



HIDDEN APARTHEID

CASTE DISCRIMINATION AGAINST INDIA'S "UNTOUCHABLES"

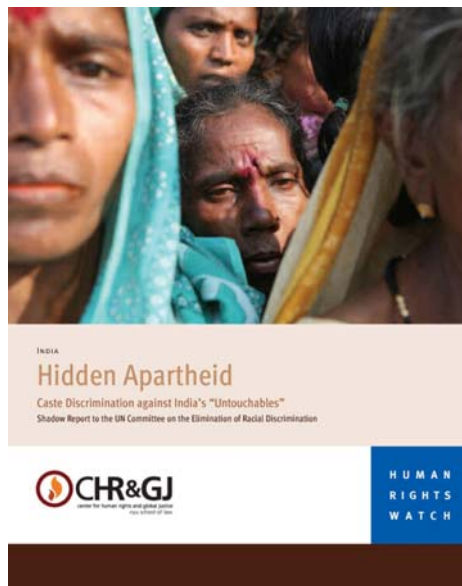
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For the Congressional Human Rights Caucus Briefing:
Untouchables: The Plight of Dalit Women
Tuesday, May 1, 2007

The Center for Human Rights and Global Justice (CHRGJ) at NYU School of Law is honored to testify at this hearing. We thank the Congressional Human Rights Caucus for its leadership and engagement on this important issue.

Our Center has investigated and documented the abuses against Dalits, or so-called untouchables, in India and Nepal. In my own capacity as former Senior Researcher for South Asia at Human Rights Watch, and in my current capacity as a Faculty Director of CHRGJ, I have investigated and documented human rights abuses arising out of various caste systems for over a decade.

In February 2007, CHRGJ issued a joint report with Human Rights Watch titled *Hidden Apartheid: Caste Discrimination against India's 'Untouchables'*. The 113-page report was produced as a "shadow report" in response to India's submission to the United Nations Committee on the Elimination of Racial Discrimination, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.



I will summarize our report's main findings as they pertain to Dalit women in my oral remarks, but request that my full written statement be included in the record. The full report and related materials can be found at www.chrgj.org and at www.hrw.org.

As was aptly noted during the July 2006 Congressional Human Rights Caucus briefing on anti-conversion laws in India, “The growing relationship between the US and India demands a better understanding of the challenges facing the world’s largest democracy.”

India has systematically failed to uphold its international and domestic legal obligations to ensure the fundamental human rights of Dalits, or so-called untouchables, despite laws and policies against caste discrimination. More than 165 million Dalits in India are condemned to a lifetime of abuse simply because of their caste.

On December 27, 2006 Dr. Manmohan Singh became the first sitting Indian prime minister to openly acknowledge the parallel between the practice of “untouchability” and the crime of apartheid. Singh described “untouchability” as a “blot on humanity” adding that “even after 60 years of constitutional and legal protection and state support, there is still social discrimination against Dalits in many parts of our country.”

Dalits endure segregation in housing, schools, and access to public services. They are denied access to land, forced to work in degrading conditions, and routinely abused at the hands of the police and upper-caste community members who enjoy the state’s protection. Entrenched discrimination violates Dalits’ rights to education, health, housing, property, freedom of religion, free choice of employment, and equal treatment before the law. Dalits also suffer routine violations of their right to life and security of person through state-sponsored or sanctioned acts of violence, including torture.

Even as compared to Dalit men, Dalit women do not have equal access to employment opportunities or justice mechanisms. They must contend with multiple threats to their personal security, including trafficking and sexual violence. In several southern Indian states, Dalit women and girls suffered under what is called the *Devadasi* system in which Dalit girls, usually before reaching puberty, are ceremoniously dedicated or married to a deity or to a temple. Once dedicated, they are unable to marry, forced to become prostitutes for upper-caste community members, and eventually auctioned off to urban brothels, putting them at particular risk of contracting HIV/AIDS. The practice continues to legitimize sexual violence against Dalit women that is prevalent across India.

Non-enforcement of Indian Laws

The 1950 Indian Constitution abolished the practice of “untouchability” in all its forms, and a number of laws and special measures have since been adopted to address caste-based discrimination and abuses. India has consistently cited these laws and policies to show that it is protecting Dalits’ rights. While these laws and policies are welcome, they have been implemented sporadically and often not at all.

India has failed to enforce its laws or pursue by all appropriate means a policy of eliminating caste discrimination. It has additionally failed to ensure that all public authorities and institutions do not engage in caste-based discrimination. This failure is exemplified by police treatment of Dalits and by discrimination against Dalits in access to relief following natural disasters.

