voice”, a Dalit-run news journal published in Bangalore, websites like [www.ambedkar.org](http://www.ambedkar.org), etc.
- “Dalit Media Watch” scans newspapers around the country daily and publishes news on Dalit rights violations.



## **(10) WIDER RESPONSE TO GAPS IN IMPLEMENTATION**

- In 2006, the then editor of The Hindu wrote “there are no official or industry statistics but every journalist is aware of the extent to which forward castes dominate the media” (...) India's media houses should look upon the entry of Dalit, Tribal, OBC, and Muslim journalists as an opportunity to broad base their journalism and make it more professional and authentic (...) Specifically, media houses must seriously think about starting internships and training programmes for Dalit, Tribal, Muslim and OBC students interested in becoming journalists”. (Varadarajan, S. (2006, 3 June). ‘Caste matters in the Indian media’, The Hindu)
- Amartya Sen has written, “The problem here does not, of course, originate in the media, for it is social division that feeds this bias in media coverage. But the media can play a more constructive part in keeping the reality of India persistently in the view of the public. The bias in coverage, even though it is by no means unpleasant to the reader, contributes quite heavily to the political apathy about the urgency of remedying the extreme deprivation of the Indian underprivileged.” (Sen, A. (2012, 7 Jan.). ‘The glory and the blemishes of the Indian news media, The Hindu)

## **(11) RECOMMENDATIONS**

### **Fair representation of Dalits in the mass media:**

- A report on the status of caste, gender, etc. representation in the media is needed in order to know the situation and to think of solutions aimed at fighting exclusion and discrimination.
- Reservation, targeted expenditure and investment are all means that can be used to encourage the process of Dalits’ inclusion in the media sector.
- A comprehensive legislative framework on non-discrimination and representation should be developed that covers all aspects of broadcasting and printed news dissemination, including reasonable content guidelines and cross-media ownership laws.
- The government should launch special programmes to encourage Dalits to work in the media; e.g. by offering

training to Dalits candidates in journalism, establishing scholarships, organising job fairs to recruit them, and participating in an annual newsroom caste census.

- In order to accomplish proportionate representation, the most popular newspapers could open a diversity department. (Balasubramaniam, J. (2011). ‘Dalits and Lack of Diversity in the Newsroom’, Economic and Political Weekly 46(11), pp.21-23)
- The media should offer special scholarships to train Dalit candidates in journalism and organise job fairs to recruit them. This model was more or less adopted by the Asian College of Journalism, Tamil Nadu, which instituted four fellowships for SC/ST students in 2005.

### **Encouraging media to cover, profile and publicize Dalit rights violations:**

- The government should take efforts to bring under one umbrella all media broadcasting management, by prescribing some minimum standards to be followed by them in the interests of viewers. It should also formalise the self-regulatory codes and penalties by giving some sort of legal recognition for the decisions of self-regulatory bodies.
- In order to publicise discrimination and atrocities against Dalits, the press, television and radio should investigate more systematically systemic oppression, exploitation, and discrimination.
- Both public and private media should compulsory broadcast human rights education programmes, documentaries and advertisements. Likewise, weekly columns and forums should be established in the printed media to publicise issues related to caste discrimination.

### **Encouraging media to promote tolerance and positive examples of combating caste discrimination:**

- Grants and awards should be accorded by the Ministry of Social Justice and Empowerment to media persons who have shown fruitful engagement in the area of eradicating ‘untouchability’ and caste discrimination.
- Given the educational power of the media in promoting tolerance, Dalit institutions should start intensely using the new social media to propagate information.



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**Guideline 53. National and local governments should collect, analyse and publicly provide disaggregated data on the situation of women affected by discrimination based on work and descent.**

# 53

## MULTIPLE DISCRIMINATION AGAINST WOMEN

Disaggregated data on the status of Scheduled Caste (Dalit) women is available only in a few areas such as population, education, healthcare, sexual and domestic violence. At times, however, this data is only comparable against the general population, without sufficient analysis of the situation of SC women as compared to non-SC/ST women, Dalit men and non-SC/ST men. The negative implications then are that any planning for special provisions for SC women is not made on the basis of adequate disaggregated data on their status.

### **(1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The central and state governments in India should take specific measures to ensure that:

- caste and gender disaggregated data is made publicly available in all major areas of Dalit women's lives, not least education, health, employment, land, housing and violence.
- data should be disaggregated to the extent that it provides an analysis of the status of Dalit women in relation to other caste (non-SC/ST) women, Dalit men and other caste men.

### **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- The 2001 World Conference against Racism in Durban, South Africa established focus on the intersections between gender and racial (caste) discrimination.



- The Committee on the Elimination of Discrimination against Women has explicitly recognised intersectionality as a basic concept for understanding the scope of state obligations to eradicate discrimination against women. This entails state parties undertaking specific measures to prohibit and eliminate intersectional discrimination, for which disaggregated data is necessary. (CEDAW. (2010). General Recommendation 28: The Core Obligations of States parties under Article 2 CEDAW, para. 18)

- The Committee on Economic, Social and Cultural Rights specifically recognises the need to remedy the multiple discrimination some groups (like Dalit women) experience that is cumulative and has a unique impact on individuals. Again, for this, disaggregated data on different aspects of social, cultural and economic rights is necessary. (CESCR. (2009). General Comment 20: Non-discrimination in Economic, Social and Cultural Rights, paras. 9-10, 17)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- States should provide disaggregated data for the situation of women affected by descent-based (caste) discrimination. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 13)

- States are requested to describe, in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial (caste) discrimination, of rights under ICERD. Data which have been categorised by race (caste), and which are then disaggregated by gender within those racial (caste) groups, will allow the states to identify, compare and take steps to remedy forms of racial (caste) discrimination against women that may otherwise go unnoticed and unaddressed. (CERD. (2000). General Recommendation 25: Gender related Dimensions of Racial Discrimination, annex V, para. 6)

- States should collect, compile and disseminate data according to race (caste) and gender. Data are often collected only according to the racial characteristics of a population or only on the basis of gender, leaving racial discrimination against women unnoticed. States should be encouraged to collect the data necessary to determine the extent to which

marginalized women are subject to intersectional subordination. Multilateral organizations, governmental entities, and NGOs should disaggregate all information and data in terms of both race (caste) and gender and their intersections, focusing on issues that are particularly relevant to women of disadvantaged racial (caste) groups. (UN Secretary General. (2001). Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference: Contribution by the Special Rapporteur on Violence against Women, on the subject of race, gender and violence against women. UN Doc. A/CONF.189/PC.3/5, para. 202(b))

- The Indian State should set benchmarks and include adequate, appropriate and comparative statistical data and analysis, disaggregated by sex, caste, minority status and ethnicity, so as to provide a full picture of trends over time in the practical realization of equality between women and men. In particular, the Indian State should review and monitor the fulfilment of the provisions of CEDAW in respect of scheduled caste women in all sectors. (CEDAW. (2007). Concluding Comments on India State Report. UN Doc. CEDAW/C/IND/CO/3, para. 15)

- The Indian State is encouraged to provide detailed information on measures taken to implement anti-discrimination and affirmative action legislation, disaggregated by caste, tribe, gender, State/district and rural/urban population. The Indian State should also provide disaggregated data on the percentages of the Union, State and district budgets allocated for that purpose and on the effects of such measures on the enjoyment by SCs of rights guaranteed by ICERD. (CERD. (2007). Concluding Observations on India State Report. UN Doc. CERD/C/IND/CO/19, para. 9)

### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The state should promote with special care the educational and economic interests of the scheduled castes, and protect them from all forms of exploitation. (Article 46 Indian Constitution)



## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- Intersectionality should be taken on board as a guiding principle of gender planning. A comprehensive database would enable the tracking of the progress achieved in basic human development indicators by women and girls belonging to these groups (i.e. groups of women experiencing intersectional discrimination, for example, based on caste and gender) as well as women in general.
- In all gender programmes, the existing patterns of discrimination, lower participation and performance should be analysed. This necessitates the collection and arrangement of data (on programme participation etc.) by caste, etc. (Working Group on the Empowerment of Women. (2006). Report of the Working Group on the Empowerment of Women for the 11th Five Year Plan. New Delhi: Ministry of Women and Child Development, p. 80)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- The Registrar General of India's National Census contains caste-and-gender disaggregated data on the population and literacy rates for SC women, SC men, women in general and men in general every ten years.
- The annual Economic Census of the Central Statistical Organisation does not provide any caste-and-gender disaggregated data on the economic status of SC women.
- The DISE data and Ministry of Human Resource Development's Selected Educational Statistics for School Education indicate the annual gross enrolment ratios and drop-out rates from school education for SC girls, SC boys, girls in general and boys in general. The MHRD statistics also indicate the gender parity index (GPI) for SCs and children in general. The MHRD annual Statistics for Higher and Technical Education also have disaggregated data for SC girls, SC boys, general girls and general boys regarding enrolments.
- Despite the reserved SC quota in government employment, there is no separate gender-wise reporting on the filling of this quota across the various grades of employment.

- The periodic National Family Health Survey provides the most caste-and-gender disaggregated data for SC, ST, OBC and Other women and men on such topics as fertility, family planning, maternal health, nutrition and anaemia, HIV knowledge, attitudes and behaviours. The NFHS also provides this disaggregated data in other areas such as women's empowerment in terms of women's control over their cash earnings, participation in decision making, freedom of movement, and gender role attitudes.
- The only caste-and-gender disaggregated data provided by the National Crimes Records Bureau on crimes against SC women is for the crime of rape.
- The National Sample Survey Organisation (NSSO) organises periodic surveys on different aspects of socio-economic development such as employment-unemployment, land ownership, etc., which are sometimes disaggregated by social group. However, little or no disaggregated data is provided on the status of SC women.
- The National Family Health Survey also reports on domestic violence experienced by SC, ST, OBC and Other women.

## **(7) IMPACT OF MEASURES**

- Where official caste-and-gender disaggregated data has been made available, despite all the limitations, it has helped expose the different level of enjoyment of rights that Dalit women enjoy as compared to other women, Dalit men and other caste men. However, the overwhelming trend is negative in that there is too little focus on Dalit women as a separate social category and, therefore, too little disaggregated data to help tailor specific programmes for their benefit.

## **(8) GAPS IN THE MEASURES**

- Currently, there are no existing policy or other provisions to make it mandatory that caste-and-gender or other disaggregated data is collected by all government statistical and other organisations that produce national and state level data on the socio-economic and political situation of different social groups.



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- There has not been any comprehensive data or survey on social and economic discrimination built into any of the current Government of India statistical data collection tools, which could also be disaggregated by caste and gender.

- Moreover, what disaggregated data is available has not been used in any significant way by the government to plan separate programmes for SC women and girls in keeping with their need today to enjoy equal development and security.

### **(9) DALIT COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- The National Dalit Movement for Justice (NDMJ) has made several proposals regarding the data on crimes collected by the National Crimes Records Bureau (NCRB). One of the proposals has been that the NCRB should collect data on the number of incidences, rate and percentage to all-India crimes against SC and ST women for each and every offence under the SC/ST (PoA) Act and PCR Act. (NDMJ, 2013). Note for the Ministry of Home Affairs for consideration of suggestions in Crime in India Reports. New Delhi: NDMJ)

- NDMJ, supported by the National Coalition for Strengthening the SC/ST (PoA) Act, is creating a databank for tracking and monitoring SC/ST atrocity cases. Through this databank, disaggregated data on atrocities committed against SC women will be available.

### **(10) OTHER COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- N/A

### **(11) RECOMMENDATIONS**

- Disaggregated data on the basis of caste-and-gender should be made mandatory in the collection of basic statistics regarding all major socio-economic and political arenas of life.

New surveys into emerging areas like migration patterns, etc. should be disaggregated by caste-and-gender in order to reveal new issues arising for Dalit women and help plan specific provisions to address these issues for the women.

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**Guideline 54. National and local governments should take into account the situation of women and girls of affected communities in all measures taken to address discrimination based on work and descent, and explicitly create provisions tailored to ensure the rights of these women and girls wherever possible.**

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# 54

## MULTIPLE DISCRIMINATION AGAINST WOMEN

Dalit women and girls continue to face the brunt of discrimination and violence on the basis of their intersecting caste and gender identities. Despite this, currently few measures exist that explicitly take into account intersectional caste-and-gender discrimination and accordingly devise strategies to address this discrimination and to ensure these women equally enjoy their rights. Instead, Dalit women often find themselves excluded from both state measures meant for SCs and for women.

### **(1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

The central and state governments should take specific measures to ensure that:

- All laws, policies, programmes and budgets for women and for SCs take into account the unique situation of SC women who face discrimination and violence based on their caste and gender.
- Specific provisions are created within laws, policies, programmes and budgets for SC women in order to protect and fulfil their rights.

