

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 International Covenant on
Economic, Social and Cultural Rights (A Periodic
Report Submitted by the State Parties under
Articles 16 and 17 of the Covenant)**

**National Campaign on Dalit Human Rights
(NCDHR)
India, 2007
In Association with
International Dalit Solidarity Network (IDSN),
Indian Institute of Dalit Studies (IIDS) and Social
Watch-Tamil Nadu**

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Caste and Descent Based Discrimination: The Characteristics and its Manifestations

Who Are Dalits?

- 1) What the world today knows as “Dalits” constitute about 167 million Scheduled Castes as per the Indian Constitution and also according to the Census 2001. There is a sizeable population among the Muslims and Christians (as per a rough estimate there are 42 million Muslim Dalits and Christian Dalits who count about 16 million) people in India, were till a few years ago known and publicly identified as "Untouchables". And for all official purposes, Dalits who have converted to Islam and Christianity are not treated as Scheduled Castes, whereas those who are Sikhs and also those who converted to Buddhism are treated as Scheduled Castes.

Dalits in the Caste System

- 2) The basic conception of social organization, which prevails among the Hindus, started with the rise of four groups or *Varnas* into which the Hindu society is believed to have become divided. These four *Varnas* were: 1) *Brahmins*, the priestly and educated class, 2) *Kshatriyas*, the military class, 3) *Vaishyas*, the trading class and 4) *Shudras*, the servant class. For quite a sometime there were merely four groups. But after sometime what were only groups (*Varnas*) before became castes (*Jatis*). And four castes multiplied into several sub-castes. In this way the modern caste system was only the evolution of the ancient *Varna* system.¹ According to Manu, the Hindu lawgiver, there were originally four *varnas* and four they must remain. He had not admitted that the untouchables who were supposed to be out side the four fold division of the caste system. That the untouchables were to remain, out of the Hindu social structure is clear from the name, by which he describes the untouchables. Manu speaks of them as “*Varna – Bahyas*” (those out side the *Varna* system). They must remain separate and segregated without being the part of the Hindu society. And if they are a part, they are a part but not of the whole.²
- 3) However, by implication those who are below the pollution line have been called as *Panchamas*. Legitimized by the theory of Karma and reincarnation, the *Panchamas* deserve to be untouchables.³ Untouchability with its manifold manifestation, is rooted in the notions of the purity and pollution, which is believe to have developed in the later Vedic period, when the Brahmanic literature emerged in the form of *Smritis*, *Samhitas* and the *Upanishads*. In the later Vedic period texts, the *Chandals* and the *Poulkasa* were manifested object of spite and abhorrence. They existed at

¹ B. R. Ambedkar, “Symbols of Hinduism”, *Writings and Speeches*, Vol. 3, Education Department, Government of Maharashtra, Bombay, 1987, pp. 141-142

² B. R. Ambedkar, “The House the Hindus Have Built “, *Writings and Speeches*, Vol. 5, Education Department, Government of Maharashtra, Bombay, 1989, p. 169

³ T. K. Oommen, “Panchamas to Dalits: The Context and Content of Identity”, *The Times of India*, New Delhi, 11 May 1994.

the lowest ritual and social level.⁴

Caste System, Untouchability, Human Rights and Dalits

- 4) The caste system is the social organization of Hindus. However the residual consequences of the caste system are also found in the communities that have converted to other religions like Buddhism, Sikhism, Christianity and Islam from Hinduism. As a system of social, economic and religious governance caste system is not founded on the principles of equality, liberty (or freedom) or fraternity but on the principles of inequality in every sphere of life. Historically the caste system has formed the social and economic framework for the life of the people in India. In its essential form, caste as the system of social and economic governance is based on principles and customary rules that involve the division of people into social groups (castes) where assignments of rights are determined by birth, are fixed and hereditary. The assignment of basic rights among various castes is unequal and hierarchical, with those at the top enjoying most rights coupled with least duties and those at the bottom performing most duties coupled with no rights.
- 5) Untouchability is the belief system that creates a mindset practicing exclusion, discrimination and violence hindering the access and enjoyment of basic human rights, citizenship rights and development rights. It is a process of imposing disabilities, perpetuating deprivation and preventing equal opportunities.
- 6) The practice of untouchability is not a simple practice of touch or non-touch, rather a complex and dynamic set of beliefs that has created a mindset that is inherently hierarchical, exclusionary, discriminatory promoting deprivations and justifying violence on the slightest pretext or deviation from the norm. The untouchable communities are thus condemned to a life of indignity, chronic poverty and marginalisation. The mindset being re-produced in the administrative, legislative and governance institutions, they contribute little to change the system, the state sees its vast citizenry as a population to be administered than a people to be empowered.
- 7) The practice continues widespread owing to three fundamental causes:
 - a) Continuing belief in untouchability in society
 - b) Vulnerability of Dalit community
 - c) Not benefiting from the fruits of growth
 - d) Willful negligence by state institutions
- 8) In this framework the concept of human rights under the Hindu social system has a specific meaning. Unlike other human societies, the Hindu social order in its classical form does not recognize the individual and her/his distinctiveness as the center of the social purpose. The unit of the Hindu society is not the individual. Even the family is not regarded as a unit of society except for the purposes of marriage and inheritance. The primary unit of society is caste. There is no room for individual merit and consideration of individual justice. Any right that an individual has is not due to her/him personally; it is owing to being born in a particular caste. Similarly, if

⁴ Vivekananda Jha, "Stages In the History of Unsociability", *Indian Historical Review*, Vol. 2, No. 1, July 1975, pp. 28-31

an individual suffers from lack of rights, it is not because s/he deserves it by their merit or conduct.

- 9) The unequal and hierarchical assignment of rights under caste system has its basis on the specific notion of "human-hood" which is different and unique. In this particular order of hierarchy, castes are placed at the top. The 'upper castes' are given all privilege and rights as they are considered to be "superior social beings" worthy of all rights and privileges. Dalits being considered at the bottom are denied all rights because they are treated as "sub-human beings or lesser human beings" considered unworthy of any rights. As inferior social beings untouchables are not entitled to any individual rights i.e. civic, religious, political or economic. In addition, they are considered to be impure and polluting and therefore are physically and socially isolated and excluded from the rest of the Hindu society. Isolation and exclusion of untouchables is a unique feature of the Hindu social order.

Caste/Descent and Work-Based Discrimination

- 10) It is clear from the above characterization of caste system that Dalits who are placed at the bottom of caste hierarchy are denied basic human rights that are necessary for the development and growth of human beings. This comprehensive and multiple exclusions and discriminations and denial of human rights of the untouchables have severe consequences on their poverty and deprivation. The denial of human rights is not associated with race or colour, but based on descent associated with social origin determined by social and religious ideology.
- 11) Determination of occupation by birth and restrictions to change the hereditary occupation and social position obviously restricts the freedom of occupation and involves descent and work related discrimination. As occupation and property rights of each caste are fixed and compulsory it necessarily involves forced exclusion of one caste from the occupations of other castes. Dalits having been excluded from access to social rights, property rights and source of livelihood for generations, except the labour or service to the castes above them, experience denial of basic rights in multiple spheres.
- 12) The religious and philosophical sanctions and societal mechanism of social ostracism against Dalits to change their position promoted the concept of impunity against harassment, exploitation and atrocities on Dalits from various angles – abuse and physical violence of women, children or men, sexual exploitation of Dalit women including practices like Devadasi system, exploitation of Dalit labour through *begar* (free labour), bonded labour or child labour, destruction of assets belonging to Dalits and prevention of their right to free exercise of their franchise.
- 13) It must be mentioned that both legal and religious sanctions were powerful engines to keep caste going. The legal sanction has been done away with by the Constitution but caste and its practices continue unabated because of the more powerful religious and philosophical sanction. Therefore untouchable status, discrimination and forced impure occupation, all for an accident of birth even today characterize the life of Dalits.

Recognising Human Rights Violations in Caste-Based Discrimination by the Indian State

- 14) The Constitution of India, adopted in 1950 is a total departure from the philosophy, norms and traditions of the Hindu social order. The adoption of the Constitution was preceded by strong social, religious and political movements of the untouchables in the early part of the 20th century against caste and Brahmanism. The induction of these viewpoints was particularly facilitated by the nomination of Dr. Ambedkar⁵, who led much of the struggle against caste and untouchability as chairman of the drafting committee of the Indian Constitution.
- 15) The philosophic ethos of the Constitution proclaimed justice, equality, liberty, and fraternity to all Indian citizens as against rights based on birth. Further the democratic form of government with elected representatives also provided an opportunity for members of different sections to participate in decision-making on a common platform.

Rationale and Scope of the Special Provisions for Dalits

- 16) In addition to the general frame of justice and equality, the Constitution also recognized the need for distinct and special provisions related to the protection for Dalit community (scheduled castes).⁶
- 17) "A section of people in the Indian society were denied of certain basic rights since ancient times with the result they remained economically, socially and educationally backward. Because of the fundamental disparities between the Schedules Castes and Schedules Tribes as compared to other communities and the urgent need for special measures to uplift their status, a clear distinction has been made in the Constitution itself in respect of the SCs (Dalits) and STs (Adivasi)".⁷

Importance given to issues of Dalits and Adivasi (Tribals)

- 18) The spirit of the Constitution is that equality, justice and progress of the Scheduled Castes and Scheduled Tribes will be a measure of progress of the Indian society as a whole. The provisions have been towards enhancing spaces for social, economic and political participation of Dalits. Inherent in the provisions is also the faith and belief that there is sufficient political will to ensure the implementation of these provisions by the newly promoted legislative, executive and judicial mechanisms of the state.

⁵ Dr. B.R. Ambedkar is one of the foremost scholars of the nineteenth-twentieth century. Born into a Dalit family he was the architect of providing a framework for the elimination of caste-based disabilities for Dalits and inculcating the values of justice, equality, liberty and fraternity into the Indian Constitution. He is the foremost leader of the untouchable community.