India's National Human Rights Commission (NHRC)—a statutory government body that India describes as the apex national institution to protect human rights and redress grievances—has commented that the law enforcement machinery is the greatest violator of Dalits' human rights. According to the NHRC, police responsibility for the widespread torture of Dalits in custody, rapes of Dalit women, and the looting of Dalit property “are condoned, or at best ignored.” Under a theory of collective punishment, the police often target entire Dalit communities in search of select individuals. Dalit women are particularly vulnerable to sexual violence by the police. Dalits are also vulnerable to arrest under draconian security laws.

According to separate investigations by the National Campaign on Dalit Human Rights, Human Rights Watch, and the Dalit Network Netherlands, the Indian government also failed to protect Dalits from discrimination in the distribution of aid in the wake of December 2004 Indian Ocean tsunami.

Violations of Dalits' Civil, Political, Economic, Social, and Cultural Rights

Dalits' fundamental civil, political, economic, social, and cultural rights are routinely violated by state actors and private individuals. Some key examples are provided below.

Denial of the Right to Life and Security of Person

Caste-motivated killings, rapes, and other abuses are a daily occurrence in India, resulting in routine violations of Dalits' right to security of person and protection of the state. The police have systematically failed to protect Dalit homes and Dalit individuals from acts of looting, arson, sexual assault, torture, and other inhumane acts such as the tonsuring, stripping and parading of Dalit women, and forcing Dalits to drink urine and eat feces.

Attempts by Dalits to defy the caste order and demand their rights, seek redress for crimes committed against them, or lay claim to land that is legally theirs are consistently met with economic boycotts or retaliatory violence. Much like cases of police abuse against Dalits, attacks by private actors often take the form of collective punishment—entire communities or villages may be punished for the perceived transgressions of individuals who seek to alter village customs or demand their rights.

In 2004, the Dalits of Kalapatti village, Tamil Nadu, were forced to flee after an attack in which upper-caste neighbors burned and destroyed over 100 Dalit homes. In Punjab on January 5, 2006 Dalit laborer and activist Bant Singh, seeking the prosecution of the people who gang-raped his daughter, was beaten so severely that both arms and one leg had to be amputated.

Dalit women often bear the brunt of these so-called retaliatory acts. On September 26, 2006, in Kherlanji village, Maharashtra, a Dalit family was killed by an upper-caste mob, after the mother and daughter were stripped, beaten and paraded naked through the village. They were killed because they refused to let upper-caste farmers take their land.

As noted by India's National Commission on Women: "In the commission of offences against... [Dalit] women the offenders try to establish their authority and humiliate the community by subjecting their women to indecent and inhuman treatment, including sexual assault, parading naked, [and] using filthy language."

A March 2006 study by India's National Campaign on Dalit Human Rights on violence against Dalit women in five Indian states notes that violence serves as a crucial social mechanism to maintain Dalit women's subordinate position in society, adding that violence is the core outcome of gender-based inequalities that are shaped and intensified by the caste system.

The nature and frequency of violence against Dalit women serves to highlight the incongruence between the reality of Dalit women's lives and the universal right of women to freedom from any gender-based violence that results in physical, sexual, or psychological harm. Such violence also stands as a strong indictment of the failure of the Indian government to respect, protect and ensure Dalit women's rights.

Statistics on the frequency of these crimes, which themselves grossly underestimate the pervasiveness of the abuse, reveal a culture of violence and impunity that rob Dalit women of their rights to security and basic human dignity.

Denial of the Right to an Effective Remedy

Between 2001 and 2002 close to 58,000 cases were registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—legislation that criminalizes particularly egregious abuses against Dalits and tribal community members. A 2005 government report states that a crime is committed against a Dalit every 20 minutes. Though staggering, these figures represent only a fraction of actual incidents since many Dalits do not register cases for fear of retaliation by the police and upper-caste individuals.

Both state and private actors commit these crimes with impunity. Even on the relatively rare occasions on which a case actually reaches trial, the most likely outcome is acquittal. Indian government reports reveal that between 1999 and 2001 as many as 89 percent of trials involving offenses against Dalits resulted in acquittals.

Caste-based Segregation

Residential segregation of Dalits is prevalent across the country. Segregation is evident in schools and in access to both public and private sector services. A survey recently published by Action Aid India investigated the extent of "untouchability" in 565 villages throughout 11 Indian states and found that the practice continues to profoundly affect the lives and psyches of millions of Dalits. "Untouchability" practices were documented in almost 80 percent of the villages surveyed.