### **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- States agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. (Article 2(f) CEDAW)



- Intersectionality is a basic concept for understanding the scope of the general obligations of States. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as... caste. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures. (CEDAW. (2010). General Recommendation 28: The Core Obligations of States parties under Article 2 CEDAW. UN Doc. CEDAW/C/GC/28, para. 18)
- States condemn racial (i.e. caste) discrimination and segregation, and undertake to pursue by all appropriate means and without delay a policy of eliminating racial (caste) discrimination in all its forms and promoting understanding among all races (castes). (Articles 2& 3 ICERD)
- Recognising that some forms of racial (caste) discrimination have a unique and specific impact on women, gender factors or issues should be taken into account which may be interlinked with racial (caste) discrimination... A systematic and consistent approach is required to evaluate and monitor racial (caste) discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their human rights on grounds of race, descent (caste)... (CERD. (2000). General Recommendation 25: The Gender Related Aspects of Racial Discrimination. UN Doc. A/55/18, annex V, para. 3)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example, women belonging to an ethnic or religious minority (or scheduled caste). Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying... State measures should be taken to prevent, diminish and eliminate conditions and attitudes which cause or perpetuate substantive, multiple discrimination, as well as specific measures to attenuate or suppress conditions that reproduce this discrimination. (CESCR. (2009). General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights. UN Doc. E/C.12/GC/20, paras 9-10 & 17)
- States should 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. (CERD. (2002). General Recommendation 29: Descent Based Discrimination, para. 11)
- States should 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.” (CERD. (2002). General Recommendation 29, para. 12)
- The Indian Government is urged to enforce laws preventing discrimination against Dalit women and prohibiting the devadasi system... and to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress. (CEDAW. (2000). Concluding Observations on India Report. UN Doc. A/55/38, para. 75)
- The Indian State should put in place a mechanism to monitor the effective enforcement of the SC/ST (Prevention of Atrocities) Act in order to end impunity for crimes against Dalit women. The Indian State should increase Dalit women’s legal literacy and improve their access to justice in bringing claims of discrimination and violation of rights. The Indian State should also study the health implications of manual scavenging on Dalits engaged in this profession and on the community as a whole, and to address all the impediments to eradicating this practice, including by providing the Dalit women engaged in this practice with vocational training and alternative means of livelihood. (CEDAW. (2007). Concluding Observations on India Report. UN Doc. CEDAW/C/IND/CO/3, para. 29)
- The Indian State is urged to effectively prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit women, sanction anyone preventing or discouraging victims from reporting such incidents, take preventive measures, and provide legal, medical and psychological assistance, as well as compensation, to victims... The



Indian State should also effectively enforce state laws prohibiting the Devadasi (forced prostitution) practice. (CERD. (2007). Concluding Observations on India report. UN Doc. CERD/C/IND/CO/19, paras 15 & 18)

- The Indian State is urged to increase efforts to enable scheduled caste women to access higher education. (CEDAW. (2007). Concluding Observations on India Report. UN Doc. CEDAW/C/IND/CO/3, para. 33)

- The Indian State should expand throughout the country preventive programmes to curb violence against SC/ST persons, especially women. (CESCR. (2008). Concluding Observations on India Report. UN Doc. E/C.12/IND/CO/5, para. 53)

#### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The 11th Five Year Plan (2007-12) specifically talks of the intersections between gender and other social (e.g. caste) and economic variables, which reinforce vulnerability of more than one type and result in double and triple discrimination amongst women belonging to particular groups. “Sectoral planning often fails to capture this. Our ability to recognise these intersections and address the specific deprivations will be the real test of the 11th Plan agenda of inclusive growth.” (Planning Commission. (2008). Eleventh Five Year Plan, Volume 2: Social Sector. New Delhi: Planning Commission, para. 6.55)

- The Ministries of Women and Child Development, Social Justice and Empowerment, and Human Resource Development must join hands to enforce penalties for blatant violations of the Constitution and the SC/ST (Prevention of Atrocities) Act. Crimes of caste-based discrimination, ‘untouchability’, devadasi/jogini and manual scavenging will be strictly punished according to law. National Human Rights Institutions will be urged to take up SC women’s issues as a priority. Distinct provisions for SC women will be made in the planning of programmes, allocation of finances, and in distribution of reservation facilities in education and employment. (Planning Commission. (2008). Eleventh Five Year Plan, Volume 2, para. 6.56)

- The 12th Five Year Plan, however, makes no mention of intersectionality, nor explicit recognition that women are not a homogenous group. Instead, the Plan only states that special attention must be paid to the needs of vulnerable women, including SC women. The principle goals of the 12th Plan towards the empowerment of SCs include ensuring security and dignity, especially women, and completely eradicating ‘untouchability’ and caste discrimination; and ensuring SC women and men develop to be on par with their non-SC counterparts... “In view of the multiple vulnerabilities that SC women face, they should be provided with good quality house sites in the joint names of the wife and husband; public distribution outlets should be opened in SC bastis which should be operated, as far as possible, by local SC women; and special programmes and interventions designed for them, particularly in the fields of education and health.” (Planning Commission. (2012). Twelfth Five Year Plan, Volume 3: Social Sector. New Delhi: Planning Commission, paras 24.28 & 23.55)

- The National Policy for the Empowerment of Women 2001 recognises that the underlying causes of gender inequality are related to the social and economic structure. Consequently, the access of women, particularly those belonging to weaker sections including scheduled castes, to education, health and productive resources, among others, is inadequate. Therefore, they remain largely marginalized, poor and socially excluded. (para. 1.10) However, the only mention of any targeted strategy for SC women is in terms of equal access to education: the Policy states that sectoral time targets in existing policies will be achieved, with a special focus on girls and women, particularly those belonging to weaker sections. (para. 6.1)

- The Scheduled Caste Sub Plan and the Gender Budget are both special budgeting provisions for SCs and women respectively. However, planning on SC women is not made mandatory; nor do the budget guidelines mention the need to address such intersectional identities.

- Two gender specific atrocities are recognised in the SC/ST (Prevention of Atrocities) Act: assault or use of force to any SC woman with intent to dishonour or outrage her modesty (sec. 3(1)(xi)); sexual exploitation of SC women (sec. 3(1)(xii)).



- The only specific reservations for SC women are in local governance or Panchayati Raj institutions – one-third of all SC reservations are set aside for SC women. (Articles 243D & 243T Constitution of India)

- The Ministry for Social Justice and Empowerment has only one scheme specifically for SC girls, the Special Educational Development Programme for Scheduled Castes Girls belonging to Low Literacy Levels operated by the district level panchayats. The scheme provides a package of educational inputs through residential schools for SC girls in areas of very low literacy and where traditions and the environment are not conducive to learning among these girls.

- In Tamil Nadu, the Tamil Nadu Adi Dravidar Housing and Development Corporation (TAHDCO) operates a land purchase and land development scheme to improve the land holding of SCs and to enhance their socio-economic status in the state. Only landless SC women aged 18-55 years with a family income of not more than Rs 1 lakh and who are engaged in agriculture can apply. The land will be then registered only in the SC woman's name.

## **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- Intersectionality should be incorporated as a guiding principle of gender planning. Discrimination is doubled, trebled and multiplied further in case all the different axes intersect – caste/tribe, religion, economic and work status, residence, geographic location, asset-ownership, marital status, age, health status, etc. The gender framework should incorporate this. (Working Group on Women's Empowerment. (2006). Report of the Working Group on Women's Empowerment for the Eleventh Five-Year Plan. New Delhi: Ministry of Women and Child Development, p. 80)

- Viewing women as a distinctly separate group (from men) misses out the intersections between gender and other variables of social and economic status. These intersections reinforce vulnerability of more than one type and result in double and triple discrimination among women belonging to these groups – for example, poor, low caste women. It is necessary not only to unravel these threads and trace several distinctive roots of inequality and discrimination, but also to conceive of multi-layered re-

sponses in planning and programming in order to bridge the divides using the theme of 'inclusive growth'. (Report of the Working Group on Women's Empowerment for the Eleventh Five-Year Plan, pp.75-76)

## **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- Despite laws in place, there are ongoing atrocities committed against Dalit women and the culture of impunity for perpetrators of such atrocities... Despite a law banning manual scavenging, this degrading practice persists with grave implications on the health of Dalit women engaged in this activity... SC and ST women and children make up a large proportion of victims of trafficking and sexual exploitation. (CEDAW. (2007). Concluding Comments on India report. UN Doc. CEDAW/C/IND/CO/3, para. 28; CESC. (2008). Concluding Observations on India report. UN Doc. E/C.12/IND/CO/5, para. 27)

- By and large, the police and government administration fail to exercise due diligence to protect Dalit women and ensure effective legal remedies when rights violations occur. Non-enforcement or under-enforcement of the law is the norm rather than the exception. Violations of the rights of Dalit women, in particular, tend to be trivialised, if they are brought to light at all where victims face threats from the perpetrators or biased treatment from state officials. (Iru-dayam, A. et al. (2011). Dalit Women Speak Out: Caste, Class and Gender Violence in India. New Delhi: Zubaan; Center for Human Rights and Global Justice & Human Rights Watch. (2007). 'Caste Discrimination against Dalits or so-called Untouchables in India'. New York: CHRGI & HRW)

- Political representation through reserved SC women's quotas in local governance, in the absence of supportive capacity building, protective and monitoring measures and mechanisms, has not necessarily translated into free and meaningful political participation for many Dalit women. Research on Dalit women's right to political participation in local governance in rural India revealed the severe obstructions Dalit women elected representatives or aspiring representatives face due to the entrenched caste hierarchy, chronic poverty and patriarchy. Effectively preventing Dalit women from exercising political authority then compro-



mises their ability to deliver more caste and gender responsive development outcomes for their localities. (Mangubhai, J., A. Irudayam and E. Sydenham. (2009). *Dalit Women's Right to Political Participation in Rural Panchayati Raj*. The Hague: IDEAS, Justitia et Pax & Equalin-rights)

- Reservations (affirmative action) benefit comparatively few Dalit women, particularly in education and employment. Dalit women often become excluded in employment and higher education because of the existence of two separate quotas for them; that is, they are told to apply for the women's quota when they try to access SC quotas, and they are directed towards the SC quota when they apply for women's quotas. Additionally, quotas operate as a form of rationing: because of the existence of quotas, Dalit women cannot apply for non-reserved categories. (Das, M.B. (2006). 'Do Traditional Axes of Exclusion Affect Labor Market Outcomes in India?', *Social Development Papers*, South Asian Series 97. Washington DC: The World Bank; Grey, M. (2005). 'Dalit Women and the Struggle for Justice in a World of Global Capitalism', *Feminist Theology* 14(1), pp. 127-149)

- Similarly, the incoherence of the Indian state's development policies plays a role in perpetuating the social exclusion of Dalit women. In particular, the state pays insufficient attention to the inter-linkages between policies for women and those for SCs, with the consequence of separate targeted schemes for SCs and for women. In terms of implementation of these schemes, however, most of the benefits of development programmes, and the bulk of state resources distributed as entitlements to Dalits, have gone to Dalit men. (Saxena, K.B. (2004). *Report on Prevention of Atrocities against Scheduled Castes*. New Delhi: NHRC)

## **(7) IMPACT OF MEASURES**

- In the absence of planning and programmes specifically targeting SC women, they continue to lie at the bottom of most development indicators, much below those of SC men and non-SC/ST women. While improvements in basic literacy, health and other indicators for SC women have occurred over the years, the development gap between Dalit women and others remains.

- In the absence of economic development measures for SC women, a general trend today is that Dalit women are assuming de facto responsibility for continuing caste-based occupations, while Dalit men find limited opportunities to take up non-traditional labour occupations in urban areas. Moreover, significantly more 'high' caste women are entering into high-level occupations than Dalit women, and such disparities are increasing. (Deshpande, A. (2007). 'Overlapping Identities under Liberalization: Gender and Caste in India', *Economic Development and Cultural Change* 55(4), pp. 735-760; Heyer, J. (2007). 'The Marginalisation of Dalits in a Modernising Economy', Research paper. Oxford: University of Oxford)

## **(8) GAPS IN THE MEASURES**

- No intersectional perspective: Planning and special budget allocations are done separately for scheduled castes and for women, without any recognition of the multiple identities and consequent vulnerabilities that SC women face and which require specific strategies to overcome.

- Few measures specific for SC women: Few government measures currently exist that acknowledge and address the intersectional discrimination that Dalit women face and which contributes to their lower development levels and lesser enjoyment of rights than Dalit men and other caste women.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- There are a number of Dalit women's organisations and movements emerging across the country, which are highlighting the specific issues and problems of Dalit women, pressing for an intersectional analysis and for specific government measures to target SC women. These organisations include the National Federation of Dalit Women, All India Dalit Mahila Adhikar Manch, Rashtriya Dalit Mahila Andolan, Tamil Nadu Dalit Women's Movement, Dalit Stree Shakti – Andhra Pradesh, Andhra Pradesh Jogini Vyavastha Vyathirekha Porata Samithi (APJVVPS), and Dalit Mahila Manch – Rajasthan. This is in addition the number of individual Dalit women's activists and smaller Dalit



women's rights movements in the different states that are working towards these goals.

- Dalit organisations such as Navsarjan Trust – Gujarat, Evidence – Tamil Nadu, Chindu – Andhra Pradesh and REDS – Karnataka have developed a specific emphasis on Dalit women's rights – rights to security, land, livelihood, cultural rights, etc. – as part of their work.

## **(10) OTHER COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- The All India Democratic Women's Association (AIDWA) takes up issues of Dalit women's rights violations as part of its overall work on women's rights. AIDWA believes in women's unity against 'untouchability', against the caste system, and against class exploitation. The issues of Dalit women must form an intrinsic part of women's movements for emancipation. The demands of women's advance in every sphere must have specific reference to the needs of Dalit women.

## **(11) RECOMMENDATIONS**

### ***Planning and Budgeting***

- The Planning Commission should make intersectionality a guiding principle in planning for inclusive growth and addressing the development needs of the excluded communities.
- Planning and budgeting from a gender lens must necessarily include the intersectionality framework whereby the perspectives, interests and voices of women from the most disadvantaged groups are brought to the fore. (Kapur Mehta, A., M. Eapen and Y. Mishra. (2012). *Locating Gender in the Twelfth Five Year Plan Approach: Issues Emerging from a Gendered Analysis*. New Delhi: UN Women, p.27)
- There should be greater convergence between the Ministry of Social Justice and Empowerment and the Ministry of Women and Child Development at the central government level, and between the respective Departments at the state/UT government level, to ensure that complementary and

comprehensive schemes are planned and implemented to specifically address Dalit women's rights.