⁶ The Constitution of India recognises Dalit community as Scheduled Castes

⁷ *National Commission for Schedules Castes and Scheduled Tribes*, Sixth Report (1999-2000 & 2000-2001), New Delhi, p.8

Constitutional Provisions

- 19) The Constitution emphasizes 'safe-guards' for Scheduled Castes under the 'Special Provisions Relating to Certain Classes' in Part XVI of the Indian Constitution. The Constitution also provides for protection and promotion of their social, economic, educational, cultural and political interests to bridge the disparities and to bring them at par with other sections of the society. In addition, many articles in Parts III (Fundamental Rights), IV (Directive Principles of State Policy), IX, IX A and in the fifth schedule of the Constitution is a measure of the Constitutional concern and commitment.
- 20) The constitutional provisions include general measures found in – equality before law (Article 14); Prohibition of discrimination (Art. 15), Protection of life and personal liberty (Art. 21)
- 21) The social safeguards extended specifically to address untouchability and caste based work and discrimination are found in – Abolition of untouchability (Art.17), Prohibition of trafficking in human beings and forced labour (Art. 23), Prohibition of employment of children in hazardous jobs, etc. (Art.24), Freedom to practice religion (Art.25),
- 22) The economic safeguards are provided under - the provisions of Articles 23 and 24 stated above as well as under promotion of educational and economic interests of SCs under (Article 46 in Part IV, Directive Principles of State Policy)
- 23) Educational and cultural safeguards are specified in – provision for reservation (Art. 15 (4) and that admission into educational institutions will not be denied (Art.29 (2))
- 24) Employment provisions are made under – equality of opportunities under (Art.16), and claim to services and posts (Art.335)
- 25) Political representation was based on a compromise between Mahatma Gandhi and Ambedkar –Reservation of seats in parliament and state legislatures under Art. 330,332, 334,
- 26) Monitoring of safeguards provided under Constitution and all other provisions and policies is also provided for by - Setting up commission under (Art.338)

Other Legislations

- 27) In addition some of the legislations of general nature have greater relevance to Dalit communities.
 - a) The Untouchability Offences Act, later reformulated as the Protection of Civil Rights Act (1955) and rules 1977
 - b) The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989 and rules 1995
- Bonded Labour (system) Abolition Act, 1976

- c) Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
- d) Devadasi system Abolition Act in the states of Andhra Pradesh, Maharashtra and Karnataka.
- e) Child Labour (Prohibition and Regulation) Act, 1986
- f) Minimum Wages Act, 1948
- g) Equal Remuneration Act, 1976
- h) Land Reforms Act in different states

Special Component Plan (SCP)

Budgetary Allocation for SCs: Special Component Plan Massive Injustice and Loss of Opportunities for Dalits

28) Analogous to the “The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989”, the Government of India does have a potentially powerful mechanism for the economic empowerment of Dalits. The mechanism is the Special Component Plan (SCP) for Dalits. SCP, in the words of the Indian Planning Commission is “a policy instrument designed to ensure the fulfillment of constitutional guarantees and entitlements enjoined for the Scheduled Caste communities.”

The Concept of Budgetary Allocation

29) The SCP, initiated during the Indian Government's 6th Five Year Plan (1980-85), envisaged a radical redefinition of planning and budgeting for Dalits. It was based on the realization by the Government of India that decades of planning and hundreds of millions of Rupees spent in the name of “Welfare of SCs & STs” had not brought any substantial changes in the Socio-economic lives of Dalits. Hence the SCP was brought in as a radically reworked strategy of Dalit welfare and empowerment.

- a) *“The Sixth Five Year Plan marked a shift in the approach to the development of the SCs. The SCP, launched for the SCs, was expected to facilitate easy convergence and pooling of resources from all the other development sectors in proportion to the population of SCs and monitoring of various development programmes for the benefit of SCs⁸”*

30) The programme was made obligatory for all the State Governments and all their departments as well as all Central Government Ministries. And in 1986, a scheme of Special Central Assistance of 100% grant to the States for the implementation of SCP was also initiated.

31) The main elements of the philosophy of the SCP, as regularly stressed by the Ministry of Social justice and Empowerment of the Government of India, are Proportionality, Convergence, Universal Application and Auto-Decision making.

⁸ Report of the Steering Committee on Empowerment of the SCs, OBCs and Minorities, *Tenth Five Year Plan* (Government of India)

Proportionality

32) According to SCP, funds allocated for the welfare of Dalits out of the total annual plan outlay, should be at least proportional to their population percentage at the national and States level. This means that as Dalits constitute 16.5% of the Indian population, at least 16.5% of the outlay of the Central Budget should be allocated as SCP funds. Similarly in a State like Tamil Nadu, where Dalits constitute 19% of the State population, at least 19% of the plan outlay of the State Budget should be allocated as SCP funds.

Convergence

33) In contrast to the earlier practice of numerous schemes by different departments and ministries, rarely leading to any significant impact, SCP envisages an approach whereby holistic programmes, in accordance with specific historic needs and priorities of Dalits, would be evolved and sufficient funds allocated for the programmes. The targets fixed under SCP are to be desegregated into district-wise and sector-wise targets. At the district level, the district Collectors are responsible for coordinating the implementation of the schemes under SCP.

Universal Application

34) As per SCP, no State Government Department and no Central Ministry or Department can claim exemption regarding the implementation of SCP. SCP also makes it clear that no mere notional allocations of funds, based on the unacceptable logic of indivisibility of projects, are allowed. Every department /ministry must initiate concrete steps to evolve proper programmes under SCP, as per specific Government Orders (G.Os). Separate budget heads have to be shown in the Budget Link Book, clearly mentioning the receipts-expenditures details of SCP, ensuring prevention of any diversion, under-utilization or mis-utilization of funds earmarked for Dalits.

35) "An important operational principle of SCP is that in all sectors of plan programmes, outlays for development SCs should be incorporated and no distinction can be drawn between the so called "indivisible and divisible" sectors, as the outlays are allowable in relation to the needs of scheduled castes⁹"

Auto-Decision-Making

36) SCP visualizes also that Dalits themselves (and those that legitimately represent them) should have the final say in terms of the implementation of SCP. SCP demands that at both Central and State levels, the department concerned with Scheduled Castes Welfare, such as the Scheduled Castes Development Corporations should act as the nodal agency for the formulation, implementation and monitoring of SCP.

⁹ *Adidraida and Tribal Welfare Department, Govt of Tamil Nadu, 2003*

The Betrayal

- 37) Unfortunately, just as with the SC/ST Act, SCP too remains a hope vastly betrayed – by a combination of bureaucratic indifference and resistance, Casteist perceptions and a lack of political will. The spirit of the Plan has been consistently thwarted in its application and implementation by most of the departments at the Central and States level, denying Dalits all over the country hundreds and hundreds millions of Rupees, which are legitimately due to them, year after year.
- 38) As per proportional allocation 16% of the total budget should have been allocated instead the money was 4 percent of the total budget. Even the allotted amount has been lapsing. Controller and Auditor General (CAG), in its review of the Special Central Assistance by the Ministry of Social Justice and Empowerment, discovered persistently large unspent provisions during all the three years, it studied¹⁰. The Ministry surrendered Rs.5945.30 millions in 1997-98, Rs.5090.70 millions in 1998-99 and Rs.1452.00 millions in 1999-2000 on the last day of the financial year, without assigning reasons for the surrender, even though the Ministry was well aware of the scheme-wise savings early enough.¹¹.
- 39) The Steering Committee on Empowerment of SCs, OBCs and Minorities, 10th Five Year Plan, claimed, “Often such unspent SCA funds were diverted to other purposes, leaving the earmarked / intended purposes unattended.”
- 40) The total budget allocation under plan outlay for 2007-2008 is Rs. 20,51000 Crores, and under Scheduled Caste Sub Plan(SCSP) which was previously known as SCP, the Government of India is liable to allocate Rs. 32,816 Crores exclusively for Dalits (16% of the total budget) but it has allocated just Rs. 12, 515.75 Crores only for the welfare of Dalits which means the amount denied to Dalits is Rs. 20, 300.25 Crores.

Article 6: Right to Work

- 41) The Right to Work is not listed as a Fundamental Right in the Constitution of India. It is under the Directive Principles of State Policy that Article 39 and Article 41 emphasize a responsibility on the State to provide that citizens, both men and women should have adequate means of livelihood and also includes that “the State, shall within the limits of its economic capacity and development, make effective provision for securing Right to Work ...” Keeping these Directives under consideration there have been many attempts by the Government over the years in this regard. But Right to Work could never acquire an enforceable character.
- 42) The Indian state has recognized backwardness and deprivation suffered by these Dalit groups as back as 1950 and developed policies for the economic, social and political empowerment of these communities. The government’s approach towards Dalits draws primarily from the provisions in constitution.

¹⁰ *Controller and Auditor General CAG Report No. 1 of 2001 (Civil)*

¹¹ *ibid*

- 43) The government has used two fold strategies, namely (a) Remedial measures and safeguards against discrimination in multiple sphere and (b) developmental and empowering measures particularly in economic spheres. The measures and safeguards against discrimination in the form of reservation policy are however, confined to state run and state supported sectors and the private sector namely agriculture, private industry and cooperative sector where more than 90% of Dalit workers engaged, are excluded and therefore remained unprotected from possible discrimination. In the absence of legal safeguards and reservation policy in the private sectors the state has used “general programmes” for economic, educational and social empowerment of Dalits. The focus has been to improve the private ownership of fixed capital assets like agricultural land, ownership of non-land capital assets, human resource capabilities, and access to social and basic services like housing, health, drinking water, electricity and others. The strategy for improving or building the private ownership of capital assets and human resources capabilities has been primarily undertaken as part of anti-poverty and other economic and social programmes for the poor, by targeting or fixing specific informal quotas for Dalits households in the case of divisible schemes.
- 44) With these policy measures of social and economic empowerment, it was expected that the access of these social groups to capital assets would improve through increase in proportion of land owning (self-employed) cultivator among Dalits. Priority in the distribution of surplus land under ceiling, government land and other land should bring a shift in the occupational status from wage labour to self-employed cultivating households. The supply of credit for land development and inputs should also make marginal and small farmers viable self-employed cultivators. Similarly it was expected that with supports for non-farm economic activities, the proportion of self-employed household/person in business in rural and urban area would improve. With expected increase in the proportion of self-employed in agriculture and non-agricultural, there should be corresponding decline in the proportion of wage labour households¹². But unfortunately it could not work to the expectation of the policy makers because of deliberate poor implementation.

Lower Access to Income Earning and Capital Assets

- 45) The Dalits have been suffering from a high degree of discrimination when we consider variables such as access to land, capital assets, employment, education and income etc. In 1999-2000, in rural India, the unemployment rate of Dalit males and females was 1.4 percent and 16.9 respectively. Interestingly, the unemployment rates for both the Dalit males and females were higher than those for the Non Dalits/ Adivasis.
- 46) In 1999-2000, although the disparity levels in rural unemployment rates between the Dalits and the Non Dalits/ Adivasis males were very low for CDS; Dalit males

¹² Differences in level of conception among Socio and Economic Groups – 1999 – 2000, NSS 55th Round, July 1999-June 2000, *National Sample Survey Organisation*, Ministry of Statistics and Programme Implementation, Government of India, September 2001.

were found to be more unemployed than the Non Dalits/ Adivasis. The Dalit females, on the other hand, were found to be more unemployed than their male counterparts. The unemployment rate for the Dalit males was found to be very high (more than 5 percent) for the States of Kerala, Tamil Nadu and West Bengal and the lowest for the States of Punjab, Rajasthan and Gujarat for CDS. The unemployment rate of the Dalit females was found to be the highest in Kerala and the lowest in Uttar Pradesh. In the urban areas, the Dalit males were found to be more unemployed than the Non Dalit/ Adivasis males.