Dalits are denied equal access to public places, such as police stations, government ration shops, post offices, schools, water facilities, and village council offices. More than 20 percent of Dalits do not have access to safe drinking water. Only 10 percent of Dalit households have

access to sanitation (as compared to 27 percent for non-Dalit households), and the vast majority of Dalits depend on the “goodwill” of upper-caste community members for access to water from public wells. Dalits are also excluded from, or receive discriminatory treatment in, private businesses such as food stalls, barber shops, and cinemas. Dalits are made to use separate crockery and cutlery and drink from separate tea glasses which they are then required to wash.

Prohibitions on Inter-caste Marriages

Strict prohibitions on marriage and other social interaction between Dalits and non-Dalits violate the rights of Dalits to marry and choose their spouse. Endogamy is a hallmark feature of the caste system. Inter-caste marriages are frequently extra-judicially punished by acts of public lynching, murder, rape, beatings, and other sanctions against the couple and their relatives. On August 6, 2001, in Uttar Pradesh, an upper-caste boy and a lower-caste girl were publicly hanged by members of their own families for refusing to end an inter-caste relationship.

Denial of Political Rights and Political Representation

Political rights, including the right to vote freely and the right to stand for election, have repeatedly been denied to Dalits through booth rigging, restricted access to polls, and through acts of intimidation and violence.

India grants Dalits certain privileges, including “reservations” (quotas) in education, government jobs and political posts. Like many of the protective measures adopted, the reservation policy has not been faithfully implemented. Caste-based occupational distribution is often reinforced in government employment quotas, with Dalits assigned primarily to sanitation posts. Reservations in higher education continue to be met with a great deal of resistance, leading to under-enforcement.

Additionally, there has been widespread public opposition to reservations for Dalits in local government bodies, often leading to acts of violence against Dalit candidates. Dalit candidates for reserved positions in local government bodies have been raped and killed for declaring their candidacy. In October 2005, a Dalit woman, Prabhati Devi, was burned alive for contesting a *panchayat* (village council) election against an upper-caste candidate in Mirzapur district in Uttar Pradesh.

Discrimination in Private Sector Employment

According to government estimates in 2000, the unemployment rate for Dalits and tribal groups was double that of non-Dalits/tribals. Public sector divestment is estimated to have left 200,000 Dalit employees jobless. Dalits continue to be significantly underrepresented in most professional strata. Dalit representation in India’s high industries and service sectors is dismal. India’s National Commission for Scheduled Castes and Scheduled Tribes has stated that the private sector, which continues to enjoy government patronage, should also be brought under the purview of the reservation policy.

The Government of India has also established several programs for the development of Dalits. According to the NHRC, however, many such programs fail to reach their target groups.

Denial of the Right to Freedom of Thought, Conscience, and Religion

Dalits in India face a number of restrictions on their right to freedom of thought, conscience, and religion. Dalits are frequently denied entry into places of worship. Some Dalits have responded to ill-treatment by upper-caste Hindus by converting en masse to Buddhism, Christianity, or Islam. However, the loss of constitutional privileges upon conversion (to Christianity and Islam) is a serious impediment to Dalits' freedom to choose their religion. In addition, the introduction of anti-conversion legislation in several states has made religious conversion extremely difficult if not impossible. Tragically, even conversion does not guarantee escape since "untouchability" is practiced across all faiths in India.

Denial of the Right to Education

Dalit children face consistent hurdles in their access to education. They are made to sit in the back of classrooms and endure verbal and physical harassment from teachers and students. Just last month, Indian papers reported that a teacher in Bhandara district, Maharashtra, poured cow urine over her Dalit students' heads in an attempt to "purify" them. Dalit children, as well as Dalit teachers, are often segregated from non-Dalit children and teachers during lunchtime.

Segregation in schools perpetuates "untouchability" practices by teaching non-Dalit children that "untouchability" is both an acceptable and necessary practice. This segregation is particularly evident in the Mid-Day Meal Scheme. The Mid-Day Meal Scheme was initiated following a Supreme Court order as a means of addressing hunger and malnutrition among schoolchildren. However, according to a study conducted by the Indian Institute of Dalit Studies, the states of Uttar Pradesh and Bihar—where a third of India's Dalits live—have refused to implement the program. Programs have also been closed because of upper-caste community opposition; upper-castes have also opposed the hiring of Dalit cooks for the program.

The effect of abuses against Dalit children in schools is borne out by the low literacy and high drop-out rates for Dalits. Many upper-caste community members believe that Dalits are either incapable of being educated, or if educated, would pose a threat to village hierarchies and power relations. Dalit girls are particularly prone to dropping out due to both caste and gender-based norms, and experience higher illiteracy rates as compared to the rest of the population.