- State governments to promote mandatory SC/women development plans for each panchayat, paying specific attention to SC women, with adequate funds allocated in proportion to their population.
- Clear guidelines should be issued regarding the reserved quotas for SCs and for women in education and employment, stipulating the equal access of SC women to both quotas.

### ***Security and Access to Justice***

- The government should monitor the effective enforcement of the SC/ST (PoA) Act and other laws in order to end impunity for violence against SC women, prosecuting and punishing all perpetrators and ensuring to SC women equal protection of the law.
- The government should take measures to improve Dalit women's legal literacy as well as their equal access to justice in bringing claims of rights violations by providing quality, free legal services to Dalit women.
- The government should take preventive measures such as police trainings and public education campaigns on the criminal nature of acts of discrimination and violence against Dalit women, and provide legal, medical and psychological assistance as well as compensation to victims.
- The government should introduce affirmative action to increase Dalit women's participation in the police, judiciary and legal professions.

### ***Political Rights***

- State governments should implement and monitor strict government rules to eradicate proxy candidature, including mandatory trainings on this issue and sanctions against officials who allow proxies to operate in the panchayats.
- State governments should establish district offices offering support to elected panchayat representatives from reserved constituencies, conducting special capacitation trainings, monitoring elections as well as participation in the panchayats, and taking prompt action on complaints from these representatives.

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- State governments should encourage the formation or strengthening of support associations and networks of Dalit women elected representatives.

***Sensitisation on Intersectional Caste and Gender Issues***

- State governments should integrate gender and caste awareness trainings for government officials and police, as well as for all panchayat representatives.



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**Guideline 56. All States should recognise and take measures to address the special problem of increased discrimination based on work and descent in situations of humanitarian crises, such as internal conflicts, wars, or natural disasters.**

# 56

## HUMANITARIAN AND DEVELOPMENT ASSISTANCE

‘Untouchability’ and caste-based segregation ensures that many Dalits live in settlements away from the main village, almost always in unsafe, low-lying areas prone to floods, cyclones and epidemics. In disaster situations, discrimination and atrocities against Dalits prevent them from securing their due entitlements under disaster relief and rehabilitation measures, which makes recovery from the impact of disasters often far more difficult for them as compared to other poor communities. Humanitarian relief provisions are also framed in ways that exclude Dalits from the list of those entitled to such relief. In addition, Dalits are also targeted, along with Adivasis, by security forces in situations of internal conflict such as that which exists in Naxalite/Maoist areas of the country.

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

In fulfilment of this guideline, the Indian government should take specific (i) legal, (ii) policy, (iii) programmatic, and (iv) budgetary measures to ensure equal access, non-discrimination, equal enjoyment of entitlements, and security of life for Dalits:

- In situations of internal conflicts and natural disasters: ensuring non-discriminatory delivery of humanitarian relief and rehabilitation measures; ensuring rehabilitation that protects human dignity; protecting the right to life of Dalits during the delivery of humanitarian assistance; ensuring that Dalits are not targeted by government security measures in internal conflict situations; protecting Dalits from targeted violence in internal conflict situations from any state or non-state party to the conflict.



## **(2) INTERNATIONAL STANDARDS AND MECHANISMS**

- The principle of the right to life with dignity, liberty and security underpins all humanitarian interventions in disasters and internal conflicts. (Article 3 UDHR)
- States Parties shall take special and concrete measures to ensure the adequate development and protection of certain racial (caste) groups, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. (Article 2(2) ICERD)
- Civilian populations in armed conflicts should be treated with humanity, impartiality and the ‘absence of adverse distinction’ in any assistance rendered. (Article 3 Geneva Conventions 1949)
- Gender based violence includes violence that impairs or nullified the enjoyment of the right to equal protection according to humanitarian norms in time of international or internal armed conflict. CEDAW. (1992). General Recommendation 19: Gender-based Violence. UN Doc. A/47/38, para. 7(c))
- The Sphere Project, an initiative of NGOs and the Red Cross and Red Crescent movement in 1997, aims to produce an operational framework for accountability in disaster assistance efforts. Its Humanitarian Charter ‘Protection Principles’ and ‘Core Standards’ articulate a rights-based and people-centred approach to humanitarian response. This means ensuring a balanced representation of vulnerable people in discussions with the disaster-affected population and specifying the responsibility to ensure humanitarian assistance reaches the most excluded and vulnerable people. Caste and discrimination are seen as factors contributing to such vulnerability. The right to receive humanitarian assistance is viewed as a necessary element of the right to life with dignity, which includes the right to an adequate standard of living. This right is also linked to the right to protection and security, in that those affected by natural disasters or internal conflicts have the right not only to survival and physical security, but also to all other rights. (Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response. Retrieved October 2013 from <<www.SphereProject.org>>)

- Humanitarian actors should ensure people’s access to impartial humanitarian assistance in proportion to their need and without adverse discrimination. (Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response, Protection Principle 2)
- For the purpose of vulnerability assessments, humanitarian agencies should compose aid workers’ teams with a balanced ratio of women and men, ethnicity, age and social background, keeping the local culture and context in view. (Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response, Core Standard 6)
- After the World Conference on Disaster Risk Reduction (DRR) in early 2006, many organisations adopted the Hyogo Framework for Action (HFA) 2005-2015. The Framework for Action specifies that cultural diversity, age and vulnerable groups should be taken into account when planning for disaster risk reduction, (Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, International Strategy for Disaster Reduction, A13(e))
- The Humanitarian Accountability Partnership Standard 2010 establishes the principles of impartiality, participation and informed consent, and transparency for organisations that assist or act on behalf of people affected by or prone to disasters, conflict, poverty or other crises. The aim is to design, implement, assess, improve and recognise accountable programmes, and to offer redress mechanism to the beneficiaries of the programmes.

## **(3) INTERNATIONAL RECOMMENDATIONS**

- Social, political, cultural, economic, conflict and natural environment factors can increase people’s susceptibility to disasters; changes in the context can create newly vulnerable people. Vulnerable people may face a number of factors simultaneously. The interplay of personal and contextual factors that heighten risk should be analysed and programmes should be designed to address and mitigate those risks and target the needs of vulnerable people. (Sphere Project. (2011). Humanitarian Charter and Minimum Standards in Humanitarian Response, p.67)



- If an imminent natural disaster creates a serious risk for the life, all appropriate measures necessary to protect those in danger, in particular vulnerable groups, should be taken to the maximum extent possible. (Inter-Agency Standing Committee.(2006). Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters. Washington DC: Brookings-Bern Project on Internal Displacement, Guideline A.1.1)
- Safe and non-discriminatory access to available humanitarian assistance should be secured for all persons in need. In particular, measures should be taken to grant priority access to vulnerable groups.
- During and after the emergency phase of the disaster, safe access to adequate food, water and sanitation, shelter, clothing, and essential health services should be provided without discrimination to all in need, including vulnerable and marginalized groups. (Inter-Agency Standing Committee. (2006). Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters, paras B.1.3 & B.2.1)

#### **(4) NATIONAL STANDARDS, MEASURES & MECHANISMS**

##### **Natural Disasters:**

- The National Disaster Management Policy 2009 recognises that the ‘economically and socially weaker segments of the population’ are the worst victims of disasters. While the Policy does not specifically acknowledge caste-induced vulnerabilities, or define the nature of caste discrimination in natural disasters, this discrimination is covered under the overarching recognition of social vulnerabilities. (para. 1.2.2)
- The National Disaster Management Policy 2009 directs the state governments, together with NGOs, to pay attention to the restoration of the permanent livelihood of those affected by disasters, with special attention to the needs of women-headed households, artisans, farmers and people belonging to marginalised and vulnerable sections. (para. 7.4.1)
- There should not be any discrimination based on caste, religion, sex, region, age, or community during disaster re-

sponse measures of compensation and relief. (sec. 6I, ‘Miscellaneous’ section, Disaster Management Act 2005)

- The provision of decentralised Disaster Management Plans in the Disaster Management Act 2005 is an important tool to ensure the issues of Dalits are taken into account and incorporated in the local disaster management plans, which would be approved by the relevant higher authorities.
- A National Disaster Response Fund (for emergency response, relief and rehabilitation) and National Disaster Mitigation Fund (for mitigation) are established, with the equivalents funds established at the state and district levels. (secs. 46-47 Disaster Management Act 2005)
- The Disaster Management Act and Guidelines formed thereunder provide for assistance to the most vulnerable people with weak capacities to cope with disasters, whose access to financial services are also limited due to their inability to provide any collateral for availing of financial services. These provisions specify compensation for land owners in cases of disasters.
- The WASH (Water and Sanitation Hygiene) Guidelines under the Sphere Project specify that any difficulty in consulting any group should be clearly stated in the disaster assessment report and addressed as quickly as possible, so as to ensure a needs-based response that is accessible to vulnerable groups.
- The State Executive Committee (SEC) is mandated to implement the National and State Plans, and to coordinate and monitor all disaster management on the state. The SEC also should ensure that non-governmental organisations carry out their humanitarian relief activities in an equitable and non-discriminatory manner. (secs. 22 & 24 Disaster Management Act)
- The Disaster Management Act and National Policy on Disaster Management lay down certain functions of the state authorities to be carried out in the pre-disaster, during disaster and post-disaster periods through a community-based approach. Community participation forms a significant theme of community-based and managed disaster risk reduction programmes.
- The National Disaster Management Policy 2009 talk of partnerships for mitigation and preparedness, in which part-



nerships with women and youth are encouraged in decision-making committees and action groups for the management of disasters. (paras 5.3.1-5.3.2)

- There are National Disaster Management Guidelines in place for the preparation of state disaster management plans. No mention is made in these Guidelines, however, as regards how state governments should combat discrimination and ensure equal access to any assistance programmes.

- The National Disaster Management Guidelines on Minimum Standards of Food Relief provide for the identification of vulnerable groups like excluded and marginalised groups in the camps for additional supplementary food to meet their special requirements. (sec. 3.2.3)

- There are central norms on the quantum of immediate relief - assistance/compensation - in the event of calamity that all victims of natural disasters can access. No specific provision is made for SC communities. (Ministry of Home Affairs (Disaster Management Division). (2012, 16 Jan.). 'Revision of Items and Norms of assistance from the State Disaster Response Fund (SDRF) and the National Disaster Response Fund (NDRF) for 2010 - 2015', Government Order No.32-7/2011-NDM-I)

#### Internal Conflicts:

- No one shall be deprived of their right to life and personal liberty. (Article 21 Indian Constitution)

- There is no specific national framework of humanitarian responses in internal conflict areas, beyond the Home Ministry's focus on internal security measures.

## (5) NATIONAL RECOMMENDATIONS

#### Natural Disasters:

- No government commissions or committees have made any recommendations as regards non-discrimination or addressing caste-induced vulnerabilities in disaster management.

#### Internal Conflicts:

- Recommendations are in terms of modifications to the law or effective implementation of the law to address internal conflict situations, and state interventions to remove the basic causes of discontent, disaffection and unrest (such as land, wages, basic services and social inequalities). (Expert Group to the Planning Commission. (2008). Development Challenges in Extremist Affected Areas. New Delhi: Government of India, para. 5.0.2)

- The government should take cognisance of reports by civil society groups on the numerous human rights violations by the authorities in areas of internal conflict and constitute enquiries into these episodes so as to inspire confidence in victims and faith of the public in the rule of law. (Development Challenges in Extremist Affected Areas, para. 5.7.4)

- Security forces should undergo rigorous training not only on humane tactics of controlling rural violence but also on the constitutional obligations of the State to protect the fundamental rights, including human rights, of Indian citizens and implications and implementation of progressive laws in favour of the poor. (Development Challenges in Extremist Affected Areas, para. 5.7.11)

## (6) IMPLEMENTATION OF NATIONAL MEASURES

#### Natural Disasters:

- The existence of caste discrimination adversely affecting post-disaster relief efforts has come to the fore in the past decade, though it does not have a prominent place in disaster mitigation and response plans. This discrimination was seen in the response to the 2001 Gujarat earthquake, where Dalits were bypassed in early relief efforts. Later on, not all affected people, especially Dalits, had access to rehabilitation processes because of a lack of information. (International Dalit Solidarity Network. (2013). Equality in Aid: Addressing Caste Discrimination in Humanitarian Responses. Copenhagen: IDSN, p.4)

- During the 2004 tsunami that devastated much of the east Indian coastline, caste discrimination was present at all phases of the recovery process, from the denial of rice,



the refusal to share emergency shelter, the removal of bodies, and the relief materials provided, through to the compensation and provision of livelihood assistance and housing. The discrimination began in the first week after the disaster and was still very much in evidence more than one year after the tsunami. (Gill, T. (2006). *Making Things Worse: How 'caste blindness' in Indian tsunami recovery exacerbates vulnerability*. Utrecht: Dalit Network Netherlands)

- During the 2007 Bihar floods, a study revealed that Dalits faced considerable discrimination in the distribution of relief materials. Dalits were often not counted as affected families, and they faced 'untouchability' practices when trying to access state relief provisions like potable drinking water. Many Dalits also did not have access to the temporary relief shelters established by the government. There were also minimal opportunities for Dalits to engage in decision-making spaces of various agencies involved in disaster relief in terms of the official assessment, relief distribution or coordination in disaster management process. (Dalit Watch. (2007). *Status Report: Bihar Floods 2007 – The Affected and the Relief and Rehabilitation*. New Delhi: Dalit Watch)

- Similarly, lack of damage assessment surveys done in Dalit colonies and large scale corruption was perceived by Dalit victims in the 2009 Andhra Pradesh and Karnataka floods; many victims complained that the officials fixed the relief amounts arbitrarily. Dalits received relief as paltry as Rs. 500 to 1500 in most cases, whereas many dominant caste victims were given maximum compensation fixed by the government for house damages. For having lost standing crops on their land, the victims got a pittance and for the deaths reported, there was an equal indifference. (Macqueen Paul, L. (2011). *Addressing Caste Discrimination in Humanitarian Response*. New Delhi: National Dalit Watch-NCDHR, pp.18-19)

- Given the caste discrimination against Dalits in disaster relief, focused interventions are required to make them resilient to hazards and to see that they are sufficiently protected in the event of any disaster. One such collaborative project on disaster management between the Government of India and UNDP-India was for Rural and Urban Risk Reduction during 2008-2012. One of the project objectives was to build the resilience of poor SCs to disaster, consider-

ing their specific vulnerabilities. No information is available, though, on the implementation of this programme and how many SCs have benefitted in concrete terms under the programme.