Labour Market

47) Like other sectors there is a rampant discrimination against Dalits in the labour market. The caste based labour market discrimination is conceived as¹³:

- a) Exclusion of Dalits from employment by 'higher caste'.
- b) Exclusion of 'low caste' from certain types of jobs/work due to notion of pollution and purity associated with Untouchability.
- c) Selective inclusion in employment but with unequal treatment reflected
 - (i) In lower wages (lower than wages given to other labourer)
 - (ii) In terms and conditions with respect to hours of works and other terms, and
 - (iii) Differential behaviour towards low caste labourer /worker in work placeCompulsive and forced work governed by traditional caste related obligations

Agricultural Sector: Hiring Practices of Farm Agricultural Labour as Primary Activity

48) The 'higher caste' wage labourers manage to get significantly more days of employment as compared to Dalit wage labourers. A relatively high rate of employment for the casual wage labourers from 'High Caste' compared with the Low Caste particularly Dalits reflects the discriminatory working nature of the labour market. It reveals employees choice towards the labourer of his or her own caste persons. Since the casual farm wage labourers are involved in manual work which required a normal working skill and which is hold by casual labourers of all caste group in normal course through work experience, there is clear reason to believe that differences in employment rate between the 'Higher Caste' and 'lower caste' wage labourers are on account of caste preference in hiring by the High Caste employers.

Agricultural Wage Rates

49) In all, the average wages per day received by Dalit wageworkers was Rs. 5 less than the all-caste wage rate (Rs. 33) as well as of wage rate of higher caste (Rs.34)¹⁴.

¹³ Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006.

¹⁴ *ibid*

Intervals of Wage Payment

50) The results indicate that the Scheduled Caste wage labourers followed by the Scheduled Tribes wage labourers suffered in term late payment of wages. The terms of payment in term of time interval are much less favourable to these two groups as compared with their counter part from OBC and Higher Caste.

Non-Agricultural Sector

51) The average days of employment obtained by per person in the non-farm casual work is work out to 124 days with a considerable variations across social groups. Highest emplyment is observed for 'higher caste' category labourer (290 days), followed by 189 days for Scheduled Caste, 105 days for Other Back ward Caste and 81 days for Scheduled Tribe Casual labourer. Thus it apperaed that high caste labourer managed to get higher level of employment compared with other caste groups in non fram sector. However the participation of SC casual labourers is realtively high.

52) Coming to daily wage earning the average wage earned by casual labour in the non-farm sector is estimated at 48 rupees at aggregate level, but the daily wage of high caste casual wage labourers turn out to be Rs 77 as compared to Rs 58 for Scheduled Caste, Rs 45 Other Backward Caste and Rs 37 for Scheduled Tribes.

Employment and Income Losses due to Exclusion in Hiring

53) Exclusion of employment in any work, or denial in some seasons, or selectively in some types of works in agricultural and non-agricultural operation or household work inside house leads to lower level of employment as compared with 'higher caste' workers. Thus the lower employment that we have observed in the earlier sections may be attributed to loss of employment due to denial of employment to workers of Scheduled Caste in various manners.

Market, Goods, and Services: Economic Exclusion and Discrimination

54) Persons belonging to Dalit community are being encouraged to move from wage labourers to owners of the activity by the schemes of the government, in both farm and non-farm activity. The 'high caste' people do not openly oppose their entry, but do it indirectly through economic exclusion. The economic exclusion is through pricing in sale, purchase and hiring activities of ranging from raw materials to finished goods¹⁵.

55) The nature and forms of land market discrimination is evident in the form of

- a. denial in sale and purchase of land for agriculture and non agricultural use, which include land for agricultural production, business location and residential house
- b. denial in renting of land for agricultural use

¹⁵ *ibid*

- c. denial of residential house on rent and
- d. in the event of transaction in sale and purchase of agricultural land or renting of land for agricultural use or residential house discrimination may be experienced in price paid and received by the low caste group in the exchange.

56) Dalits, who are in the farm activity, face problems of paying higher for purchase / hiring of inputs such as seeds, fertilizers, hiring of machinery, irrigation facility, etc. Similarly they face problems of receiving less remuneration for hiring of machinery, etc., to higher caste people. The case is true for persons belonging to scheduled caste and scheduled tribe, who are in the non-farm activity also. This attitude discourages the marginalized people from entering such activities.

57) Beside the price factor the low caste persons seem to face other difficulties in the purchase of land which include land made available at a far-off place, low quality of land, lack of access to irrigation. However, the major difficulty relates to the denial of land, which have common boarder with the land belonging to high castes.

Discrimination in Consumer Market: Sale and Purchase

58) The Report¹⁶ presents the results related to the discrimination faced by the Scheduled Caste persons in sale and purchase of farm and non-farm consumer good and other goods. Discrimination in the form of denial of purchases of farm products by high castes from the scheduled caste sellers is visible in some cases mainly due to caste considerations.

59) This is particularly widespread in case of vegetables and milk products and where the low caste identity of seller is known. The high caste generally prefers to buy from the sellers of their own caste and higher caste the items like milk, vegetable and fruits. The denial to buy such items by the high caste buyer from low caste sellers was mainly due to the notion of pollution and purity. The traditional and classical notion of purity and impurity associated with untouchable persons still influences the economic behaviour of high caste persons which discouraged them from buying or entering into exchange of consumer good particularly the vegetable, milk an from the 'low caste' sellers.

60) Faced with restrictions from the high caste buyers on the purchases of goods offered for sale by Dalit sellers, they try to use the alternative market avenues to sale their products where their caste identity is hidden.

61) The Dalit business persons engaged in non-farm business also reported difficulties in purchase of goods and materials, one of them being higher prices for the good and material that they buy. Traces of discriminations are visible in location of shop,

¹⁶ Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006

choice of shops by high caste customers and choice of customers by 'high caste' sellers.

Capital Market: Banks and Financial Institutions (tend to Exclude) Dalits in Priority Sector Lending

- 62) One of the important objectives of nationalization of banks was to spread out of banks to the remote area and make provision for credit at affordable / low interest rates. The rationale behind this objective is availability of concession rate credit at their doorstep would help the cultivators to adopt new technologies, combat uncertainties in the livelihood process. Access to credit can be viewed as a function of access to property rights, education, information, social relations, etc. It is a notion that by virtue of their caste characteristics the low caste households are being deprived of access to credit, as they do not possess the pre-conditions also.
- 63) According to NSSO, only 31 percent of agricultural labour households in India, across all castes, depend on institutional sources for credit. The ratio is also true in case of Other Backward Caste and High Castes (32 and 34 per cent respectively)¹⁷. The ratio is only 25 percent in case of Scheduled Caste households. The average amount of loan obtained non-Institutional sources by agricultural labour of scheduled caste group is higher (Rs.4207) than high caste households (Rs.3905). In case of Institutional sources, the average amount of loan obtained by SC households is lower (Rs.6703) than the average amount in case of OBC (Rs.8999) and high caste households (Rs.11868). The case is true for Other Labour households also with an average loan amount of Rs.7059 of SC households as compared to Rs.16656 of OBC and Rs.18878 of high caste households. There are two important inferences from above mentioned facts¹⁸. First, access to Institutional credit is less for the SC households as compared to OBC and high caste households. This reflected through low share of SC households as well as average loan amount also being comparatively low. Second, if the access to Institutional loans were to increase for the SC households, as a result the average loan size would also increase.

Aspects of Economic Exclusion and Discrimination

- 64) Differences in prices received or charged from the Dalits in the markets, depending on whether they are sellers or buyers. This may relate to the price of factor inputs, and consumers goods, such as wages for labour, price of land or rent on land, interest on capital, rent on residential houses, charges or fees for services such as

¹⁷ *Indebtedness among Agricultural And Other Labour Households In Rural India: Some Preliminary Analysis*; Paper Presented At Seminar Titled "Rural Credit In Orissa"; Organized By Sambalpur University, Orissa, 25-26 February 2006.

¹⁸ Sukhadeo Thorat, M.Mahamallik, and Ananth Panth; *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*; Report Submitted to International Labour Organization, New Delhi, India, January 2006

housing, water and, electricity; and Dalits also face exclusion and discrimination from participation in certain categories of jobs and sale and purchase of certain consumer goods. On account of untouchability and the notions of pollution and purity, the untouchables also face discrimination and exclusion in use of public economic services like water, electricity, health services and other services.

Discrimination in other Factor Markets: Irrigation and Agriculture (Land)

65) The discriminatory treatment to Dalits is not just confined to the labour market alone, but is equally operative in other factor markets as well. These include markets in agricultural (land) and irrigation (public and private). The evidence, although limited in nature, sheds light on the repressive and hostile market environment, which Dalits generally face in the course of their participation in various factor markets.

66) It has been well documented that land is a source of constant conflict and atrocities on Dalits are closely associated with the issue of land. Further, discriminatory practices were also reported in leasing of agricultural land to the Dalits and even the Dalit tenants were subjected to unfavorable terms and conditions of work by the 'higher caste' landowners.

Access to Employment in Private Sector: Need for Anti-Discrimination Legislation

67) There is a crucial conceptual distinction between a non-discrimination principle and affirmative action. Non-discrimination is, if you like, a more passive principle. It suggests that people refrain from discriminating against others on the basis of caste or caste-like characteristic. It suggests that no one should be the object of discrimination simply because of who they are, in terms of these characteristics. There ought to be no normative quarrel with this principle. Affirmative action, seeks to move beyond a narrow conception of non-discrimination towards equalizing results with respect to various groups. Proponents of affirmative action in India do not always strictly insist on equalizing results, but they do demand a measure of fairness that goes beyond non-discrimination. Reservations for them represent such a measure of fairness.

No Serious Effort for Corporate Social Responsibility

68) Unfortunately, social justice or "compensatory discrimination" programmes in India have gotten stereotyped around the theme of "reservation" in the public sector. And so much of a complex has been built up around the subject that there are major assumptions, which everyone takes for granted, but which are mistaken and need to be overcome. Among these two are important: first that social justice programmes are more or less equivalent to reservation and that reservation is limited to employment in the public sector as well as seats in educational institutions. Second, even more debilitating, is the pervasive idea that reservation is in some way at odds with "merit", that we have to give up on or "relax" certain standards of merit in order to do social justice for Dalit community.

- 69) Today, as privatisation is frightening Government employees, Dalits are also worried about loss of the one area they have seen as a haven for employment. One result is that the idea of "reservation in the private sector" has been brought forward by a number of Dalit political leaders. The issue of reservation in the corporate sector does not depend on the degree of disinvestment. Regardless of whether existing public sector companies are "privatised" or not, it is still true that the corporate sector is a growing and dynamic sector in India, and the question of who runs it and is employed in it is a crucial one.
- 70) Compensatory discrimination efforts, or social justice programmes, need not be limited to education and the public sector. In fact, today as India is "going global" faster than many sections of the society want, it is important to realise that a truly modern society requires the conscious creation of opportunities for all of its citizens, and a truly competitive society cannot afford to waste any talent. This means that social justice programmes are not only in the interest of Dalits, but in the interests of the nation as a whole - and they require policies that take account of every sector in a modern and growing economy.