The obstacles that Dalit girls endure in their attempts to receive an education, a basic and fundamental right guaranteed by India's constitution, is exemplified by the story of Mamta Nayak. In Mamta's village in Orissa, Dalits are prohibited from riding bicycles or motorized vehicles. Mamta lives 14 kilometers from her school, too far away to walk. She is a bright student who enjoys learning and is the only child from her region to qualify for higher secondary education. She decided to break the rule and ride a bike to school. The village council demanded that she stop. Her father pleaded with the council—that is comprised mostly of upper-caste men—to let his daughter ride her bike to school but the council denied her father's requests, stating unequivocally that the rule cannot be broken, under any circumstances.

Denial of the Right to Free Choice of Employment and to Just and Favorable Work Conditions

Exploitation of labor is at the very heart of the caste system. Dalits are forced to perform tasks deemed too “polluting” or degrading for non-Dalits to carry out. According to unofficial estimates, more than 1.3 million Dalits—mostly women—are employed as manual scavengers to clear human waste or feces from dry pit latrines. Manual scavengers are routinely exposed to both human and animal waste without proper protection. This has severe repercussions for their health; most suffer from anemia, diarrhea, vomiting, and respiratory diseases. In several cities, Dalits are lowered into manholes without protection to clear sewage blockages, resulting in more than 100 deaths each year from inhalation of toxic gases or from drowning in excrement.

Dalits also comprise the majority of agricultural, bonded, and child laborers in the country. Many survive on less than US\$1 per day.

Denial of the Right to Own Property

The right to own property is systematically denied to Dalits. Landlessness—encompassing a lack of access to land, inability to own land, and forced evictions—constitutes a crucial element in the subordination of Dalits. Land reform legislation is neither implemented nor properly enforced. When Dalits do manage to acquire land—though Dalit women rarely acquire legal title—access to that land is often denied.

Dalit Human Rights Movements

Before turning to our recommendations, I would like to stress that Dalit women should not be seen as merely victims of the heinous crimes I have described. Dalit women are the backbone of India’s economy; they are the laborers who farm its lands, build its roads, and ensure the survival of their families despite all odds.

In response to centuries of inhuman and degrading treatment, and in spite of tremendous obstacles, Dalit rights movements led or inspired by Dalit women across the country are growing, as are their demands for basic dignity and human rights. Dalits have also begun to raise their voices in international forums and in hearings before various U.N. bodies.

International Scrutiny

This hearing comes at a critical and opportune time as members of the international community increasingly turn their attention to the severity of these abuses in the world’s largest democracy. International scrutiny on this issue is growing, and with it the condemnation of abuses resulting from the caste system and the government’s failure to protect Dalits. In particular, U.N. human rights treaty bodies and special procedures are increasingly calling attention to caste discrimination as an obnoxious source of human rights violations. The issue has also been raised by the European Parliament and by the U.K. government.

On April 19, 2005 the United Nation's Commission on Human Rights adopted a resolution mandating two Sub-Commission members, Prof. Y. Yokota and Prof. C. Chung, to conduct a comprehensive study on discrimination based on work and descent (i.e. caste discrimination) and to prepare a draft set of principles and guidelines for the effective elimination of this form of discrimination. The principles and guidelines are approaching completion but the mandate of the Sub-Commission Special Rapporteurs, like all special procedure mandates, is currently under review by the new U.N. Human Rights Council.

In January 2007 the U.N. Committee on the Elimination of Discrimination against Women concluded that Dalit women in India suffer from "deeply rooted structural discrimination."

In March 2007 the U.N. Committee on the Elimination of Racial Discrimination issued its Concluding Observations regarding India's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee's report found that "*de facto* segregation of Dalits persists" and highlighted systematic abuse against Dalits including torture and extrajudicial killings, an "alarming" extent of sexual violence against Dalit women, and caste discrimination in post-tsunami relief.

As noted by the U.S. member of the Committee, Mr. Pierre Prosper: "Change cannot be achieved by legislation alone... We've received disturbing reports on the manner and magnitude of offenses [of sexual violence against Dalit women]. Dramatic action is needed to curb or cure this problem."

The Committee called for effective measures to implement laws on discrimination and affirmative action, and sought proper protection for Dalits and tribal communities against acts of "discrimination and violence." The Committee has given India a year to respond to four of its recommendations, including its recommendations on how India can end widespread impunity for violence against Dalits, and Dalit women in particular.

A resolution passed by the European Parliament on February 1, 2007 found India's efforts to enforce laws protecting Dalits to be "grossly inadequate," adding that "atrocities, untouchability, illiteracy, [and] inequality of opportunity, continue to blight the lives of India's Dalits."