- In 2011, the Orissa government announced that it would look into the matter of giving post-disaster compensation to all persons who farm land, which would include sharecroppers. However, no government order followed this announcement.

- In the absence of monitoring on equity in humanitarian relief measures, official reports on disaster mitigation and responses of various government and non-government agencies do not indicate how the measures are being implemented for different social groups such as Dalits and whether any exclusion or discrimination is taking place.

### **Internal Conflicts:**

- There is no humanitarian response for internal conflict areas. Instead, the Indian State treats the issue as one of internal security, without focusing on the removal of other insecurities like land insecurity, livelihood insecurity, food insecurity and security against economic and social oppression... Dalits are exposed continuously to the domination of other castes hostile to them, and on whom they often rely for their livelihood...The fight against this social oppression is perhaps the most significant among the issues used by the Naxalite movement. Besides taking up and resolving individual issues, the movement has given confidence to the oppressed 'lower' castes, many of whom are cadre or local leaders of the Naxalite organisations, to assert their equality and demand respect and dignity from the dominant castes and classes. (Expert Group to the Planning Commission. (2008). *Development Challenges in Extremist Affected Areas*. New Delhi: Government of India, paras 1.15.2, 3.5.1 & 3.5.4, 4.6.2)

## **(7) IMPACT ON THE BENEFICIARIES**

- Natural Disasters: Without adequate policy and programmatic focus on discrimination in humanitarian crises, nor disaggregated data on the impact of humanitarian interventions on different social groups, one can only infer from the



reports of caste discrimination in post-disaster relief that many Dalits are often left out of or enjoy lesser access to humanitarian relief.

## **(8) GAPS IN MEASURES**

### ***Natural Disasters:***

- The Disaster Management Act does not recognise in any substantive way the issue of caste based discrimination and caste-induced vulnerabilities regarding natural disasters. There is a major lacuna in terms of the lack of an equity and inclusion perspective to disaster management in the Act.
- While the National Policy on Disaster Management reads as pro-poor and emphasising addressing vulnerability, no specific mention is made of caste induced vulnerabilities and the principle of non-discrimination is not emphasised in the policy at all.
- There are no reports indicating how the revised guidelines for the National and State Disaster Response Funds, which lay out the norms on compensation against physical loss and damages, are being applied and the social group composition of the beneficiaries.
- The Disaster Management Act and Guidelines on Items and Norms of Assistance from the State Disaster Response Fund (SDRF) and the National Disaster Response Fund (NDRF) currently have no provision for compensation to be paid to non-landowning sharecroppers and salt pan workers, the majority of whom are Dalits. Moreover, no provision of financial support, for instance, for easy loans from public financial institutions and other compensatory schemes recognising the category of share croppers and other small entrepreneurs, is mentioned. Compensation provisions are instead heavily weighted towards (non-Dalit) landowning communities.

### ***Internal Conflicts:***

- There is little focus on developing state measures to address the root causes of internal conflicts, such as the caste inequalities, exploitation and oppression, that draw in many 'lower' caste communities into a struggle against the state.

## **(9) COMMUNITY RESPONSE**

- National Dalit Watch (NDW) monitors all major national disasters, working with allied organisations in the states to expose any caste discrimination in access to and enjoyment of humanitarian relief by Dalits. NDW also advocates for timely enumeration and equal entitlements to humanitarian relief for Dalits; lobbies for amendments to the Disaster Management Act that would separately recognise caste induced vulnerabilities and discrimination, and develop measures to address these aspects; advocates for Dalit-inclusive assessment formats of humanitarian agencies and tools for mapping vulnerabilities and monitoring inclusion on disaster response and recovery programmes; and creates awareness among Dalits on their entitlements under the disaster relief fund norms.

## **(10) WIDER SOCIETY RESPONSE**

- A number of organisations such as Oxfam, Save the Children, Sphere Project, etc. work in the area of humanitarian responses, following the Sphere Humanitarian Charter, Red Cross and Red Crescent NGO code of conduct, etc. While many Dalits benefit from their disaster responses, these organisations do not specifically focus on caste vulnerabilities and promoting anti-discrimination measures in disaster relief.

## **(11) RECOMMENDATIONS**

### ***Natural Disasters:***

- The National Disaster Management Act should be amended to include the following:
  - o "Vulnerable people" should be defined to mean individuals or groups or populations easily affected or prone to be affected by disaster because of their condition in life or situation: children and women (especially orphans and widows), old people, physically and mentally challenged people, migrants and all other disadvantaged people such as SCs and STs who live in vulnerable areas or are from vulnerable social or economic conditions.



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o A mandate for the National and State Executive Committee should be to ensure that government authorities and officials, as well as non-governmental organisations, carry out their activities in an equitable and non-discriminatory manner.

o The National and State Disaster Management Plans should contain a mandatory section on special provisions for vulnerable sections such as scheduled castes.

o The National and State Disaster Relief Funds should provide compensation for all affected by disasters, including landed households as well as landless labourers and sharecroppers.

- The practice of forcing or enticing Dalits to remove carcasses and corpses has to be ended with immediate effect. This work has to be done by specially trained and well-paid staff of the government and volunteers - equipped with full protective gear.

- Steps and procedures should be laid down so that the complete inclusion of Dalits and other vulnerable groups is ensured as a non-negotiable entitlement in disaster management.

- The government authorities, through community wealth/resource mapping exercises like infrastructure audits, should assess the livelihood patterns, specific vulnerabilities and needs in Dalit localities. This would enable the authorities to set up mechanisms of direct warning signals or even text messages to reach Dalits in time, thereby reducing casualties on account of lack of forewarning on a natural calamity. Further, these mapping would help in devising needs-based employment generation programmes for those Dalits recovering from disasters.

- State agencies should collaborate with CSOs to develop tools based on participatory methods and principles of social equity audit, for monitoring / auditing the extent of social equity and inclusion of Dalits in disaster response and risk reduction programmes.

- There should be integrated planning for disaster mitigation and management integrating schemes such as MGNREGS, SGSY and IAY, in order to ensure multi-hazard resistant housing, alternative livelihoods, etc. in Dalit localities.

- Focal persons should be appointed by the Government in order to monitor all aspects of inclusion of Dalits at all levels of the administration – planning, implementation and governance of Disaster management interventions. In this regard, an internal MIS on the share of Dalits in the response programmes should be built.

- Dalits should be represented in institutional decision-making processes and consultations in disaster management - at all levels - from local government level to the national level.

### ***Internal Conflicts:***

- The Indian Government should shift from a security approach to the issue of internal conflict, to a more integrated approach that addresses both security issues and the root causes of such conflicts, including caste inequalities in access to land, wages, etc.



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**Guideline 58. States should investigate all alleged cases in which members of affected communities have been denied assistance or benefits equal to that received by other people, or cases in which they have been discriminated against during the relief, rehabilitation and development processes, and compensate or retroactively grant such benefits to the victims of affected communities.**

# 58

## HUMANITARIAN AND DEVELOPMENT ASSISTANCE

‘Untouchability’ and caste-based segregation ensures that many Dalits live in settlements away from the main village, almost always in unsafe, low-lying areas prone to floods, cyclones and epidemics. In disaster situations, discrimination and atrocities against Dalits prevent them from securing their entitlements under disaster relief and rehabilitation measures, which makes recovery from the impact of disasters far more difficult for them as compared to other poor communities.

### (1) WHAT IS REQUIRED TO FULFIL THE GUIDELINE

In fulfilment of this guideline, the Indian government should take specific legal, policy, programmatic, and budgetary measures to ensure equal access, non-discrimination, equal enjoyment of entitlements and security of life for Dalits by:

- Swiftly and diligently investigating cases of caste discrimination and the denial of equal benefits during (a) relief, (b) rehabilitation and (c) development processes.
- Taking steps to compensate or retroactively grant benefits to Dalit victims who are denied equal benefits during (a) relief, (b) rehabilitation and (c) development processes.

### (2) INTERNATIONAL STANDARDS AND MECHANISMS

- The right to receive humanitarian assistance is derived from a number of legal norms and rules that are part of international law. More specifically, international



humanitarian law contains a number of relevant provisions on access to assistance and on the ‘protection of objects indispensable to the survival of the civilian population.’ (1977 Additional Protocols to 1949 Geneva Conventions)

- The Sphere Project, an initiative of NGOs and the Red Cross and Red Crescent movement in 1997, aims to produce an operational framework for accountability in disaster assistance efforts. Its Charter states the requirement to ensure people’s access to impartial humanitarian assistance in proportion to need and without discrimination. (Protection Principle 2)
- The Sphere Project Charter lays down the responsibility of humanitarian actors to assist people to claim their rights, access available remedies from the government and provide them with information on their entitlements and available remedies. This includes assisting affected people in securing the documents they need to demonstrate their entitlements. (Protection Principle 4)
- Efficient and equitable distribution methods for humanitarian assistance should be planned in consultation with the affected population. Vulnerable individuals or households should not be omitted from distribution lists and can access both the information and the distribution itself. A grievance process should be established to address any concerns arising during registration or distribution. (Sphere Project Minimum Standards in Shelter, Settlement and Non-Food Items, Non-Food Items Standard 1, guidance note 5)

### **(3) RECOMMENDATIONS BY INTERNATIONAL MECHANISMS**

- There are no recommendations by international mechanisms on the investigation of cases of denial of humanitarian assistance or grievance redress.

### **(4) NATIONAL STANDARDS, MEASURES AND MECHANISMS**

- The Revision of Items and Norms of Assistance from the State Disaster Response Fund (SDRF) and the National Disaster Response Fund (NDRF) for the period 2010 –

2015 (No.32-7/2011-NDM-I, dated 16.01.2012) stipulate the items for which humanitarian assistance will be provided. These include: gratuitous relief for death, injury and immediate sustenance; relief measures; housing and infrastructure damage; assistance to small and marginal farmers; assistance regarding animal husbandry for small and marginal farmers; assistance to artisans.

- While providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion. (sec. 61 Disaster Management Act 2005)
- Neither the Disaster Management Act 2005 nor the National Disaster Management Policy 2009 stipulate any grievance redress mechanisms or the duty of government authorities to investigate cases of unequal access to humanitarian relief measures.

### **(5) RECOMMENDATIONS BY NATIONAL MECHANISMS**

- There are no recommendations by national mechanisms on the investigation of cases of denial of humanitarian assistance or grievance redress.

### **(6) STATUS OF IMPLEMENTATION OF STATE MEASURES**

- In the absence of explicit state measures, it is up to Dalit communities and civil society organisations to enumerate the numbers of Dalit individuals and families who are denied equal access to humanitarian relief measures after disasters take place.
- Various studies – e.g. HRFDL (Karnataka). (2010). Exclusion of Dalits in the Flood Rehabilitation in Bijapur district, Karnataka; National Dalit Watch & Dalit Watch – Andhra Pradesh. (2009). The Excluded in Relief and Rehabilitation: Survey of post-flood situation of Dalit victims’ access to relief and rehabilitation in Andhra Pradesh floods of 2009; Gill, T. (2006). Making Things Worse: How ‘caste blindness’ in Indian tsunami recovery exacerbates vulnerability – have pointed out widespread discrimination against Dalits in access to humanitarian relief following



natural disasters. Moreover, the district administration appointed for monitoring the distribution of humanitarian relief was in most cases inactive and silent in curbing this discrimination. Even despite several complaints given by the Dalits to the concerned police officials, regarding the ill-treatment and discriminatory distribution of relief, none of the complaints were registered. Hence, it was only due to the efforts of Dalit communities themselves or civil society organisations that this discrimination was brought to light, the loss in many Dalit colonies assessed and compensation granted. (see Guideline 56 report for details of discrimination)

Following cyclone Thane in 2011, in Palur – Nadu Colony in Tamil Nadu, around 150 Dalit families still did not have potable water 20 days after the cyclone on the flimsy ground that the present Palur Panchayat President believed that the Dalit colony voted against his panchayat candidature. The spouse of the ward member from the colony, who had gone to the panchayat office to ask for access to water, was assaulted and his complaint was refused to be taken cognisance of by the Nellikuppam Inspector of Police. Instead, the complainant was arrested and put under judicial custody. Twenty days after the cyclone, both lines of electricity to the Dalit colony were functional until the lines reached the colony. Moreover, the colony was dependent on water from either a graveyard 0.5 km away or had to buy water. (National Dalit Watch – National Campaign on Dalit Human Rights. (2011, 20 Jan.). Press Release: Social Audit on Cyclone Thane)

## **(7) IMPACT OF MEASURES**

- Without specific grievance redress mechanisms mandated under law, district disaster management authorities and the state executive committees are not obliged to investigate cases of the denial of humanitarian relief.