National Rural Employment Guarantee Act, 2005

- 71) It is mainly because of mounting pressure from the civil society organizations and movement that a National Rural Employment Guarantee Act, 2005 as a law has come into being. Under this any person who is above the age of 18 and resides in rural areas is entitled to apply for work. Any applicant is entitled to work within 15 days, for as many days as he/she has applied, subject to a limit of 100 days per household per year. Work is to be provided within a radius of 5 kilometers of the applicant's residence, if it is beyond 5 kilometers, travel allowance has to be paid. Workers are entitled to the statutory minimum wage applicable to agricultural labourers in the state, unless and until the Central Government notifies a different wage rate. There are provisions for timely payment of wages within a weeks time; unemployment allowance; worksite facilities as clean drinking water, emergency health care etc.; participation of women to ensure one third of beneficiaries to be women; penalties for contravening with the provisions of this Act; implementation of this Act to be monitored by a State Employment Guarantee Council; the Act to be enforceable initially in 200 districts, and is to be extended to the whole of rural India within five years.¹⁹
- 72) However, barely four to six months after the launch of the landmark job guarantee scheme, a nationwide study reveals that only 30% of those registered for the scheme have received job cards. Discrimination on the basis of caste, community, gender, disability and a general lack of awareness are hampering the implementation of the National Rural Employment Guarantee Scheme (NREGS), an 11-state study by the civil society organisation Participatory Research in Asia (PRIA) has shown. A field survey by PRIA and its partner organisations in Andhra Pradesh, Bihar, Haryana, Himachal Pradesh, Gujarat, Jharkhand, Kerala, Madhya

¹⁹ The National Rural Employment Guarantee Act, 2005, *Ministry of Law and Justice*, Government of India, New Delhi, 7 September 2005

Pradesh, Rajasthan, Uttar Pradesh and Uttaranchal revealed that while there was large-scale registration for jobs, less than 30% got the crucial job cards. Another major problem was low public awareness of the scheme -- in Sitapur district of Uttar Pradesh, for instance, only 7% of respondents had proper information about the scheme. A gender bias was also apparent in the implementation of the scheme since women wishing to register for jobs faced much opposition. And in Sabarkantha district in Gujarat, the old and physically challenged were not even provided with registration forms. The survey also found village heads guilty of misusing their power, with people with ties to the *sarpanch* (village headman), *panchayats* secretary and officials appearing to have benefited more than villagers. In Rajasthan, elected *panchayats* functionaries are either ignorant or kept out of the exercise for the scheme's execution, despite the Rajasthan government's claim of having achieved decentralization of democracy.²⁰

73) It has also come to the light that seven months after one of India's most ambitious social welfare schemes, the National Rural Employment Guarantee Scheme (NREGS) was launched, less than a third of the funding to states for the current fiscal year have been utilised. According to a review of the programme by the rural development ministry, average utilisation across the country is just 29%. Only three states -- Punjab, Orissa and Andhra Pradesh -- have spent more than half the money released by the Centre under the NREGS in the year 2006-2007, says the ministry. The first meeting of the NREGA review council identified several gaps in implementation of the Act, including lack of awareness among beneficiaries and meager provisions for administrative expenses. Overburdened administrative machinery, weak redressal system and a host of other lacuna have been identified in the way this scheme is implemented.²¹

Article 7: The Right to Just and Favourable Conditions of Work

Discrimination in Wage Earnings

74) There is massive economic inequality within the social groups. The wage rate is also determined by caste-based economic discrimination in rural areas. The differences in the magnitude of wage labour among the Dalits and the Non Dalits and their land ownership backgrounds and disparities in wage rates in agriculture and non-agricultural employments still persist in India.

75) For a sustained, anthropocentric, and holistic development of the Dalit labour force, State intervention in the form of affirmative actions in various markets such as land, labour, capital, products and social services (like education and health etc) is necessary. It must be recognized that the Dalits face multiple forms of discrimination in all factor markets. If the magnitude of wage labour among the Dalits is to be reduced and discrimination in employment, wages and occupation is

²⁰ See *The Hindu*, New Delhi, June 2, 2006, and *The Hindustan Times*, New Delhi, June 2, 2006

²¹ See *The Telegraph*, Kolkata, September 19, 2006 and *The Indian Express*, New Delhi, September 28, 2006

to be overcome, the policies of improving the access to physical capital assets, human capital and market intervention are necessary.

- 76) The farm and non-farm casual labour and salaried workers experienced various types of discriminations in employment which includes discrimination in hiring and wage payment. At least one fifth of the respondents reported preference of upper caste employer for the persons belonging to their own caste or 'Higher Caste', which lead to exclusion of 'low caste' labourer from hiring in farm and non- farm work. The caste sympathy towards own caste people turnout to be the main reason for preference of labourer of their own caste or 'high caste'²².
- 77) The denial in hiring by 'high caste' take various forms such as exclusion in any work, in some season and in some specific work. Dalit labourers faced exclusion in some measure, in some types of work in agriculture which include work related to processing of crops and in cutting of some crops. In the case of non agricultural work, Dalit labourers faced exclusion to some extent in some types which mainly include work related to social ceremony, followed by house construction and work in restaurant. In case of inside housework of 'high caste' persons, the Dalit labour faced complete exclusion.
- 78) Exclusion in employment in any work, or denial in some seasons, or selectively in some types of works in agricultural and non agricultural operation or household work inside house of 'high caste' bring losses in employment and generate lower level of employment among Dalits as compared with 'higher caste' worker. It is a clear denial of right to life with dignity and right to equality enshrined in the Constitution of India as well as in International human rights instruments.

Reservation in Education and Public Sector Employment

- 79) Observing the century's old and accumulated social, economic, political and educational deprivation, the Constitution of India made specific provisions for the protection of Dalits (SCs) and the other weaker sections from any form of discrimination. While the Constitution enjoins upon the State to make effective provisions for securing the right to education, it was not until very recently (2002) that the right to free and compulsory education of children up to 14 years of age was incorporated as a fundamental right through the 93rd Constitutional amendment. Several policy instruments employed by the State in the post-independent India towards promoting education among the SCs have met with some measure of success.
- 80) Subject to Art 15(4) permits the state to make any special provision for (a) Socially and Educationally backward classes of citizen, (b) SCs and (c) STs.
- 81) Thus the Indian government approach towards these groups has been primarily shaped by the provisions in the Constitution, which guarantees equality before the

²² Labour Bureau, *Ministry of Labour*, Government of India, (1998) "Rural Labour Enquiry, Report on General Characteristics of Rural Labour Households, 50th Round of NSS, 1993-94, Shimla / Chandigarh

law, and empowers the state to make special provisions to promote the educational and economic interest of Dalits and Adivasis and to protect them from discrimination in multiple spheres.

- 82) Now the reservation policy is confined to a tiny state run and state supported sectors and the vast private sector where more than 90 percent of the Dalits/ Adivasis population /workers engaged are excluded and therefore remained unprotected from possible discrimination.
- 83) Privatization has further marginalized the weaker sections by reducing the scope available in public sector, since the public sector itself is being disinvested. The significant fact is that according to 1984 Industrial Act, 18 sectors were reserved as public sector enterprises. Over the years, these have been also converted into private sector and now only half a dozen of these remain as public sector. This has directly and definitively given a death blow to the Adivasis and Dalits in terms of job opportunities.
- 84) Article 15(4) and 16(4) of the Constitution enabled both the state and central governments to reserve seats in public services for SCs and STs and enshrine equality of opportunity in matters of public employment: "Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class or citizens, which, in the opinion of the State, is not adequately represented in the services under the State." Equal opportunity and equality of results can be achieved only by reservation. At the central level some of the services are excluded from the reservation and these prominently include defence and judiciary.
- 85) As per article 335: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or State," as the limitation of Art.16 (4) The main objective of Art.16 is to create a constitutional right to equality of opportunity and employment in public offices. According to the articles 335 and 46 of the Constitution, Art.46 speaks about the promotion of educational and economic interests of SCs, STs and other weaker sections. The state shall promote with special care the educational and economic interests of the weaker sections of the paper, and in particular, of the SCs, STs and shall project them from social injustice and all forms of exploitation.

Half Hearted Implementation of Reservation in Employment in Public Sector

- 86) Reservation policy has never been fully implemented from the time of its conception and much has been achieved in actual terms. This is disregarding the fact that SCs as per the 2001 Census constitute about 16.5 percent of the total population in India and thereupon too, they have been provided with 15 percent reservation. Yet, the implementation of the reservation policy for Dalits has been below par.

- 87) The inferences drawn from different statistical analysis clearly bring out the following. Firstly, the data evidently supports the proposition that the reduction of jobs in the Government sector for the Dalits is faster than that for the Non Dalits. Secondly, reduction in the absolute average number of employment for the Dalits in the different Groups of jobs after 1991 amply suggests that the National Employment Plan (NEP) has had adverse impacts on the job market, particularly, in the Government sector jobs. Thirdly, the percentage share of Dalit population to total employment in Group 'A' and 'B' jobs falls short of the stipulated 15 percent mark. However, for Group 'C' and Group 'D', the SC population is fairly represented. Fourthly, in 2003, 6.7 percent of Dalits were employed in Group 'A' and Group 'B' jobs, while 93.3 percent of Dalits were employed in Group 'C' and Group 'D' types of jobs. Fifthly, from 1960s to the 1980s, approximately a half of the SC population was concentrated in Group 'D' type of jobs while the other half was engaged in Group 'C' occupations. Finally, the percentage share of Dalits over the periods under analysis has declined for Group 'D' jobs and conversely, has increased for Group 'C' jobs²³.
- 88) Therefore, it becomes visibly discernible that firstly, after the inception of the NEP, though the overall employment in public sector banks has reduced for all social groups, but the Dalits seem to have been severely impacted. Secondly, due to the shrinkage of employment in the public sector banks, the Non Dalits have bifurcated to the private sectors while the Dalits still fall on the thresholds of unemployment and thirdly, though the Annual Report of the Ministry of Finance (1990) mentioned about launching a special drive to clear the backlog of jobs as on March 1990 in all classes of employees, it failed to address the question so as to how the percentage share of the Dalits in officer and clerical categories fell much below the stipulated quota.
- 89) Although, there has been a marked improvement in the overall representation of the Dalits in Government services, but still in 2003, a gap of about 3 percent in Group 'A' jobs and a gap of 1.5 percent were evident. Since the representation of the Dalits fell below the stipulated quota of 15 percent there is a need to implement a special drive to fill up the posts.
- 90) The notions of purity and pollution, social stigmas and forms of ostracisms linked with several caste-based occupations such as scavenging and sweeping discourage the Non-Dalits from participating in these occupations. This explains the higher concentration of the Dalits in lowest level jobs.
- 91) The fact that the reservation policy has been one of the cornerstones of Dalit empowerment cannot be negated. But still the Dalits have been unable to reach the levels of development as is visible for the Non-Dalits. Reservation policy has never been fully implemented from the time of its conception and much has been achieved in actual terms.

²³ 55th Round of NSS, 1999-00, Shimla / Chandigarh.

Indian Institute of Dalit Studies "Rural Labour - Magnitude and Characteristics" Chapter VIII Scheduled caste: A profile 2004 Documentation on Status of Scheduled Caste.