The U.S. Department of State 2006 Country Report on Human Rights Practices in India contained detailed documentation on the extent of human rights abuses suffered by Dalits at the hands of the government and private actors throughout the country.

The issue has also been raised on multiple occasions in the U.K. House of Commons and in various Early Day Motions.

Recommendations

A lack of reporting on this pervasive problem, along with a lack of attention to the limited impact of laws in place to address caste-discrimination, are two key gaps that need to be addressed with urgency by the Indian government to ensure that it is in compliance with its international human rights and constitutional obligations.

We believe that unless this issue is taken up with strong leadership at the highest levels of government, the more than 165 million Dalits in India will remain condemned to a lifetime of abuse simply because of the caste into which they are born. We hope that the U.S. government will take up the matter urgently. Specifically, we urge the U.S. government to encourage India to take active steps to faithfully implement its constitution and laws, and comply with its obligations under international human rights law to respect, protect, and ensure Dalits' rights.

In particular, the U.S. should encourage the Indian government to:

- Eradicate caste-based segregation in residential areas and schools, and in access to public services.
- Implement laws and government policies to protect Dalits, and Dalit women in particular, from physical and sexual violence.
- Ensure proper investigation and prosecution of crimes against Dalits.
- Identify obstacles in the implementation of legislation designed to protect Dalits and take steps to overcome these obstacles. In particular, India should ensure the effective eradication of exploitative labor arrangements and implement rehabilitation schemes for Dalit bonded and child laborers, manual scavengers, and for Dalit women forced into prostitution.
- Implement the recommendations of the 2004 National Human Rights Commission report on atrocities against Dalits.
- Ensure proper implementation and monitoring of Dalit development programs.
- Take immediate steps to implement the recommendations of the U.N. Committee on the Elimination of Racial Discrimination, and in particular its recommendations to:
 - Introduce mandatory training on the application of India's Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for police, judges and prosecutors, and take disciplinary measures against those who fail to implement this law.
 - Ensure the protection of witnesses and victims to caste-based crimes and ensure their immediate access to effective remedies.
 - Prosecute and punish perpetrators of sexual violence and sexual exploitation of Dalit women, and sanction anyone found preventing or discouraging victims from reporting such incidents, including public officials.
 - Eradicate the social acceptance of caste-based discrimination through public education and awareness campaigns.
 - Ensure equal access to health care, safe drinking water, and other public services.

- Investigate all alleged cases of discrimination against Dalits in post-tsunami relief and compensate or retroactively grant benefits to victims of such discrimination.
- Take effective measures to reduce dropout rates and increase enrollment rates among Dalits at all levels of schooling by providing scholarships and by ending classroom segregation.
- Ensure proper enforcement of reservations or quotas to counter the under-representation of Dalits and tribal communities in government and public services.
- Adopt measures to enhance Dalits' access to the labor market, including by extending the reservation policy to the private sector.

In addition, the Center for Human Rights and Global Justice urges the U.S. government to:

- Ensure the participation of Dalit non-governmental organizations (NGOs) in the planning and implementation of United States Agency for International Development projects.
- Help ensure that anti-discrimination measures are built into World Bank-funded projects in areas where the problems of caste violence and caste discrimination are severe.
 - As part of its commitment to good governance, the World Bank, as well as other international lending institutions, should establish ongoing dialogue with Dalit NGOs at all stages of the decision-making process—before a loan is released, while the project is being implemented, and in the course of any post-project evaluation.
 - Prior to approval of projects, and in consultation with Dalit NGOs, the World Bank should investigate the effect of proposed policies and programs on caste violence, caste discrimination, and discrimination against Dalit women, and explore ways in which programs could help alleviate violence and discrimination.
- Ensure that U.S. government employees and contractors in India work actively to counter and remedy caste discrimination in their hiring practices and conditions of employment.
- Encourage U.S. Companies investing and operating in India to adopt and implement the *Ambedkar Principles*.
 - The Ambedkar Principles are a set of employment principles and additional principles on economic and social exclusions that were formulated to assist all foreign investors in South Asia in their efforts to address caste discrimination. <http://www.indianet.nl/ambedkarprinciples.html>
- Support the continuation of the mandate of the U.N. Sub-Commission Special Rapporteurs on Work and Descent Based Discrimination.

Without the important and critical measures outlined above, India's remarkable economic growth will continue to bypass a substantial proportion of its population, a population that is long overdue its basic human rights and is in greatest need of the international community's support.

Thank you once again for your leadership on this issue and for inviting us to be part of this important hearing.