## **(8) GAPS IN THE MEASURES**

- A major lacuna in the Disaster Management Act 2005 is the lack of an equity and inclusive approach to disaster management. Consequently, discrimination is the distribu-

tion of humanitarian relief is rampant, thereby defeating the very purpose of the Act.

- Without specific grievance redress mechanisms mandated under law, district disaster management authorities and the state executive committees are not obliged to investigate cases of the denial of humanitarian relief.
- The Disaster Management Act and Guidelines on Items and Norms of Assistance from the State Disaster Response Fund (SDRF) and the National Disaster Response Fund (NDRF) currently have no provision for compensation to be paid to non-landowning sharecroppers and salt pan workers, the majority of whom are Dalits. Moreover, no provision of financial support, for instance, for easy loans from public financial institutions and other compensatory schemes recognising the category of share croppers and other small entrepreneurs, is mentioned. Compensation provisions are instead heavily weighted towards (non-Dalit) landowning communities.

## **(9) DALIT COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- National Dalit Watch (NDW) monitors all major national disasters, working with allied organisations in the states to expose any caste discrimination in access to and enjoyment of humanitarian relief by Dalits. NDW state partners make lists of non-enumerated Dalits and facilitates Dalit communities to present their cases of non-receipt of disaster relief to the district authorities. NDW also creates awareness among Dalits on their entitlements under the disaster relief fund norms.

## **(10) OTHER COMMUNITY RESPONSE TO GAPS ON IMPLEMENTATION**

- A number of organisations such as Oxfam, Save the Children, Sphere Project, etc. work in the area of humanitarian responses, following the Sphere Humanitarian Charter, Red Cross and Red Crescent NGO Code of Conduct, etc. While they assist many Dalits through their humanitarian relief, these organisations do not specifically focus on caste vulnerabilities and promoting anti-discrimination measures in disaster relief.



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## **(ii) RECOMMENDATIONS**

- Steps and procedures should be laid down so that the complete inclusion of Dalits and other vulnerable groups is ensured as a non-negotiable entitlement in disaster management.
  - Amend the Disaster Management Act 2005 to include the following:
    - o The National Executive Committee and State Executive Committees should guarantee that there is no discrimination in disaster preparedness, mitigation, relief and rehabilitation by ensuring the most vulnerable people are first approached for humanitarian relief and ensuring transparency, accountability and justice in the way each transaction is carried out.
    - o Guidelines for minimum standards of relief should also include: special provisions for vulnerable groups including SCs who live in vulnerable areas or are from vulnerable social or economic conditions; and such other relief as may be necessary such as protection from further violence or atrocities, assurance of legal support, access to psychosocial services and other confidence building measures.
    - o Disaster relief funds should be disbursed promptly by the district authorities so that the sufferings of people are mitigated at the earliest. When people turn up for relief, they should be treated with dignity and never turned away.
  - The government should strengthen governance systems ensuring transparency and accountability at every level, starting with the village councils. This includes by establishing grievance redress mechanisms under the Disaster Management Act.
  - Cases of wilful discrimination, exclusion and atrocities against Dalits during humanitarian relief efforts should be investigated and prosecuted under the law, and preventive mechanisms developed to stop occurrence of such instances.
  - Regular social audits should be organised at the relief camps, and effective, pro-active mechanisms established for the registration of grievances, particularly those of socially marginalised communities.
- Focal persons should be appointed by the Government in order to monitor all aspects of inclusion of Dalits at all levels of the administration – planning, implementation and governance of Disaster management interventions.



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**Guideline 59. International financial institutions and private companies should affirm the unacceptability of discrimination based on work and descent within their own organizations as well as within their sphere of influence, including supplies and business partners, with special focus on equal access to markets and services and actively implementing anti-caste laws; and such entities should incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.**

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# 59

## **MARKET ENTERPRISES AND FINANCIAL ALLOCATIONS**

The private sector should not take into account caste identities in employment, business and financial transactions. Various business/commerce associations argue that that hiring processes in their member companies are 'caste-blind' and that mandatory job quotas for scheduled castes would only hurt competitiveness by hampering the ability of companies to hire the best candidates. The limited data available, however, indicates that private sector hiring processes are not caste blind in reality, and that many Dalits employed in the private sector either face caste discrimination or try to hide their caste identities.

### **(I) WHAT IS REQUIRED TO FULFIL THE GUIDELINE**

International financial institutions and private companies should take specific policy and other measures to ensure the equal rights and opportunity for Dalits in the private sector:

- Affirm unacceptability of caste discrimination within organisations as well as its sphere of influence: to institute a specific policy on anti-discrimination in the company/institution as well as vis-à-vis engagement with partners, as well as ensure all company procedures are non-discriminatory.
- Actively ensure non-discrimination and equal access to markets and services: to assign responsibility for non-discrimination and equal opportunities to a senior management level staff; to ensure grievance redress mechanisms are in place to deal with issues of caste discrimination; to have staff trainings on non-discrimination; to have affirmative action measures in place to ensure Dalits' de facto equal access to markets and services.



- Incorporate caste and gender analyses and anti-discrimination measures into corporate social development measures: to actively ensure employee diversity within the company/institution, with special focus on caste and gender; to ensure the corporate social responsibility policy of the company places specific emphasis on engaging with Dalit communities.

## **(2) INTERNATIONAL STANDARDS AND MECHANISMS, INCLUDING CORPORATE MEASURES**

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. (Article 23(1) UDHR)
- Businesses should uphold the elimination of both direct and indirect discrimination in respect of employment and occupation, including the terms of employment. (Principle 6, UN Global Compact 2000)
- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. (Office of the High Commissioner for Human Rights. (2011). UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. UN Doc. HR/PUB/11/04, principle 11)
- In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (OHCHR. (2011). UN Guiding Principles on Business and Human Rights, principle 15)
- Multinational enterprises should be guided throughout their operations by the general principle that governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination. This is without prejudice to the measures to ensure hiring of local workers or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment. (ILO. (2006). Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Geneva: ILO, para. 22)
- Multinationals and other enterprises shall be guided throughout their operations by the principle of equality of opportunity and treatment in employment and should not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job. (Organisation of Economic Cooperation and Development. (2011). Guidelines for Multinationals and other Enterprises. OECD Publishing, section VIe, p. 35)
- We express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business. We promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse. (Global Sullivan Principles 1999, principles 1-2)
- There shall be no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation. (Ethical Trading Initiative. The ETI Based Code, para. 7.1)
- Fair employment practices are part of our commitment to responsible business practices and human rights. Microsoft policy prohibits discrimination in hiring, compensation, access to training, promotion, termination or retirement, when such discrimination is based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership, or political affilia-



tion. (Microsoft. (2008). Communication on Progress under the UN Global Compact. Retrieved Nov. 2013 from <<www.unglobalcompact.org/system/attachments/204/original/COP.pdf?1262614174>>)

- The employment, classification, promotion, and assignment of persons on the staff of the International Monetary Fund shall be made without discriminating against any person because of sex, race, creed, or nationality...The IMF supports an inclusive work environment, where different perspectives are shared and respected and employees feel able to contribute without fear of discrimination, harassment or disparagement. (International Monetary Fund. (2004 & 2013). Diversity Annual Reports 2004 & 2013. Retrieved Nov. 2013 from <<www.imf.org/external/np/div/index.asp>>)

- Similarly, the World Bank is committed to inclusion and diversity in their hiring and employment policies, but does not mention the principle of non-discrimination based on caste. Its guidelines for evaluators of global and regional partnership programmes include sensitivity to the beliefs, manners, and customs of the social and cultural environments in which they work, including issues of discrimination and gender inequality. (Independent Evaluation Group. (2007). Sourcebook for Evaluating Global and Regional Partnership Programs: Indicative Principles and Standards. Washington DC: IEG-World Bank, para. 8.2)

### **(3) INTERNATIONAL RECOMMENDATIONS**

- The Commission and the European External Action Service should include, where relevant, a 'caste-based discrimination clause' in all trade and association agreements... The EU should also promote non-discriminatory and inclusive policies and procedures in business operations with caste-affected countries, including affirmative action for Dalits and similarly affected people in the labour market and the private sector. (Committee on Development. (2013). Motion for Resolution, European Parliament.B7-0507/2013, paras. 17-18)

- The Indian Government is urged to take action to eliminate discrimination in employment and occupation against members of the Dalit population and promoting equality

of opportunity and treatment for them, including through strengthening legal protection and socio-economic empowerment. The Committee also reiterates its request to the Government to provide information on the steps taken to raise awareness among workers and employers of the issues involved, particularly the need to reject and combat the practice of 'untouchability' and caste-based discrimination at work. (ILO. (2007). Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference: 96th Session, p. 292)

- The Indian Government is urged to adopt policies and social measures to increase employment and enhance the employability of those vulnerable to discrimination in both the public and private sectors...The Government needs to take measures to improve the access of discriminated groups such as the Dalits to employment via such programmes as vocational training and labour market measures. (ILO. (2007). Report of the Committee of Experts on the Application of Conventions and Recommendations. Geneva: ILO, provisional record 22, part 2)

### **(4) NATIONAL STANDARDS AND MECHANISMS, INCLUDING CORPORATE MEASURES**

- Businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation. (Ministry of Social Affairs. (2011). National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business. New Delhi: Government of India, Core Element 2)

- Every company having net worth of Rs 500 crores or more, or turnover of Rs 1000 crores or more, or a net profit of Rs 5 crores or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, to formulate and monitor a CSR policy. The CSR policy may include activities related to contribution to any central/state government fund for the socio-economic development of SCs. (sec. 135 & Schedule VII Companies Act 2013)

- Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third



parties. (Ministry of Corporate Affairs. (2009). Corporation Social Responsibility Voluntary Guidelines. New Delhi: Government of India, Core Element 4)

- Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society. (Ministry of Corporate Affairs. (2009). Corporation Social Responsibility Voluntary Guidelines. New Delhi: Government of India, Core Element 6)
- Affirmative action for the scheduled castes and scheduled tribes communities is defined as a voluntary commitment by Indian companies to help the government and civil society in the national endeavour to ensure equal opportunity to SC/ST members. The Code of Conduct for Affirmative Action to be voluntarily followed by companies relates to non-discrimination, assistance, and transparency with respect to SC/ST employees/ applicants/ vendors. (CII website. Retrieved Nov. 2013 from <<www.ciiaffirmativeaction.in/about\_us.aspx?cid=11>>)

## (5) NATIONAL RECOMMENDATIONS

- The National Commission for Scheduled Castes reiterates the need to bring about suitable provision for extension of reservations in the private sector for SCs. (National Commission for SCs. (2005). First Annual Report 2004-2005. New Delhi: NCSC, para. 5.23)
- Companies should provide equal opportunities to all qualified employees regardless of their race, caste, religion, colour, ancestry, marital status, gender, sexual orientation, age, nationality, ethnic origin or disability. To meet this intent, human resource policies should promote diversity and equality in the workplace, as well as compliance with all local labour laws, while encouraging the adoption of international best practices. (Developing Code of Ethics for Indian Industry (April 2012), National Human Rights Commission (NHRC), an initiative by Institute for Corporate Sustainability Management Trust)

## (6) IMPLEMENTATION OF NATIONAL MEASURES

- While several Indian companies have a number of SC employees, the industry generates no data on the caste affiliation of its employees. Hence, no caste analysis appears to be taken by the industry as part of their corporate social development measures.
- The Ministry of Corporate Affairs has not published to date any information on the implementation of corporate social responsibility measures by Indian companies, as per the Companies Act 2013.
- The Confederation of Indian Industry (CII) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) have an Action Plan entitled 'Concrete Steps by Indian Industry on Affirmative Action for Scheduled Castes/Scheduled Tribes'. The Plan includes principles and concrete steps on specific areas such as workplace, entrepreneurship development, employability and education. A Code of Conduct for Companies has been developed, councils have been set up for promoting, coordinating and overseeing the industry's actions, and possible SC/ST entrepreneurs are being identified. (CII website. Retrieved Nov. 2013 from <<www.cii.in/PolicyAdvocacyDetails.aspx?enc=IFXLRvnZcDACwloqWArEXIcvuANvzgDxEEJSWHB7rz5wGOZZgeDEwFRE76lKC5mfHieO+UwMGUryNJwTMQkIBg>>)
- CII's Voluntary Code of Conduct for affirmative action, launched in 2007, currently has 729 signatory companies. These companies commit to vocational training, educational scholarships and efforts to increase procurement from 'lower-caste' entrepreneurs. The Code of Conduct states that the industry will discourage conscious discrimination in any form, give preference in the selection of business partners to socially disadvantaged sections, upgrade skills and provide continuous training to employees belonging to the socially disadvantaged sections of society. The companies will also partner with educational institutions to support and aid students from the Scheduled Castes and Scheduled Tribes. (CII website. Retrieved Nov. 2013 from <<www.cii.in/PolicyAdvocacyDetails.aspx?enc=pynTVycG5JIqGPm+630IftlQRuYOImy+yKpX66YlnIDCtaK5Wh8gZOcWziXW3w5k>>)