Article 11: Right to an Adequate Standard of Living

Human Development and Living Condition of Dalits in India

- 92) Development process has to be ultimately assessed for its impact on quality of life and human well being. There is a broad based consensus that exists on the three critical dimensions of well being. These dimensions of well being are related to: a). Longevity: the ability to live long and healthy life; b). Education: the ability to read, write and acquire knowledge; and c). Command over resources: the ability to enjoy a decent standard of living and have a socially meaningful life.²⁴
- 93) In India, there is a considerable difference in the level of attainment of people on various aspects of well being, depending on their place of residence (rural/urban), the sex of the person and the social group or the segment of the population (i.e. the Scheduled Castes, the Scheduled Tribes and others) that the person belong to..... The attainment levels of the Scheduled castes and the Scheduled Tribes are also lower than others on the available indicators.²⁵
- 94) 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 provision of certain services in the private and public sector (e.g. office helpers). Limited access to education, training or resources, such as land or credit, further impairs their equal opportunities for access to non-caste based occupations and decent works. The deprivation stemming from discrimination in all areas of their life leads to higher levels of poverty among Dalits as compared to non-Dalits.²⁶
- 95) Where 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 for all. Purely developmental approaches to improving the lots of the Dalits are insufficient, if the underlying structural causes and caste barriers are not simultaneously addressed.²⁷

²⁴ National Human Development Report 2001, P.17, Planning Commission, Government of India, New Delhi, March 2002.

²⁵ Ibid, p. 18

²⁶ “Caste based Discrimination”, in Equality at Work: Tackling the Challenges, p.36, ILO Report, Geneva, 2007.

²⁷ Ibid, pp. 36-37

96) In terms of access to basic services which could measure the status of Dalits in Indian society in terms of human development index and current standard of living, given below are some crude facts²⁸:

Health

- ❖ According to National Family Health Survey (NFHS) II data, the neo natal mortality, infant mortality and child mortality and under five mortality is higher for Dalits at all India level as compared with total mortality for others
- ❖ Anaemia among Dalit Women is more compared to the women of other communities
- ❖ At national level the full vaccination among Dalit infants is less compared to others
- ❖ At national level anaemia among Dalit children is more than that prevalent among others

Education

- ❖ Literacy Rates among Dalits is 45.20 percentage as compared to 54.51 percentage for the total population in India
- ❖ The performance of literacy rates for Dalits in states like Bihar, Jharkhand and Uttar Pradesh is far below satisfactory, which is below 50 percentage
- ❖ 32 Districts in Bihar, Jharkhand and Uttar Pradesh have literacy rates below 30 percentage
- ❖ The enrolment rate of Dalit students has increased in different levels of education
- ❖ The drop out rate is still very high. 41.5 percentage at Primary Level; 59.9 percentage at Upper Primary Level and 71.9 percentage at Secondary Level

Electricity

- ❖ 44.3 percentage of Dalit households have access to Electricity where as for others it is 61.4 percentage
- ❖ 21.4 percentage of Dalit villages have no access to electricity at all whereas for others it stands at 19.5 percentage

Drinking Water

- ❖ 27 percent Dalit households have water sources within premises whereas for others it stands at 45.2 percentage
- ❖ 19.5 percent Dalit households have access to drinking water sources away from their premises whereas it stands at 14.4 percentage for others
- ❖ 32.2 percent of Dalit households have access to drinking water from Tap, whereas for others it stands at 40.1 percentage

Sanitation

- ❖ 23.7 percent of Dalit households have access to latrine facility as compared to 42.3 percentage General households

²⁸ Report of Sub-Group-I on Assessment of Prevailing Situation in respect of Scheduled Castes and Scheduled Tribes for certain Socio-Economic Indicators, prepared and released by the Office of the Registrar General, Census, Government of India in November 2004.

Housing

- ❖ 42.8 percent of Dalit households have permanent houses in comparison to 57.7 percent of General households
- ❖ The condition of housing for Dalits in Orissa(19.5 percent), Chhattisgarh(22.2 percent), West Bengal(23.9 percent), Bihar(27.9 percent), Jharkhand(29.6 percent), Madhya Pradesh(34.8 percent), Uttar Pradesh(41 percent) and all the North Eastern States except Mizoram are below the national average

Poverty

- ❖ Out of 27.11 percent of all population living below poverty line in rural areas, Dalits account for 36.25 percentage
- ❖ Out of 23.65 percent of all population living below poverty line in urban areas, Dalits account for 38.47 percentage

Caste Discrimination in Food Security Programmes

97) The right to food is considered a fundamental human right under Indian Constitution and International human rights instrument. But when it comes to the Dalit children it is severely violated in different forms and ways. Considering high drop out rate in primary education the Supreme Court of India directed the Union government to provide Mid Day Meals Scheme (MMS) so students may be retained and the right to education for all can be realised. The mid-day meal scheme started in 1995 in a few districts with 33.4 million children in 1995-96 has increased to 105.0 million children across the country in 2000-02. SC children covered under this programme have fallen from 22638260 in 2003-04 to 22004919 in 2004-05 causing concern in the context of the discrimination reported.²⁹

98) The physical setting of the MMS is important, the locality in which that space is situated is equally if not more significant. The physical access – location of the MMS in terms of caste geography – we note that Rajasthan and Tamil Nadu have very low percentages of villages in which the MMS is held in a Dalit locality: 12% in Rajasthan and 19% in Tamil Nadu. Most midday meals in these states are held in dominant caste localities.

99) In Uttar Pradesh, Rajasthan and Tamil Nadu, then, the vast majority of Dalit children must enter an area of heightened vulnerability, tension and threat, in order to avail themselves of the midday meal or its dry grain equivalent. Access for Dalit children is thus conditional, and hostage to the fluctuating state of caste relations in the village or region. A pattern of incidents documented in the study, to be discussed later, demonstrate how Dalit children's access to the MMS, already tenuous because it is held in the dominant caste locality, is then cut off when dominant castes feel the need to demonstratively reassert their hegemony.

100) In hiring practices, Rajasthan is consistently the least likely to employ Dalits, with 8% of respondent villages having a Dalit cook, and not a single respondent village having a Dalit MMS organizer. Tamil Nadu hires proportionally more Dalits, while

²⁹ "Citizens Report on Governance and Development 2006", *Social Watch*, Pearson Education-Longman, Delhi, 2006

still keeping them firmly in the minority, with 31% of respondent villages having Dalit cooks, and 27% having Dalit organizers.

101) In Uttar Pradesh, measurable indicators point to an extremely low level of Dalit participatory empowerment and ownership of the pre-MMS dry grain distribution system. In 94% of respondent villages in UP, the distribution organizer is dominant caste; Dalit organizers are found in only 4% of respondent villages (the remaining 2% have Scheduled Tribe organizers). The issue of hiring cooks, of course, does not arise where dry grain is distributed in lieu of a proper, cooked, midday meal.

Opposition to Dalit Cooks

102) "Opposition to Dalit cooks" is actually a blanket term describing several different patterns of specific acts of caste discrimination and exclusion observed in the study. The patterns can be grouped into five, which take place at different points during the process of MMS institution and continuance. First, when local administrators are putting the MMS into place, dominant caste community members intervene to block the hiring of Dalit cooks, favoring dominant caste cooks instead. Where a Dalit cook has been hired, dominant caste parents then begin sending their children to school with lunches packed at home, or require their children to come home for lunch, in any case forbidding their children to eat food prepared by the Dalit cook. In the third stage, dominant caste parents or community members pressure the local administration to dismiss the Dalit cook, on any pretext, and hire a dominant caste cook instead. Where this is ineffective, or sometimes without the intervening step, the dominant caste parents campaign to shut down the MMS in the village school altogether. Finally, some dominant caste parents react to the hiring and keeping of a Dalit cook by withdrawing their children from the school, and sometimes admitting them in a different school where the cook is not Dalit.

Public Distribution System

103) The Indian Government's Targeted Public Distribution System (TPDS, or, often, simply PDS) is reputed to be the largest system of controlled food distribution for the poor in the world. At the village level, the system is operated through government-recognized "Fair Price Shops", or PDS shops, run by local, government-recognized PDS dealers.

104) As with the MMS, *physical access*, *participatory empowerment/ownership* and Dalits' *community-level access* are the factors according to which the survey³⁰ evaluates caste discrimination and exclusion in the PDS. Two measurable indicators are employed to gauge Dalit *physical access* to the PDS: existence and number of functioning PDS shops in the village, and location in terms of caste geography. First, are there PDS shops operating in the village, and second, are these shops placed in dominant caste localities, Dalit quarters, or elsewhere?

³⁰ With regard to the PDS, Uttar Pradesh and Bihar *have* implemented the scheme on a par with the other states, unlike in the MMS. Therefore all five states in the survey are considered together.

- 105) Dalits' *participatory empowerment* and *ownership* of the PDS is measured by the percentage, out of all PDS shops in respondent villages, of PDS shops owned by Dalits.
- 106) A second factor conditioning Dalit access to the benefits of the PDS is the location in which the shops are physically situated. As a five state average, 17% of villages have PDS shops in Dalit colonies, while 70% (more than four times the former) have PDS shops located in dominant caste localities, and 13% of villages have PDS shops located elsewhere. Rajasthan has the highest proportion of PDS shops held in dominant caste localities at 91%, followed by Uttar Pradesh at 82%, Bihar at 76%, Tamil Nadu at 53%, and Andhra Pradesh with 30 percent³¹
- 107) In terms of Dalits' *community access* to the PDS, four forms of discriminatory practices are reported – discrimination in quantity, discrimination in price, caste-based favouritism by the PDS dealer, and practices of “untouchability” by the PDS dealer – in varying degrees of currency
- 108) One classic “untouchability” practice is the dominant caste dropping of goods (water, food, money) from above into cupped Dalit hands below, so as to avoid the possibility of “polluting” contact between the “upper” and “lower”. This remains in evidence, but other “untouchability” practices, such as dominant caste dealers hanging *purdah* before dealing with Musaher Dalits in Bihar, also emerge in the survey data. As PDS dealers are government actors, the practice by more than one quarter of PDS dealers of “untouchability” in the course of their official duty – in blatant defiance of the Anti-untouchability Act of 1955, the Constitution of India and numerous pieces of legislation since – has serious legal implications for the government.
- 109) The MMS and PDS are arguably the strongest available tools with which poor and marginalized populations in India can at present actualise their Right to Food. Whether they are operated well or poorly can – indeed *does* – make the difference between sustenance and preventable starvation for Dalits children and adults suffering from chronic poverty. While the problem is nationwide, its degree varies considerably from state to state.

Land Rights

- 110) Denial of land rights to Dalits is directly linked to caste system and its pernicious influence resulting into gross human rights violations of worst kinds in multiple forms. Perceptions of land are linked to social status and economic freedom “Land owning patterns and being a high caste member are coterminous. There is also a

³¹ Only Andhra and Tamil Nadu have significant percentages of PDS shops held in “other places”, at 22% and 31%, respectively. In these states, researchers understood “other place” to include the localities of Other Backward Castes (OBCs) instead of only caste-neutral places. Therefore, the percentages of PDS shops held in dominant caste (by which we mean all castes in a position of dominance over Dalits, including OBCs) localities in Andhra and Tamil Nadu may be considerably higher than they appear in our data.

nexus between being lower caste and landless”.³² .

111)It is indeed a sad commentary on land reforms and the egalitarian policies of the Government that five decades after independence, the Dalits are still forced to work as landless labourers, bonded labourers and attached labourers and are denied ownership rights to land. Violence against Dalit women is also linked to the denial of land rights as in majority of the land disputes; the Dalit women are made targets of violence to silence their male counterparts.

112)Landlessness among Dalits is a common feature in the Indian rural economy. At an all India level, the 1999-2000 NSS³³ data illustrates that around 10 percent of the SC households are landless as compared to 13.34 percent in 1992 and 19.10 percent in 1982. Though it is apparent that landlessness is decreasing, but the rate of decrease is marginal. On the other hand, 6.15 percent of the Non Dalit households were found to be landless in 1999-2000, as compared to 10.53 in 1992.

The Non- Implementation of Land Reforms Policy: A Violation of Dalit Human Rights

113)The State wise analysis of the landlessness brings to the fore that in 1999-2000, the highest numbers of SC landless households were found in Bihar followed by Gujarat, Maharashtra, Tamil Nadu and Punjab respectively. Landlessness among the Non SC/STs was low both at all India level and at the State level as compared to the SC and the ST households. In 1999-2000, at the state level, landlessness among the Non SC/ST households was the highest in the States of Maharashtra (around 12 percent) followed by Punjab (9.85 percent), Tamil Nadu (9.35 percent), and Gujarat (9.05 percent). It is a historical fact that in Punjab Dalit have not been allowed to own land, as there was a Law, which prohibited Dalits ownership of land.

114)It is also interesting to note that in 1999-2000, the percentage of Dalit landless plus near-landless' households were more concentrated in the developed States like Punjab, Kerala and Haryana, followed by some underdeveloped States like Bihar and Tamil Nadu.

115)According to the Report of the National Commission for Scheduled Castes and Scheduled Tribes³⁴, as on 30 September 1996 about 5.213 million acres of land were distributed at all-India level. Of these about 1.8 million acres were distributed to SC, and 2.67 million acres to non-SC/ST persons. A total of 5.121 million beneficiaries have been so far covered, of which 1.84 million were SC, and 2.55 million non-SC/ST. The land distributed per beneficiaries comes to 0.977 acre, which was less compared to 1.047 acres for non-SC/ST. Of the total land distributed to SC households, however, West Bengal alone accounted for about 20 percent, followed by UP. In term of share in beneficiaries also West Bengal also

³² Smita Narula, “Broken People-caste Violence against India’s Untouchables”, *Human Rights Watch*, 1999, p.27

³³ *National Sample Survey*, Government of India

³⁴ 1995-96, Government of India

accounted nearly 43 percent of total beneficiaries followed by U.P. (13%), A.P. (12%) and Bihar (12.4%).

- 116) Dalits and Adivasis have been greatly let down in the land distribution schemes as well as appropriation struggles. Right from 1948 up till 1970's, the Zamindari Abolition Act, and various Tenancy Acts, the land has actually been transferred from Kings, Jagirdars, Enamdars, Zamindars etc., to farmers and tillers of the land. This extent alone is around 34.9 million acres. But only a meager 0.5% of this land has reached to the hands of Dalits and Adivasis.
- 117) Under the new regime of liberalized economy, Dalits are further being alienated from land. This has been happening mainly because large tracts of lands are being provided to MNCs and big projects funded by the World Bank at throw away prices without taking into consideration the interest of the small and marginal farmers, majority of whom happen to be Dalit and other disadvantaged sections of Indian society. This has also led to large-scale displacement of Dalit and Adivasi families at various places within the country. The Special Economic Zones (SEZs) which are being pursued with a missionary zeal by different State Governments is nothing but reincarnation of Zamindari system and is taking away the large tracts of cultivable land from poor people most of whom happens to be Dalits and other marginalized sections of Indian society.
- 118) Land Reforms Acts envisaged as a 're-distributive' strategy to change agrarian relations and break the caste-class nexus of big landlords, had the potential to provide reparation for one of the crucial disability placed on Dalits by the caste system. "The implementation has however been subverted by the absence of political will and bureaucratic commitment, loopholes in the laws, tremendous manipulative power of the landed classes, lack of organization among the poor and excessive interference of courts"³⁵
- 119) The programme of ceiling set out in the plan had been diluted in implementation. There were deficiencies in the law and delays in its enactment and implementation resulting in large-scale evasions. Several states had made provisions for disregarding transfers made after a certain date but often these provisions proved to be ineffective and not much surplus land has been available for distribution. The main object of ceiling which is to re-distribute land to the landless at a reasonable price on a planned basis has thus been largely defeated.³⁶

The Right to Housing

Discrimination in Renting, Sale, and Construction of Residential Houses by Dalits

- 120) Dalits are being discriminated in the housing market. The questions mainly relate to the restrictions faced by Dalits in purchase of land for construction of residential

³⁵ Report on Prevention of atrocities against Scheduled Castes, *NHRC*, 2004, p.85

³⁶ *Planning Commission of India*

house in predominantly high caste locality, in taking house on rent in high caste locality and self restrictions imposed by high caste in buying of land in the low caste locality for construction of houses to live. The discriminations faced by low caste in each of these housing transactions is quite evident and of high order in the three sample villages.

121) Permitting the scheduled Caste persons to buy house for stay in high caste locality, or to rent the house to them in the high caste locality, or alternatively to buy land by high caste person in low caste locality and to take a house on rent in their locality for stay (by high caste), means breaking the traditional residential segregation in housing which is ubiquitous feature of caste-wise residential pattern of rural area.

122) The results indicated that about 64 percent of the respondent corroborated that the 'high caste' persons do not prefer to buy land to build houses in low caste locality and only 7 percent present reported the willingness of high caste to buy land for houses in 'low caste' locality³⁷.

123) In response to the question related to the reasons, about 90 percent of the Dalit respondent reported the belief in caste prejudice and hence the unwillingness of the 'high caste' to share housing with the 'low caste' untouchables and to break the residential segregation as one of the main reasons. Only 5 percent indicated the price related reasons³⁸.

Atrocities induced Displacement and Dalits in the Slums

124) Among the total population in the slums, Dalits and Muslims together account for 55% of the total population³⁹. In terms of accessibility and availability of services, the most deprived among the people in the slum in this regard are the Dalits. Education of children in the slums is another major issue where drop-outs at an early age, and problem of lack of governmental initiative⁴⁰ were highlighted. Also it was established in a study on the educational situation of Dalit children in Delhi's slums that drop out of Dalit children is directly linked to the familial and personal factors. The most prominent observation is that there exists direct relationship between income expenditure gap and drop-out, followed by housing and environmental conditions. Another major factor was the frequent shifting of parents' work place, followed by weak parental and home support to the children⁴¹. Chugh identifies that an overemphasis on child labour distorts the actual reasons for non-attendance. In the case of Dalits she says it is the school, family and community sub system responsible for drop-out among Dalits. It is important read this with

³⁷ Sukhadeo Thorat, et.al., op.cit

³⁸ ibid

³⁹ Antony Margaret and G. Maheswaran, *Social Segregation and Slum of Delhi*, Indian Social Institute, New Delhi 2001

⁴⁰ Chugh Sunita, *Why children drop out? Case study of a Metropolitan Slum*, Book well, New Delhi, 2004

⁴¹ Ibid

another finding⁴² that only 14.86 percent of Dalit families were found to be capable of managing the income expenditure gap by their own.

125) Increased atrocities against Dalits and the general decline in rural sector associated to structural changes attached to globalization gave a new dimension in understanding Dalit migration to cities. A people centric approach would easily suggest how the states in India have failed to ensure the constitutional rights to life, livelihoods and dignified life to the Dalits in the Indian villages. In the context of large scale slum demolitions, the role of state as a neutral agency faces severe criticism across the ranks, since the state agencies does these demolitions unpublicized, unplanned and using heavy violence and without respecting any dialogical practices in a democratic system.

126) Urban Dalits' identity formation on the basis of different strategies of resistance has been highlighted in various studies⁴³. Few urban studies have established that marginalization was common in meaning to all Dalits across the country and that the urban experience is different from the rural in terms of agencies of oppression. Dalit youths and activists were mostly critical of the 'upper caste' social behaviour in the slums and accused that while the police unduly hold the Dalits responsible for offences; their attitude to upper caste people was entirely different. In some places the men folk were restricting the movement (sometimes not allowing girls to go to school) fearing the rising cases of kidnapping of women. Men in the slums in this social reality act as protective insiders to secure the dignity and safety of the women by restricting their movements.

Article 13 and 14: Right to Education

Right to Education for Dalit Children

127) The Constitution of India clearly embodies several significant pledges to promote the rights of children. This was affirmed further by the National Policy for Children, 1974. Eighty Sixth Amendment of the Constitution, 2002 promises free and compulsory elementary education of good quality of eight years for every child of the age group of 6-14 years as Fundamental Right.

State Provisions of Education for Dalit Children

128) State provision of education for SC and ST are contained in Articles 15 (4), 45 and 46 of the Indian Constitution. Article 15 (4) underscores the states' basic commitment to positive discrimination in favour of the socially and educationally backward classes and or SC/ST. Art. 45 declares that the states' endeavour to

⁴² Bijulal, M.V, *City Slum and the Marginalised: Dalits and Muslims in Delhi Slums*, Indian Social Institute, New Delhi, 2004

⁴³ S. Anandi, *Contending Identities: Dalits and Secular Politics in Madras Slums*, Indian Social Institute, New Delhi, 1995

provide free and compulsory education for all children until they complete the age of 14 years. Art 46 expresses the specific aim to promote with special care the educational and economic interests of SC/ST.

Dalit Children Population

129) According to census 2001 the country had a child population of 205 million in the age group of 6 to 14. Of these children the number of Dalit children in the same age group is 35.6 million, about one in every six children.

National Drop-Out Rate of Dalit Children

130) The enrolment of Dalit children has increased over the years, revealing the increased interest in education and mobility. "Enrolment of SC and ST boys and girls at primary stage has reached an astonishing 92% during 1999-2000".⁴⁴ But the real problem is an alarming drop-out rate among Dalit students. The national drop-out rate among Dalit children is 36.6 % at primary, 59.4 % at middle and 73.1 % at secondary level of education.⁴⁵

Sarva Shiksha Abhiyan (Education for All Campaign)⁴⁶

131) The Sarva Shiksha Abhiyan has special focus on the educational development of children belonging to Scheduled Castes and Scheduled Tribes. Every activity under the project must identify the benefits that will accrue to children from these communities. Incentives in the programme will have a sharper focus on children from these communities. The participation of Dalits and Adivasi in the affairs of the school will be especially encouraged to ensure ownership. Unfortunately, the programme could not achieve the expected results in the past in terms of education of Dalit Children because of deep-rooted discriminatory practices at various levels.

132) Some excerpts from the latest survey on "Out of School" are given here to highlight present status of drop out rates in the context of SSA⁴⁷. Universalisation of elementary education through the Sarva Shiksha Abhiyan has not percolated to the marginal social groups (SCs/STs/OBCs and Muslims) and a sizeable section (nearly 40%) of disabled children. Besides, the maximum overall dropout rate (20%) is after the completion of class V.