- Currently, nearly 100 CII member companies had drawn up affirmative action agendas for SC/ST youth under four heads: employability, entrepreneurship, education and employment, already making a difference to the lives of over 37,054 SC/ST youth. (CII website. Retrieved Nov. 2013 from <<www.cii.in/Result\_Summary.aspx?enc=X2vDqhkJCfl eYoegwCPhmMKf8haN4I4USsa TjrsEXB9Xe48go-vIAq3QF9sE4xo6z>>)
- Our company is committed to diversity in all its forms in working environment, where there is mutual trust and respect. We recruit, employ and promote employees on the sole basis of qualifications and abilities needed for the work to be performed without discrimination in terms of caste, creed, race, gender, religion or economic status. (Hindustan Unilever. (2008). Communication on Progress under the UN Global Compact. Retrieved Nov. 2013 from <<www.unglobalcompact.org/system/attachments/1263/original/COP.pdf?1262614254>>)
- The Adhwani Affirmative Action Programme attempts to address the prevailing social inequities in India by encouraging positive discrimination towards SCs and STs by Adhwani companies. We focus on the following areas of development: employability, entrepreneurship, education, uplifting and helping the poor sectors. We are committed to exercising positive discrimination in employing SC/ST personnel and in engaging them as business partners without sacrificing merit or quality. (Adhwani website. Retrieved Nov. 2013 from <<http://adhwani.com/Our\_Promises.aspx?id=Affirmative\_action>>)
- The Aditya Birla Company engages with well-established and recognised programmes and national platforms such as the CII, FICCI, ASSOCHAM, etc., given their commitment to inclusive growth. Our CSR policy conforms to the CSR Voluntary Guidelines spelt out by the Ministry of Corporate Affairs, Government of India in collaboration with FICCI in 2009. (Aditya Birla website. Retrieved Nov. 2013 from <<www.adityabirla.com/csr/corporate-social-responsibility-policy>>)
- A Tata company shall provide equal opportunities to all its employees and all qualified applicants for employment without regard to their race, caste, religion, colour, ances-

try, marital status, gender, sexual orientation, age, nationality, ethnic origin or disability. (Code of Conduct of Tata Company, clause 4)

- The Tata Company adheres to the principle of equal opportunity, irrespective of caste, whether in recruitment or career advancement within the organisation. The company is also committed to directly conducting or supporting initiatives to ensure an equal footing for socially and economically disadvantaged sections in the country at large, and specifically SCs and STs. (TATA Sponge Iron Limited. (2007). Communication on Progress under the Global Compact 2007-08, Retrieved Nov. 2013 from <<www.unglobalcompact.org/system/attachments/262/original/COP.pdf?1262614178>>)
- Indian Oil Corporation Ltd is an equal opportunity employer. There is no discrimination for employment/growth on the basis of caste, colour, gender, religion or region. (Indian Oil. (2007). Communication on Progress under the Global Compact 2005-06, Retrieved Nov. 2013 from <<www.unglobalcompact.org/system/attachments/2436/original/COP.pdf?1262614330>>)
- HSBC India has signed the Confederation of Indian Industry's Code of Conduct for Affirmative Action and the HSBC Group's existing employment policies prohibit discrimination on the basis of gender, race, nationality, age, disability, ethnic origin, religion or status. In compliance with the Code of Conduct for Affirmative Action, we have now started to collect employment data on tribe, caste and other community origins for new employees. (HSBC. Communication on Progress under UN Global Compact 2006. Retrieved Nov. 2013 from <<www.unglobalcompact.org/system/attachments/3933/original/COP.pdf?...>>)

## **(7) IMPACT ON THE BENEFICIARIES**

- In the absence of specific measures in the private sector, in modern economies such as India's IT and industry sectors, discrimination continues to affect the possibilities of Dalits to engage on an equal footing with other groups. Caste discrimination is extensive in the hiring process, promotion, equal remuneration and in terms of intolerance and prejudices in the workplace. In the pri-



vate sector, Dalits have a low employment record in proportion to their share of the total population – both in the rural areas and in the more middle class occupations in the cities. The perception that Dalits should be restricted to their traditional low status occupation is widespread, and those who have obtained educational qualifications find it difficult to get work. If recruited, they often serve in low-level positions, and both open and hidden practices of caste discrimination are commonplace and practiced by employers as well as co-workers. (International Dalit Solidarity Network. (undated). 'Addressing Caste Discrimination in Business'. Retrieved Nov. 2013 from

- <<[http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/CSR/DDCinformationSheet.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/CSR/DDCinformationSheet.pdf)>>
- Most people assume that such caste-biases play no role in the burgeoning private sector. But the results of a series of studies done by reputed Indian and American academics, using methods originally developed to study racial discrimination in the United States, point to caste-biases in the hiring processes of private companies. (Kumar, A. (2011, July). 'Combating Caste Bias in the Private Sector', The Wall Street Journal, India)
- In the employment trends among social groups and in terms of most social indicators, the Scheduled Castes (SCs) and the Scheduled Tribes (STs) among social groups continue to be among the most marginalized sections. (Planning Commission. (2012). Draft Twelfth Five-Year Plan 2012-17. New Delhi: Government of India, para.22.37)

## **(8) GAPS IN MEASURES**

- There is no caste disaggregated data to show the extent of SC employment in the private sector, and no information provided on how many companies have anti-discrimination policies or have incorporated CSR measures targeting SCs.
- Most international financial institutions and private companies still have not explicitly affirmed the unacceptability of caste discrimination within their own organisations as well as within their sphere of influence, including suppliers and business partners; nor have they adopted and made

public strong anti-discrimination policies that would ban caste discrimination in their workplaces.

- The Companies Act 2013 only identifies SC/ST development concerns as part of the Corporate Social Responsibility activities that companies can allocate funds for, but does not mention aspects of the non-discrimination principle in hiring and employment opportunities for SCs.

## **(9) COMMUNITY RESPONSE**

- Dalit leaders from across the country who gathered for a national conference in Mumbai in 2012 unanimously demanded reservation for the community in the private sector. They issued a 12-point programme for the holistic development of Dalits, calling on the government as well as private enterprises to reserve 25% of all tenders for SCs. "The state is keen on privatisation. This means jobs in government sector are going down. To empower Dalits, it is imperative that state bring reservations in private sector as well." (Express News Service. (2012, 13 Dec.). 'Dalit leaders seek quota in private sector', The Indian Express)
- The Dalit Indian Chamber of Commerce and Industry (DICCI) was established in 2005 and one of its mandates is to promote entrepreneurship among Dalits as a solution to their socio-economic problems.
- The National Campaign on Human Rights promotes inclusive policies for the corporate sector. A goal is to initiate constructive dialogue among private sector leaders and Dalits, and to develop and inclusion tool which companies can be encouraged to use to assess their operations.

## **(10) WIDER SOCIETY RESPONSE**

- The International Dalit Solidarity Network (IDSN) has formulated 'The Ambedkar Principles: Employment and Additional Principles on Economic and Social Exclusion Formulated to Assist All Foreign Investors in South Asia to Address Caste Discrimination'. The 10 principles include recommendations on how to eliminate caste discriminatory employment practices through an active non-discrimination policy and affirmative action.



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- IDSN has also developed a Dalit Discrimination Check as a practical tool to help companies prevent discrimination and exploitation of Dalits in their Indian operations and suppliers. The Dalit Discrimination Check builds on the Human Rights Compliance Assessment (HRCA), which is a diagnostic tool designed to help companies detect potential human rights violations caused by the effect of their operations on employees, local residents and all other stakeholders. The purpose is to provide a practical tool that will help companies operating in India, or sourcing from India, to avoid discriminating on the basis of caste.

## **(II) RECOMMENDATIONS**

- All inter-governmental organisations, including international financial institutions, should ensure that development or assistance projects which they support take into account the socio-economic situation of Dalits.
- International Financial Institutions should incorporate caste and gender disaggregated analysis into corporate social development strategies and poverty and social assessments in order to ensure equal benefits to Dalits. Prior to approval of projects and in ongoing projects, in consultation with Dalit NGOs and academics, these institutions should investigate the effect of their proposed policies and programmes on caste discrimination and ensuring equal access and enjoyment of basic entitlements, and seek ways to strengthen Dalit communities in new and ongoing projects through anti-discriminatory and pro-Dalit measures.
- Companies should support and implement the UN Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, the Global Compact, the OECD Guidelines for Multinationals and other Enterprises, the IDSN Ambedkar Principles and principles contained in the ILO Tripartite Declaration.
- Companies should affirm and ensure the unacceptability of caste discrimination within own organisations as well as within the sphere of influence including suppliers and business partners, with special focus on equal access to markets and services and labour rights, and actively contribute to implementing all anti-caste laws of the Indian state.
- Companies should develop and implement affirmative action plan (setting targets wherever possible), including training opportunities for Dalit employees and potential recruits.
- Companies should appoint a specific board member to oversee the policy areas, and a senior manager to maximise the benefits of diverse workforce and report the progress in the annual reports that are open to scrutiny from Dalits.
- All corporate support to community development programmes and other charitable activities should include the active participation of Dalits in planning and implementation, and that they receive at least an equal share of the benefits.
- MNCs and TNCs must voluntarily adopt effective affirmative action measures to ensure that SCs are recruited and employed in their Indian subsidiaries.



# Annexure

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## **DRAFT PRINCIPLES AND GUIDELINES FOR THE EFFECTIVE ELIMINATION OF DISCRIMINATION BASED ON WORK AND DESCENT**

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## **DRAFT PRINCIPLES AND GUIDELINES FOR THE EFFECTIVE ELIMINATION OF DISCRIMINATION BASED ON WORK AND DESCENT**

### **PREAMBLE**

*Bearing in mind* the commitment to the principles and obligations under the Charter of the United Nations, including the Preamble and Articles 1, 2, 13, 55, and 56, to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Recalling* that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and nations, to respect for the equal freedom and dignity of all human beings, and their entitlement to the rights and freedoms specified therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status,

*Recalling also* the International Convention on the Elimination of All Forms of Racial Discrimination, which seeks to eliminate discrimination based on race, colour, descent, or national or ethnic origin,

*Taking into account* General Recommendation 29 of the Committee on the Elimination of Racial Discrimination, which confirms the Committee's consistent view that the term 'descent' in article 1, paragraph 1 of the Convention applies not only to race but also other forms of inherited status and strongly condemns discrimination based on work and descent as a violation of the International Convention on the Elimination of All Forms of Racial Discrimination, and the Committee's concluding observations addressed to States parties to the Convention,

*Affirming* the condemnation of discrimination in the Durban Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

*Noting* that the World Summit 2005 Outcome emphasized the responsibilities of all States, in conformity with the Charter of the United Nations, to respect human rights and fundamental freedoms of all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

*Taking into account also* International Labour Organization Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, and its accompanying General Recommendation No. 111,

*Affirming* the UNESCO Convention on Cultural Diversity, and on Discrimination in Education,

*Affirming also* the principles set forth in the United Nations Global Compact, to the end of eliminating discrimination in respect of employment and occupation,

*Highlighting* that discrimination based on work and descent exacerbates poverty and constrains progress toward achieving the Millennium Development Goals,



*Reaffirming* the importance of universal education expressed in the Millennium Development Goals,

*Noting* with grave concern the persistence of discrimination based on work and descent in many regions as reported by the Special Rapporteurs on Discrimination based on Work and Descent of the Sub-Commission on the Promotion and Protection of Human Rights, and by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance of the Human Rights Council,

*Aware of* the Organisation for Economic Cooperation and Development's Guidelines on Companies

*Taking note of* the Kathmandu Dalit Declaration, the Ambedkar Principles, and the Sullivan Principles,<sup>1</sup>

*Commending* the efforts of governments to eliminate discrimination based on work and descent through national constitutional and other legislation and other measures,

*Respecting and attaching the highest importance to* ongoing efforts by affected communities, and international and regional organizations to eliminate discrimination based on work and descent,

*Strongly condemning* discrimination based on work and descent, including discrimination based on caste and analogous systems of inherited status, as a violation of human rights and international law,

*Confirming* the need for the concerted efforts of not only States but also regional and international bodies, donors, local authorities, political parties, private sector actors such as companies, schools, social, cultural and religious institutions, other non-governmental organizations (NGOs) and the media in order effectively to eliminate discrimination based on work and descent in their sphere of influence,

*Recommends* the following principles and guidelines for the effective elimination of discrimination based on work and descent.

## **SCOPE AND APPLICATION**

1. The principles and guidelines concerning discrimination based on work and descent apply equally to all States and to all local, national, sub-regional, regional, and international governmental and non-governmental bodies.

## **DEFINITION**

2. Discrimination based on work and descent is any distinction, exclusion, restriction, or preference based on inherited status such as caste, including present or ancestral occupation, family, community or social origin, name, birth place, place of residence, dialect and accent that 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,

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<sup>1</sup> Kathmandu Dalit Declaration, adopted at the International Consultation on Caste-Based Discrimination: Establishing Dalit Rights in the Contemporary World; the Role of Governments, the United Nations and the Private Sector, on December 1 2004; the Ambedkar Principles; employment and additional principles on economics and social exclusion formulated to assist all foreign investors in South Asia to address caste discrimination (2005); the Global Sullivan Principles on Social Responsibility (1999).



cultural, or any other field of public life. This type of discrimination is typically associated with the notion of purity and pollution and practices of untouchability, and is deeply rooted in societies and cultures where this discrimination is practiced.