133) In an exhaustive survey, based on data collected from 87,874 households and conducted by IMRB and commissioned by HRD ministry, it has been found that nearly 7% of children in the age group of 6-13 are out of school.

134) In real terms, this means that 1.34 crore out of 19.4 crore children in this age

⁴⁴ *Report, National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1999-2000 & 2000-2001, pp. 151-183

⁴⁵ *Ibid.* p. 177

⁴⁶ "Sarva Shiksha Abhiyan", *Ministry of Human Resource Development*, Dept. of Elementary Education & Literacy, Government of India.

⁴⁷ Akshaya Mukul, "Sarva Shiksha Gains not Universal", *Times of India*, New Delhi, 27 January, 2006

category have not been to school. Though among all social groups the estimated percentage of children out of school is higher in rural areas compared to urban areas, Muslims top the list in both the settings at close to 10%. 'Other' category comprising upper castes and the well heeled has the least number (nearly 4%) of out-of-school children.

135) Among SCs, while the national average of out-of-school children is 8.17%, states like Delhi (nearly 26%), Jharkhand, Bihar (both over 21%), Nagaland and Chhattisgarh and a few others have contributed to this mess in a big way.

Discrimination by Teachers

136) Caste prejudices doggedly persist even in our modern settings. Teachers have been found to maintain discriminatory attitudes and practices that underlie caste relations in society. B. K. Anitha's study in Karnataka revealed that Dalit pupils were called 'kadu-jana' (forest people) who would not learn without being beaten.⁴⁸ In their study in Rajasthan, Jabbi and Rajyalakshmi found that fear of teachers and corporal punishments are factors that parents (especially of Dalit Children) cite as constraining regular school attendance.⁴⁹

Dalits and Higher Education

137) As far as higher education is concerned, the enrollment of Dalit students at the graduate, post-graduate, and professional/Ph.D research levels was abysmally low. By 2001, 3.4% of the Dalit men over the age of 15 and only 1% of the Dalit women over the age of 15 had a post-secondary education of any kind. For Dalit men this was less than half of the percentage of non-Dalit men, while the Dalit women's percentage was less than a quarter of the percentage of non-Dalit women. Despite the steady growth in higher-level educational infrastructure since Independence, the National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs) stated in its report for 1996-97 and 1997-98 that "it has been observed that the enrolment of the SC and ST in general, technical and non technical is not satisfactory. This situation is alarming in technical and professional courses where most of the SC\ST seats remain unfilled." Many universities do not even follow the University Grant Commission (UGC) guidelines regarding both the relaxation of admission standards and the facilities to be provided to the SC&ST students. In the same report, the National Commission indicated how important it was that the universities and professional institutions strictly follow the various guidelines, which the UGC has issued from time to time.⁵⁰

138) The National Commission for Scheduled Castes and Scheduled Tribes in its last report observed that fifty-seven years of freedom is an occasion for some serious introspection, especially with regard to the mass education sector. In spite of a

⁴⁸ B.K. Anitha, *Village, Caste and Education*, Rawat Publications, Jaipur, 2000

⁴⁹ Mona Jabbi and C Rajyalakshmi, "Education of Marginalized Social Groups in Bihar", in A Vaidynathan and P R Gopinathan Nair (Eds.) *Elementary Education in Rural India: A Grassroots View*, Sage Publication, New Delhi, 2001.

⁵⁰ Umakant, "Dalits and Education", *Dalit International Newsletter*, June 2006

commendable expansion of facilities, the curse of illiteracy and deprivation has not been wiped out. Although the participation of Dalits has improved in the last five decades, their unequal development in a hierarchical social order continues to be reflected in the indicators of the educational status of various communities. That the educational status of non-Dalits has progressed at a faster pace than the Dalits' status, clearly shows the bias of the planners and implementers in bypassing the various policy guidelines framed for purpose of giving an impetus to improving the educational status of the weaker sections of Indian society.⁵¹

Dalits and Curriculum

- 139) Education is an important mean of reducing ignorance and inequality in society. It helps the individual to raise his/her social status in various ways. Knowledge, skills, values, and attitudes acquired through education help one to lead a desired quality of life. Knowledge must be made available to all. As Dr. Ambedkar, the great Dalit leader and chief architect of the Indian Constitution had said, "In the complex world man lives at his peril and he must find his way in it without losing his freedom. There can, under these circumstances, be no freedom that is worthwhile unless the mind is trained to use its freedom. Deprive a man of knowledge and you will make him inevitably the slave of those more fortunate than himself . . . deprivation of knowledge is denial of the power to use liberty for great ends. An ignorant man may be free . . . but he cannot employ his freedom so as to give him assurance of happiness"⁵².
- 140) It is in this context that curriculum gains an important place in the over all policy framework for providing education to all which could lead to acquire the knowledge, skills and a sense of equity and also develop the scientific temper. The exercise for designing the National Curriculum Framework (NCF) was initiated around the year 1998 and then again in July 2004 to develop the National Curriculum Framework 2005. The second initiative was basically taken to remove the distortions which had been made part of the Curriculum Framework released in the year 2000. It is important in this regard to look at these initiatives in an unbiased way and assess whether the new initiatives could lead to creation of egalitarianism and also develop scientific temper.
- 141) Curricular and pedagogic concerns in the NCF, however, fail to be adequately informed by an understanding of the specific context of educational deprivation, particularly where the economically and socially vulnerable communities such as Dalits and Adivasis are concerned. For instance, it is important to recognize that these communities were historically deprived of education because of the position of Dalits as untouchables in the caste system that these factors may continue to be relevant to the educational experiences of these communities today has largely been ignored.⁵³

⁵¹ *Report of National Commission for Scheduled Castes and Scheduled Tribes*, Government of India, New Delhi, 1999-2000 & 2000-2001

⁵² B.R. Ambedkar, *Writings and Speeches*, Vol. 3, Government of Maharashtra, Mumbai, 1987, p. 39

⁵³ Geetha B Nambissan, "Dealing with Deprivation", *Seminar*, Issue, 493, 2000

- 142)The transaction of the conventional curriculum in rural schools is a far cry from one that 'encourages exploration, problem-solving... participatory... interactive group learning...' and so on (NCERT, 2000:11). A recent study by Bodh (DPEP, 1999) of schools in villages of Madhya Pradesh and Rajasthan (a number of them predominantly inhabited by lower castes and Adivasis) reveals that curriculum transaction continues to be primarily textbook based, directed by the teacher and dominated by rote learning. The boundaries between school and community knowledge are rigidly drawn with the textbook serving as the only source of 'legitimate knowledge'. Teachers rarely relate to the knowledge base of children.⁵⁴
- 143)The authority of teacher is unquestioned and children usually ask no questions even to clarify their doubts. Children listen to the teacher, copy lessons, memorize them and answer questions (DPEP, 1999). In single and two teacher schools that predominate in the more backward regions, the situation is compounded as teachers are confronted with teaching children of many grades together, a situation that their training least prepares them for. They evolve their own coping strategies such as huddling children of two or more grades into one classroom, keeping pupils busy with writing work, and using punishment to maintain discipline. Learning becomes a casualty in the process.⁵⁵
- 144)The NCF 2000 drew sharp criticism and many saw it as an attempt to destroy the secular fabric of the nation. The NCF 2005 was aimed at detoxifying the textbooks and at the same time to inculcate the principles of justice, social, economic and political, liberty, equality of status and of opportunity. But so far all the intended goals have not been operationalised on the ground. The NCF 2005 is confused, with no direction and systematic approach. It avoids the harsh reality on the ground and the ideological erosion that outfits and organizations that are antithetical to the Indian Constitution have successfully made over the past two decades that was also the periods when the Indian state chose to withdraw from its basic constitutional mandate of providing good quality, free and compulsory education to all. What can the NCF 2005 do to ensure equity in access across class, caste community and gender of a curricular framework? The error in fundamentals in the NCF 2005 apart from those outlines above also mean that inequities due to caste, class, community and gender are not treated as violations of basic human rights and dignity but cloaked in syrupy phrases such as minority sensibilities etc. This is downright dangerous for a rational national curriculum. For instance in the five major concerns outlined in the forward to the NCF 2005 (pg vi) not one reflects the non-negotiable Constitutional right of every Indian to have access to quality education based on the principles of egalitarianism, non-discrimination and therefore, democracy. The distinct approach that hopes to convert itself into national policy appears to be to offer the disadvantaged poorest of India's poor sops and comforts but not the basis inalienable right to a good, free and quality education.⁵⁶

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Teesta Setalvad's Address to Central Advisory Board on Education, September 8, 2005, *The South Asian*, a web portal, September 8, 2005.

145) Official curriculum barely acknowledges the existence of Dalit and Adivasi communities, despite the fact that they form a significant proportion of the population especially at the district and local level in many states in the country (Kumar, 1989). On the other hand, these communities, when represented in the textbook, are portrayed largely in subservient roles in accordance with what is perceived as their traditionally low position in the social hierarchy (ibid; Nambissan, 1996 and 2000). Recent writings of Dalit intellectuals have also emphasized that the content of school knowledge excludes the culture and experiences of lower castes and Dalits and hence is alien to them. Referring to the richness and diversity of languages and experiences among producing communities by virtue of their being structured and rooted in the production process, Ilaiah observes that the linguistic skills or knowledge of the lower castes have no place in the education system (1996:56).⁵⁷

146) How could one go from here especially with a focus on equity and justice? This is a question that must be answered if the egalitarianism and other noble goals as set in our Constitution are to be realized in actual practice and made available to all.