3. Special measures taken for the sole purpose of securing adequate advancement of affected groups and individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed discrimination based on work and descent, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that they shall not be continued after the objectives for which they were taken have been achieved.<sup>2</sup>

## **PRINCIPLES**

4. Discrimination based on work and descent is a form of discrimination prohibited by international human rights law as proclaimed by the Universal Declaration of Human Rights and, inter alia, by the International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the International Labour Organization Convention No. 111.<sup>3</sup>

5. Discrimination based on work and descent and other forms of discrimination are not only human rights violations but also major obstacles to achieving development. Inequalities inevitably diminish development gains and are among root causes of armed conflicts. Ineffective allocation of human resources due to discrimination based on work and descent distorts the labour market and affects the efficiency of an economy.

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<sup>2</sup> The definition of discrimination based on work and descent is modelled on Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It accordingly supports and encourages consistency with existing international law on the subject of discrimination, and should be read as such. Likewise, paragraph 2 is modeled on Article 1.4 of ICERD and is intended to explicitly allow for the possibility of special measures, such as affirmative action, taken solely for the purpose of and to the extent necessary for the equal enjoyment of human rights and fundamental freedoms of groups and individuals affected by discrimination based on work and descent. In practice, discrimination based on work and descent is usually embedded in a discernible context of religious, moral, or cultural beliefs about the relative worth of a certain group of persons, as well as notions of purity, pollution, and untouchability. While such a context is not necessary for identifying discrimination based on work and descent, its existence should give reason for greater concern that discrimination based on work and descent is taking place. In addition, actors should recognize that in most situations the effective elimination of discrimination based on work and descent will be impossible with the eradication of the background context of prejudicial beliefs and attitudes, and organize their efforts accordingly.

<sup>3</sup> This paragraph reaffirms that discrimination based on work and descent is prohibited by international law. At the most general level, this form of discrimination in the protection and promotion of human rights and fundamental freedoms is inconsistent with the goal, proclaimed in the Preamble to the Universal Declaration of Human Rights (UDHR) and underlying every major instrument of international human rights law, of universal respect for, and observance of, human rights and fundamental freedoms for all. But discrimination based on work and descent is also clearly prohibited by Article 1.1 of ICERD, as confirmed by the Committee on the Elimination of Racial Discrimination's General Recommendation 29, A/57/18 at 111 (2002). In addition, discrimination based on work and descent is inconsistent with the specific provisions prohibiting discrimination and protecting equality in, inter alia, the UDHR (see, e.g., Articles 1, 7, 10, 21, 26), the International Covenant on Civil and Political Rights (ICCPR) (see, e.g., Articles 4, 20, 24, 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see, e.g., 2, 7, 10, 13), the International Labour Organization Convention (ILO) No. 111 (Articles 1.1 and 3) and Recommendation No. 111, as well as the ICERD.

6. In addressing the problem of discrimination based on work and descent, special care should be taken to address the situation of women, children, the sick or disabled, the aged and people living below the poverty line.<sup>4</sup>

7. All States have a duty to acknowledge the existence of discrimination based on work and descent, to take all necessary constitutional, legislative, administrative, budgetary, judicial and educational measures to eliminate and prevent discrimination based on work and descent in their respective territories and to respect, protect, promote, implement and monitor the human rights of those facing discrimination based on work and descent. All persons of affected communities have the right to enjoy, on an equal footing with others, all civil, political, economic, social and cultural rights, including but not limited to:<sup>5</sup>

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<sup>4</sup> This principle reflects both the (1) reality of heightened risk for women and girls, children, the sick or disabled and the aged in contexts of discrimination based on work and descent; and (2) the recognition by international law of risks of this sort. Especially women and girls, as well as children of both sexes, face heightened risk and multiple discrimination in societies in which discrimination based on work and descent is practiced. International law has recognized the increased need for protection of human rights and fundamental freedoms of women and girls and children through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). For example, the Preamble to CEDAW, emphasizing the interdependence of the elimination of discrimination against women and the elimination of other forms of discrimination. The nondiscrimination article CRC (Article 2) clearly indicates that the protection and promotion of the rights of the child shall be pursued without distinction in status.

<sup>5</sup> The phrase “including but not limited to” recognizes that international law affords affected communities a greater range of rights than listed in this paragraph, viz. the full range of human rights and fundamental freedoms now protected by international law. The purpose of the list is to identify areas of particular risk now faced by affected communities, based on sociological research and documentation, summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2\* (2006), Chapter III. This list should therefore be treated as an open-ended, rather than a rigid, category, to which further rights may be added as requiring special attention. The rights enumerated in the list are recognized by international law, such as the UDHR (Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 20, 22, 23, 25, 26, 27), ICCPR (Articles 6, 7, 8, 10, 14, 25, 26), ICESCR (Articles 7, 10, 11, 12, 13), ICERD (Article 5(a), (b), (c), (d)(v) and (ix), (e)(i),(iii), and (iv)), CRC (Article 32), as well as standards of conditions of employment and education as provided by the ILO Fundamental Conventions (No.s 29, 105, 87, 98, 100, 111, 138, 182) as well as the 1998 ILO Declaration on Fundamental Principles and Rights at Work. A number of these rights are considered non-derogable (derogation from ICCPR Articles 6, 7, 8.1 and 2, 11 is disallowed by ICCPR Article 4). The right to physical security and to live free from violence and the right to be free from forced labour should be read to include the peremptory norms against torture and slavery. (On the peremptory norm against slavery, see ILO, Forced Labour in Myanmar (Burma), Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Official Bulletin (Geneva), 1998, Series B, special supplement, para. 538). The ILO on Fundamental Principles and Rights at Work binds member states regardless of their ratification of the eight Fundamental Conventions. The particular relation between these rights and legal obligations of states and other actors will depend on further factors such as state ratification of treaties, as well as the development of doctrine and jurisprudence by national and international courts and treaty bodies, including development in the recognition of norms as customary international law. Principle 6 also reflects the general approach of these Principles and Guidelines: the central problem in contexts of discrimination based on work and descent is that there are certain universal rights and freedoms which are wrongfully being denied to a descent-based community. Thus, the particular mention of terms such as “descent,” “work and descent,” or “discrimination” is not necessary for a right or duty recognized by international standards to merit special attention in efforts to eliminate discrimination based on work and descent.

In line with Principle 1, Principle 6 places an emphasis on the equal protection and promotion of rights for women and girls pursuant to CEDAW, as well as the protections required for children pursuant to CRC. In addition to the CRC, ILO Convention No. 182 imposes an obligation in particular to prohibit and eliminate certain forms of child labour, including those involving slavery or slavery-like practices (Article 3(a)) and carried out in circumstances likely to harm the health, safety and morals of the child (Article 3(d)). ILO Convention No. 138 provides that no



- The right to physical security and life and the right to be free from violence;
- The right to equal political participation;
- The right to fair access to justice;
- The right to own land;
- The right to equal access to public and social services;
- The right to freedom of religion;
- The right to marriage on free will
- The right to education;
- The right to cultural identity;
- The right to equal opportunity and free choice of employment;
- The right to equal, just and favorable conditions of work;
- The right to be free from forced or bonded labour;
- The right to be free from cruel, inhumane or degrading treatment;
- The right to health;
- The right to adequate food, water, sanitation, clothing and housing;

8. All States have a duty to make sincere efforts to dispel the prejudicial beliefs that constitute, support and reinforce discrimination based on work and descent, including notions of untouchability, pollution and caste superiority or inferiority, as well as to prevent actions taken on the basis of such beliefs.

9. Regional and international bodies, including United Nations bodies and regional intergovernmental bodies, and national and international civil society, including private sector actors such as corporations, schools, hospitals, labour unions, agricultural associations and media practitioners, should provide assistance to efforts toward the effective elimination of discrimination based on work and descent.

## **GUIDELINES<sup>6</sup>**

### **GENERAL**

10. National and local governments should take all necessary constitutional, legislative, administrative, budgetary and judicial measures, including appropriate forms of affirmative actions and public education programmes, to prevent, prohibit and provide redress for discrimination based on work and descent in both public and private spheres; and ensure that such measures are respected and implemented by all State authorities at all levels.

11. National and local governments should take specific and effective measures to implement laws regarding discrimination based on work and descent including affirmative action.

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child shall enter the labour market before completion of compulsory schooling and, in any case, shall not be less than secondary education at 14 or 15 years of age (Article 2).

<sup>6</sup> These Guidelines articulate specific measures to be taken by states and other actors in order to implement the Principles. They are based on sociological documentation and research on the specific obstacles faced by affected communities as summarized, inter alia, in the Progress report of the Special Rapporteurs on the topic of discrimination based on work and descent, A/HRC/Sub.1/58/CRP.2\* (2006), Chapter III.

12. National and local governments should take proper measures to protect affected communities against acts of discrimination and violence, and measures to end impunity for violence against members of affected communities.

13. National and local governments should establish time-bound programmes to enforce the abolition of untouchability and segregation. Legal and judicial mechanisms should be established and enforced including by effectively punishing acts of “untouchability.” Governments should introduce and apply special measures to address the persistence of social norms of purity and pollution.

14. National and local governments should explicitly prohibit by law discrimination based on work and descent, and explicitly provide for criminal and civil remedies in cases of violation. Criminal and civil sanctions should explicitly apply not only to direct violations but also to complicity or aiding and abetting by other actors, including but not limited to corporations and public officials.

15. National and local governments should repeal all existing laws and regulations that directly or indirectly discriminate on the basis of work and descent, including but not limited to laws restricting voting or land ownership rights based on caste or analogous systems.

16. National and local governments should adopt comprehensive plans of action, including specific budgetary measures and create an office to implement and coordinate such plans of action, for the effective elimination of discrimination based on work and descent.

17. National human rights institutions and specialized institutions should be given power to specifically address the problems faced by affected communities. Governments of affected countries should ensure that, where they exist, national human rights institutions and specialized commissions can act independently and effectively in protecting the interest of people affected by discrimination based on work and descent by providing adequate financial, statutory and personnel support. Where such institutions and specialized commissions do not exist, they should be established. Governments should, unless better solutions are found, implement the recommendations of specialized commissions, national human rights institutions and other relevant commissions on measures to eliminate discrimination based on work and descent; and intergovernmental agencies, including UN human rights bodies and agencies, should take note of such recommendations and where necessary provide technical assistance in support of their implementation.

18. In order to achieve not only de jure but also de facto equality and non-discrimination for those facing discrimination based on work and descent, national and local governments should take positive measures to improve the conditions of affected communities, such as special measures for the purpose of securing adequate advancement of affected groups and individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms in education and employment.<sup>7</sup>

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<sup>7</sup> This Guideline emphasizes the need for states, including those which have specific legislation prohibiting discrimination based on work and descent, to ensure that the elimination of such discrimination is not merely formal



19. Governments should ensure that timely reporting is submitted to all relevant United Nations treaty bodies, giving disaggregated data on discrimination based on work and descent.

### **SURVEY AND RESEARCH**

20. National and local governments should conduct regular surveys and other appropriate research in the social, political, economic, cultural and criminal justice fields, including the attitudes of the general public towards the affected communities, and utilize the resulting data, including disaggregated data for the situation of women, to develop effective measures for the elimination of discrimination based on work and descent. The surveys and research should present information on the situation of those affected by discrimination based on work and descent, and a review of the effectiveness of existing measures and proposals for the elimination of such discrimination. Research institutions and universities should also be encouraged to independently conduct such surveys and research.

### **COMBATING SEGREGATION**

21. National and local governments should ensure access to public places, including community centers, hospitals, schools, places of worships, and water resources, by those from affected communities; take measures to eliminate and prevent segregation in employment, housing and education and to ensure protection from violence against those who cross the boundaries of segregation.

22. National and local governments should introduce and apply special measures to eradicate the persistence of social and cultural stigma of impurity and pollution that de facto precludes marriages between members of affected and non-affected communities and, in some societies, gives rise to violence, collective punishment and social exclusion against couples from different communities.

### **PHYSICAL SECURITY AND PROTECTION AGAINST VIOLENCE**

23. National and local governments should prohibit harmful practices of child marriages and dowry, and those forbidding the remarriage of widows, the dedication of girls to temple deities and forced, ritualized prostitution and create local law enforcement task forces for the effective implementation of the prohibition.<sup>8</sup>

24. State actors should take special measures, such as devising and implementing comprehensive plans of action and creating a monitoring mechanism, to protect affected communities from physical violence, including torture, sexual violence and extrajudicial killings.

25. Particular attention should be given to the situation of women and girls, including under domestic violence laws, and to sexual violence, sexual exploitation and trafficking committed

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or in language. While explicit legislation is often necessary and strongly encouraged (see Guidelines 5 and 6), it has not proven sufficient. Assessments of the progress made by countries that explicitly prohibit human rights violations against affected communities have shown that these prohibitions often prove ineffective in the absence of diligent enforcement. The rest of the Guidelines should be read to conform with and support this general Guideline.

<sup>8</sup> This guideline draws on concluding observations to governments of caste affected countries by the Committee on the Elimination of Racial Discrimination, in particular the concluding observations on India CERD/C/IND/CO/19 (2007) paragraph 18. The guidelines 16, 17, 24, 27, 37 and 50 also take some parts of the same document, CERD/C/IND/CO/19 (2007), respectively from para.s 15, 26, 17, 23, 25 and 22.

against women and girls of affected communities.

26. National and local governments should investigate, prosecute and punish perpetrators of all forms of violence and atrocities, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.

27. National and local governments should encourage victims and witnesses to report such acts to the competent authorities and protect them from acts of retaliation and discrimination, and ensure that complaints under relevant acts and other criminal law provisions are properly registered. National and local governments should make public information on the number and nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

### **ACCESS TO JUSTICE AND EQUAL POLITICAL PARTICIPATION**

28. Judicial, legislative, and law enforcement bodies should take specific and concrete measures to ensure equal protection of the law for affected communities.