Cultural Barriers in Access to Education

147) The dominant culture of discrimination and exclusion as prevalent in society is also reflected in having access to education by Dalits. Dalit families usually live in spatially segregated clusters or habitations that are located at a distance from dominant caste habitations within the larger village set-up. This residential pattern has important implications for physical and social access to education, implications which are usually ignored in favour of other considerations when attempts are made to meet qualitative targets vis-à-vis school expansion. Given the fact that norms of purity and pollution still govern social norms and relations in rural areas, it becomes essential to understand whether schools are socially accessible to Dalit children when the schools are located at traditionally prescribed distances from Dalit habitations. In many habitations the school is situated in localities inhabited by dominant castes, who are not only hostile to students belonging to lower castes or minority groups but also prevent their having physical access to the school. Putting the relationship between caste status and educational access into perspective, it has been observed that there are conditions in which the right to education for members of the socially marginal and low ranked caste members remains contested. Members of the high-ranked caste groups and the dominant actors of the village often see education for the working and labouring castes as both a waste and a threat. The popular perception is that members of castes ranked low in the caste hierarchy are incapable of being educated, and, if educated, pose a threat to village hierarchies and power relations. A study done in 1998 (People's Report on Basic Education: PROBE) highlighted the continuing caste discrimination in the heart of Delhi, where some teachers go so far as to pass on disparaging remarks about the accessibility of government schools to Dalit children. As one of them bluntly put it: "What is the point of teaching Dalit children? Just teach them how to beat drums, that is good enough."⁵⁸

⁵⁷ Geetha B Nambissan, op.cit

⁵⁸ Umakant, "Dalits and Education", *Dalit International Newsletter*, June 2006, p. 10

148) Studies of education and caste show that Dalits are less likely to send children to schools. The influence of caste on school enrolment encompasses both sociological factors such as the role of cultural norms, and historical influences such as colonial and post-colonial policy towards education in India. Collectively, these non-economic factors might exert an important role on current schooling decisions, even after controlling for the economic factors that affects them. A recent study revealed that while there was a latent demand for education among Dalits, which was almost as strong as the Hindu demand, enrolment rates for children from this community were lower than that for Hindus because Dalits were not as well-endowed as Hindus with “enrolment-friendly” factors. In conjunction, the physical and psychological disincentives that inhibit Dalit school enrolment needs also to be both recognised and eliminated. Discrimination in schools against Dalit children is an important disincentive for these children to enroll at school.⁵⁹

149) It is also important that sending children to school depends on attitudes towards education: of the children; of their parents; and of their wider communities. But an equally important finding is that the size of the religion or caste effect depends upon non-community circumstances in which children are placed. Under favourable circumstances, the size of community effect is negligible. Under less-favourable circumstances however, the size of the community effect is considerable. In summary therefore Vidya, Veda and Varna are profoundly and fundamentally inter-linked. While economic and regional factors may mediate their interactions, recognition of these inter-linkages has significant implications for education policy in particular, and more widely, for development policy in India.⁶⁰

Recommendations

Options for Interventions

The interventions that need to be addressed must include:

1. Recognition of ‘caste-based untouchability’ as the basis for exclusion, discrimination, disabilities, deprivation and violence
2. Reparation for historical and ongoing exclusion and deprivation

Committee on Elimination of Racial Discrimination (CERD)’s General Recommendation No XXIX should form the basis of National Principles of Governance by the State Party. However specific attention could be drawn on the following to adequately address the Economic, Social and Cultural Rights:

1. Resolutely implement legislation and other measures already in force;
2. Educate the general public on the importance of affirmative action programmes

⁵⁹ Vani K Borooah and Sriya Iyer, Vidya, Veda, and Varna, “The influence of Religion and Caste on Education in Rural India”, *The Journal of Development Studies*, Vol. 41, 2005, p. 1369-1404

⁶⁰ Ibid

- to address the situation of victims of descent-based discrimination;
3. Conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of descent-based communities, including a gender perspective;
 4. 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;
 5. 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;
 6. Provide disaggregated data for the situation of women affected by descent-based discrimination;
 7. Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment;
 8. 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;
 9. Organize training programmes for public officials and law enforcement agencies with a view to preventing injustices based on prejudice against descent-based communities;
 10. Take substantial and effective measures to eradicate poverty among descent-based communities and combat their social exclusion or marginalization;
 11. Work with intergovernmental organizations, including international financial institutions, to ensure that development or assistance projects which they support take into account the economic and social situation of members of descent-based communities;
 12. Take special measures to promote the employment of members of affected communities in the public and private sectors;
 13. Develop or refine legislation and practice specifically prohibiting all discriminatory practices based on descent in employment and the labour market;
 14. Take measures against public bodies, private companies and other associations that investigate the descent background of applicants for employment;
 15. Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities;
 16. Ensure equal access to health care and social security services for members of descent-based communities;
 17. Take measures to address the special vulnerability of children of descent-based communities to exploitative child labour;
 18. Take resolute measures to eliminate debt bondage and degrading conditions of labour associated with descent-based discrimination;
 19. Reduce school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls;
 20. Combat discrimination by public or private bodies and any harassment of students who are members of descent-based communities;

Other UN Bodies

21. The efforts taken by the UN Sub-commission to study descent based discrimination practices as in Caste and the recognition accorded in ICERD need to be extended to other UN covenants like – ICCPR, ICESCR, CEDAW and CRC.
22. The UN agencies working in India (UNDP, UNICEF, UNIFEM, WHO, ILO) should incorporate CERD General Recommendation XXIX into Country Strategy Programmes.
23. The UN agencies working in India should establish mechanisms to work with Dalit organisations, CBOs, academics and other professionals to reach out to Dalit communities in their programmes with particular reference to Millennium Development Goals.
24. UN agencies working in India should implement affirmative action measures in order to proportionately employ Dalits including women in all development agencies.
25. Ensure that caste and gender desegregated data is collected on the impact of all current programmes and develop social, economic, educational and health programmes and strategies that ensure non-discrimination and social inclusion.
26. All UN agencies working in India should incorporate an analysis of caste into poverty reduction and disaster response strategies, pay particular attention to caste discrimination, disabilities and violence and develop specific strategies and programmes to curb discrimination and violence, support Dalit empowerment and facilitate education and awareness on diversity and multi/inter-culturalism.
27. ILO should conduct a thorough analysis of the impact of caste discrimination on labour and should work with social partners and develop specific plan of action to address and eradicate caste based discrimination in the labour force, forced and bonded labour and child labour including gender analysis.

National Commissions

28. Expand the Constitutional mandate to the National Commission for Scheduled Castes and National Commission for Safai Karmacharis to ensure that their recommendations become binding on Union or States governments, Public Sector Units, Financial Institutions, and they have powers to undertake corrective measures, including action taking on erring officials is vested in them⁶¹.
29. Ensure that the Commissions present substantive annual reports and the Government place them before the Parliament within three months for discussion and action.
30. Ensure that all States, Ministries and Departments follow up recommendations of the Commissions and action-taken reports are submitted to the Parliament or respective bodies within six months.

⁶¹ The National Commission for SC/ST has made these recommendations in their many reports to the government.

31. Support and facilitate the National Human Rights Commission and National Commission for Women to incorporate analysis of caste discrimination and disabilities and take necessary additional steps to support Dalit women and communities in ensuring and accessing their rights and entitlements.

Union/ State Governments Bodies

Legislative

32. Amend Art. 21 of the Constitution of India to include the following rights to all citizens, with special emphasis on Dalits and tribals on the basis of low income; the right to a standard of living adequate for the health and well being of women and men equally, including food, safe drinking water, clothing, housing, public health and medical care, social security and social services, the right to living wage and the right to 5 acres of cultivable land or to gainful employment.
33. Ensure land and livelihood rights of Dalits living in scheduled areas in the Forest Bill.
34. Ensure Constitutional safeguards to Dalits who have converted to Christianity and Islam by providing them Scheduled Caste status as it has been done in the case of Dalits who became Sikhs or those who converted to Buddhism.
35. There should be proportionate increase in the Reservation Policy after taking into account the increased population of Dalits covering all religions.
36. There should be a Central Act of Reservation and should be provided enough safeguards by placing it in the IXth Schedule of Indian Constitution.

Executive

37. Organize periodic sensitization and exposure programmes to all members of the executive on untouchability, caste based discrimination and disabilities drawing resource persons from Dalit communities to share experiences and bottlenecks and progressive developments and best practices in diversity and multicultural principles and programmes.
38. Take up confidence building measures among Dalits and other communities on Constitutional values and principles, government institutions and implementation through frequent interaction and visit to Dalit communities, proactive and prompt response in times of discrimination and conflict and immediate relief and adequate rehabilitation.
39. Ensure that the local bodies, district administration as well as state and ministries develop comprehensive mechanisms and programmes for enhancing for mandatory and increased access and availing of development programmes by Dalits.

Special Legislations

40. Enforce with stringent measures the Bonded Labour System (Abolition) Act, 1976 and ensure immediate release and sufficient rehabilitation package to victims to prevent their lapse into the system.
41. Ensure the implementation of Minimum Wages act, Equal Remuneration Act, Land Reforms Act without any grounds for Caste based Discrimination.
42. Immediately and urgently release and rehabilitate all members involved in the work of manual scavenging providing alternate and sustainable livelihoods and employment and development programmes for the victims as well as their families and prosecute all violators and perpetrators of the dehumanizing

- practice.
43. Extend the Devadasi System Abolition Acts to cover the practice in any part of the country and ensure the abolition of the system with immediate effect and provide relief and rehabilitation to victims and livelihood and development programmes for their families.

Earnest Implementation of Special Component Plan (SCP)

44. The mandated 16% (according to the proportion of Scheduled Castes to the total population of the country) of the budget must be allocated and spent strictly for the direct development of the scheduled castes by all ministries and departments at the central and state levels.
45. Any unspent money under SCP must be allowed to carry over and not be diverted or lapsed in the following year.
46. The social welfare department should be made the nodal department with full autonomy in the policy, planning, and implementation of the SCP as is being done in the state of Maharashtra.
47. Union government should ensure that states come up with a need-based plan for the SCP before the release of budgets.

Protect Rights of Dalit Children

48. Ensure strict enforcement of Child Labour (Prohibition and Regulation) Act, 1986, with comprehensive measures to enumerate disaggregated data, and special vulnerability of Dalit children.
49. Implement focused measures to arrest child labour among Dalit children - disaggregated data on Dalit children in child labour, inspection and rescue of children in hazardous industries, Special measures to protect the vulnerability of Dalit girl children, special development programmes for areas that provide child labour, special measures to arrest distress migration and special drives to prevent trafficking of children etc.
50. Implement compulsory, free and high quality education for all Dalit children, making adequate funds allocation proportionate to the level of illiteracy, increase the number and amount of scholarships, provide better infrastructure facilities in SC schools and hostels, and offer market oriented vocational and technical education.

Ensure Rights of Dalit Women

51. Recognize Dalit women as a distinct category among women and accordingly make disaggregated data on Dalit women available in census reports, action taken reports, and progress reports and while reporting to international treatise bodies.
52. Evolve national and state level perspective plans for mainstreaming Dalit women in developmental programmes, market enterprises, financial allocations, reservation in education and employment and health facilities.
53. Ensure proper representation of Dalit women in statutory bodies and committees, vigilance and monitoring bodies and undertake capacity building programmes to promote their active participation.

Equal Opportunity Commission

54. Set up an “**Equal Opportunities Commission**” and also to enact a separate and comprehensive “Anti-discrimination legislation” to address the issue of Untouchability, Atrocity and all other related forms of Social and Economic exclusions, discriminations and prohibitions.

Reservation

55. Extend reservation to the armed forces as has been recommended by the National Commission: “The National Commission for SCs/STs still however feels that the Government should introduce some element of reservation in Armed forces without adversely effecting the efficiency as there was no substance to challenge the competency when there were regiments like Sikh and *Mahars* known for their excellent achievements. The Commission recommends that as far as possible in direct recruitments the reservation may be introduced⁶²
56. Extend reservation to the judiciary as has been recommended by the National Commission: “The Commission reiterates its recommendations made in its earlier reports that reservation provided for in judicial appointments below the High Courts needs to be implemented to fulfill the prescribed reservation percentage. The Commission also reiterates its recommendation to consider provision of reservation in appointments of judges to the High Courts and Supreme Court of India”⁶³
57. Extend Reservation to Private sector and it 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
58. Reservation in private sector should include legal safeguards of equal opportunities and non-discrimination. It should be in proportion to population and put in place adequate monitoring mechanisms.

⁶² *NCSC/ST Seventh Report, 2001-02, New Delhi, p.65*

⁶³ *NCSC/ST Seventh Report, 2001-02, New Delhi, p.66*