29. National and local governments should take all necessary steps to ensure equal access to judicial remedies for affected communities, including the provision of legal aid or other kinds of support to public interest organizations representing the interests of those subject to discrimination based on work and descent.

30. State actors, including all bodies of government and public corporations, should adopt specific guidelines, including a scheme of incentives and sanctions, prohibiting discrimination based on work and descent in their internal practices. National and local governments should encourage the recruitment of members of affected communities into law enforcement agencies.

31. Law enforcement officials, including police, judges and prosecutors should be provided with adequate training in the prevention, investigation, and prosecution of cases involving discrimination based on work and descent.

32. National and local governments should take specific measures to ensure equal rights to political participation for affected communities, including rights to participate in public elections, and to equal opportunity to run and be elected to public office.

33. National and local governments should consider the introduction and implementation of a reservation policy to all categories of public service posts, including the judiciary in order to ensure adequate, effective and meaningful, not symbolic, representation at all levels of governments and legislatures and maintain and release statistical data on such representation.

### **EQUAL EMPLOYMENT OPPORTUNITY AND FREE CHOICE OF OCCUPATION**

34. National and local governments should enact equality laws that prohibit public and private employer discrimination on the basis of caste or analogous systems, take steps to remove customary constraints on leaving traditional caste-based occupations, and promote gainful alternative employment opportunities and full access to markets for members of affected communities.



35. National and local governments should enact and enforce legislation guaranteeing decent work, a living wage and labour rights for affected communities.<sup>9</sup> National and local governments should ensure the complete eradication of manual scavenging<sup>10</sup> and other unhealthy working conditions, in accordance with international standards.

36. The government should adopt measures to enhance affected communities' access to the labour market by introducing or extending reservation policies to the public and private sectors, which should effectively counter the impact of market liberalization and globalization.

37. The State and other agencies should secure and support the full exercise of the right of affected communities to free choice of labour and other occupations traditionally withheld from them because of their caste or other kinds of social origin.

### **FORCED, BONDED AND CHILD LABOUR**

38. National and local governments, corporations, labour groups, and international labour, financial, and development organizations should collaborate to ensure concrete mechanisms for the prevention, identification and eradication of exploitative labour arrangements and the implementation of rehabilitation schemes for forced, bonded and child labourers with special attention to affected communities.

### **HEALTH**

39. National and local governments should take all necessary measures to ensure the highest attainable standard of physical and mental health, equal access to healthcare and a safe health environment for members of affected communities. Governments should pay special attention to child malnutrition and high maternal mortality rates in affected communities.

40. National, local and international health officials and practitioners should ensure equal treatment for members of affected communities including access to sanitation facilities and medical insurance and treatment at hospitals.

41. Development and financial assistance to ensure adequate hygiene and sanitation should be provided by national and local governments and international development and humanitarian organizations.

### **ADEQUATE FOOD, WATER, AND HOUSING**

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<sup>9</sup> The ILO Protection of Wages Convention No.95 guarantees payment in legal tender, cash, fair reasonable, direct, adequate and timely.

<sup>10</sup> "With regard to the practice of manual scavenging and the fact the Dalits are usually engaged in this practice due to their social origin...the Committee noted in its previous observation that the Tenth Five-Year Plan (2002-07) refers to a nation-wide programme for the total eradication of manual scavenging by 2007...In this context, the Committee strongly urges the Government to take decisive action." India Observation C.111 of ILO Committee of Experts on manual scavenging.

42. National and local governments should take all necessary measures to eliminate discriminatory practices that cause affected communities to suffer from inadequate food, water, sanitation, clothing and housing.<sup>11</sup>

43. National governments and local authorities should ensure affected communities due entitlement to land and protect against forced eviction.

44. Governments should ensure that the ministries, district administration and local bodies develop comprehensive mechanisms and programmes for enhancing mandatory and increased access to development programmes and budgets for affected communities.

45. Donor agencies have an obligation to help governments ensure effective outreach in providing food, water and housing to affected communities on an equal footing with other parts of the population.

## **EDUCATION**

46. National and local governments should take all necessary measures to ensure equal access to free quality primary and secondary education for children from affected communities, as well as equal opportunity to receive tertiary education. Effective special measures should be enacted for affected communities in admissions to public and private higher education institutions.

47. National and local governments should take effective measures to reduce dropout rates and increase enrolment rates among children of affected communities at all levels of public and private schooling, by providing scholarships or other financial subsidies, combating classroom segregation, harassment and discrimination against pupils of affected communities and ensuring non-discriminatory access to such schemes, including through provision of adequate equipment, staffing and quality of teaching in public schools, as well as adequate means of physical access to schools for children living in dominant caste neighbourhoods and armed conflict areas. Governments should take all necessary measures to remove obstacles, including child labour, which keep children from regular full time education. Governments should also pay particular attention to the need of providing adequate education to children and adults who are unable to read and write because of lack of formal education.

48. National and local governments should review and eliminate language in school textbooks that conveys or encourages stereotypical and prejudicial beliefs, attitudes, and actions against members of affected communities and ensure that the content of education and curricula reflect the contributions of affected communities and emphasize the need to eliminate discrimination based on work and descent through, among other things, inclusion of human rights education.

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<sup>11</sup> Affected communities are likely to suffer high and disproportionate levels of poverty due to discriminatory practices; such barriers and practices should be addressed including by expanding access to adequate sources of income and employment for the affected communities. In residential areas in which access to food, clothing and housing is typically provided through communal resource arrangements such as village wells and ponds, community grazing grounds, village forests and public roads, national and local governments should monitor and facilitate affected communities' access to these common resources and ensure that their access is not blocked through prejudicial or punitive measures by other residents.



## **USTOMS**

49. National and local governments should take specific measures to raise awareness both among the public and among government officials, teachers, and media practitioners on discrimination based on work and descent, such as through internal training and public campaigns. Areas of attention should include not only the print and broadcasting media but also alternative avenues of information dissemination, such as local oral information through theatre, songs, etc. as well as information via internet.

50. National and local governments should, wherever necessary, review or enact libel, slander, and hate speech laws to explicitly prohibit and punish libellous and slanderous speech or speech inciting discrimination, hatred, or violence based on work and descent.

51. Governments should take special measures to promote due representation in the mass media of affected communities, and carry out sensitization campaigns and awareness raising programme with media representatives. It is recommended that government and other relevant institutions encourage media outlets to profile and publicize abuses faced by descent-affected communities, as well as promoting tolerance and positive examples of combating descent based discrimination.

52. The media, religious, educational and cultural institutions and other parts of civil society, and international organizations should contribute to correcting the spread of negative images of affected communities, and endeavour to build the capacity of those communities, as well as recognize the contributions of affected communities to the development of society.

## **MULTIPLE DISCRIMINATION AGAINST WOMEN**

53. National and local governments should collect, analyze and publicly provide disaggregated data on the situation of women affected by discrimination based on work and descent.

54. National and local governments should take into account the situation of women and girls of affected communities in all measures taken to address discrimination based on work and descent, and explicitly create provisions tailored to ensure the rights of women and girls affected by discrimination based on work and descent wherever possible.

## **PARTICIPATION OF AFFECTED COMMUNITIES**

55. Any measures taken for the effective elimination of discrimination based on work and descent should be made on the basis of genuine and informed consultations with affected communities . Procedural mechanisms of those measures should be set up to ensure that the affected communities' interests are adequately represented.

## **HUMANITARIAN AND DEVELOPMENT ASSISTANCE**

56. All States should recognize and take measures to address the special problem of increased discrimination based on work and descent in situations of humanitarian crises, such as internal conflicts, wars, or natural disasters.

57. Governments and international organizations should develop measures to tackle exclusion and discrimination in all development and disaster recovery programmes, such as social equity

audits and caste analysis frameworks. Appropriate ‘affected community inclusion tools’ should be developed and applied effectively in the planning and monitoring of programmes. Agencies should provide training on discrimination based on work and descent to their staff and should take responsibility to monitor and counter untouchability practices. Members of affected communities should be fully involved in decision-making on and the planning and evaluation of programmes, and agents involved should actively seek to employ members of affected communities in the recovery or development operations.

58. States should investigate all alleged cases in which members of affected communities have been denied assistance or benefits equal to that received by other people, or cases in which they have been discriminated against during the relief, rehabilitation and development processes, and compensate or retroactively grant such benefits to the victims of affected communities.

### **MARKET ENTERPRISES AND FINANCIAL ALLOCATIONS**

59. International financial institutions and private companies should affirm the unacceptability of discrimination based on work and descent within own organizations as well as within the sphere of influence including supplies and business partners with special focus on equal to markets and services and actively to implementing anti-caste laws; and such entities should incorporate caste and gender analyses as well as anti-discrimination policy measures into their corporate social development strategies.

### **INTERNATIONAL COOPERATION**

60. International, regional and sub-regional bodies should provide support for the effective elimination of discrimination based on work and descent, through financial, technical and legal assistance. Inter-governmental bodies, including financial institutions, bilateral donors and diplomatic organizations including embassies, should ensure that the development assistance projects which they support are consistent with efforts to eliminate discrimination based on work and descent. Regional and international human rights institutions and procedures, as well as international civil society, should monitor and support efforts to eliminate discrimination based on work and descent. Humanitarian organizations should recognize affected communities as being at special risk of rights violations and deprivations, and prioritize the distribution of aid accordingly.

61. All international organisations, including United Nations agencies, should pay particular attention to discrimination based on work and descent and seek to prevent and address the multiple forms of human rights violations resulting from this form of discrimination. It is recommended that all agencies include analyses of the situation of affected communities in their country and regional strategies, and develop policies, strategies and instruments to address work and descent based discrimination as well as operational guidance to staff.

### **RESPONSIBILITIES OF STATES WITH DIASPORA COMMUNITIES**

62. Governments of the countries with diaspora communities where discrimination based on work and descent is practiced should take effective measures to prevent such discrimination.



## **INTERPRETATION**

63. These principles and guidelines for the effective elimination of discrimination based on work and descent shall not be interpreted as limiting, altering, or otherwise prejudicing the rights of individuals recognized under international human rights law, humanitarian law, or immigration and refugee laws.

## **IV. CONCLUSIONS AND RECOMMENDATIONS**

64. The problem of discrimination based on work and descent continues to exist today in many parts of the world. This problem was not a part of the major human rights agenda of the international community until the beginning of this century. The problem of caste-based should this be 'descent-based discrimination, including discrimination against the Buraku, has been taken up by the respective States concerned only as a specific human rights issue peculiar to each State. These forms of discrimination had not been regarded as having common features and similar historical, political, economic and social contexts. However, since the Sub-Commission decided in August 2000 to take up this topic as an important human rights issue of the day and appointed Special Rapporteurs successively up to today, the various studies they have conducted have revealed that the issue is broader than caste-based discrimination in South Asia but has existed and continues to exist in parts of Africa, Latin America and the Middle East, and in some countries of Western Europe (particularly among the diaspora communities). As a result of deliberations and dissemination of information on this topic by the Sub-Commission in parallel with other similar efforts by the Human Rights Committee of the International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Commission's (now, the Human Rights Council's) Special Rapporteur on contemporary forms of racism and racial discrimination and the International Labour Organization (ILO), the issue of discrimination based on work and descent is regarded as a specific and important human rights issue to be properly addressed by the international community.

65. It should be emphasised that each State in South as well as East Asia where such discrimination has been felt as an acute and urgent human rights issue has taken certain legislative, administrative, budgetary and positive measures to address the issue. Nevertheless, this type of discrimination still persists even in those States where certain corrective measure have been taken, because: (a) legislative, administrative, budgetary and positive measures are not seriously, vigorously and effectively carried out; (b) such measures are often incomplete or insufficient to effectively eliminate such discrimination; and (c) discrimination of this kind is deeply rooted in social customs, beliefs, rituals and behaviour which distinguishes affected individuals and communities from the majority or dominant individuals or groups on the basis of impurity and pollution and, unless the attitudes, modes of behaviour or value systems of ordinary citizens drastically change, eradication of such discrimination is difficult.

66. In order to eliminate such discrimination, it is essential that Governments, central as well as local, take all possible effective measures vigorously to achieve this goal. But also, all actors in society, which include business companies, schools, universities, institutes, religious groups and organizations, hospitals, newspapers and broadcasting networks, non-governmental organizations and other welfare and humanitarian organizations, trade unions and employers' organizations, internet operators, and UN bodies and agencies as well as other universal and

regional international organizations, should take steps immediately and effectively to eliminate all discriminatory acts, social, psychological or physical.

67. On the basis of the foregoing observations and conclusions, the Special Rapporteurs recommend as follow:

(a) The Human Rights Council should include the topic of discrimination based on work and descent among the studies to be conducted by an expert or experts appointed by the Council.

(b) The Human Rights Council should adopt the draft Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent included in Chapter II of this report, with necessary amendments and improvements, and send the revised Principles and Guidelines to the General Assembly for adoption.

(c) The Human Rights Council should request, pending the adoption by the General Assembly, all organs and agencies of the United Nations as well as its Member States to give due consideration to the draft Principles and Guidelines in the formulation and implementation of their policies and operations.

(d) The Human Rights Council should request, pending the adoption by the General Assembly, all other international and regional organizations, international and national non-governmental organizations, national human rights institutions, companies, religious institutions, schools, universities, welfare and humanitarian organizations, trade unions and employers' organizations, newspapers and broadcasting networks and internet operators, to give full consideration to the Principles and Guidelines in the course of their activities.

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