

briefing

India

A Submission to the United Nations Human Rights Council Universal Periodic Review

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1. Introduction

Christian Solidarity Worldwide (CSW), a human rights organisation specialising in religious freedom, wishes to draw the attention of the OHCHR to the widespread abuses associated with the caste system in India, and the infringements of religious freedom (particularly that of the most oppressed castes) which are symptomatic of the extremist nationalist agenda of Hindutva.

CSW is persuaded that the highest levels of Indian government are taking increasingly seriously the plight of the nation's disenfranchised Dalit (Scheduled Caste) community, and the ongoing problems of religious communalism. However, the wide gulf between legislation and implementation, and the prejudicial attitudes displayed by officials at the state and local levels in many areas, give cause for continued and serious concern.

The issue of caste lies at the heart of many of India's human rights problems, including prejudicial violence, discrimination, labour exploitation and religious freedom infringements. It should be considered as the main prism through which to view and interpret these problems; and the means of addressing these problems should involve reference to caste. The hierarchical caste system continues to dominate and shape Indian society to a considerable extent, detrimentally affecting the social status, treatment and socio-economic prospects of the Scheduled Castes, or Dalits, who comprise the 'lowest' layer of the caste system and represent 16% of the total population (at least 167 million), according to official 2001 census data.

Dalits often bear the brunt of religious freedom violations in India, owing largely to proponents of Hindutva. This is an extremist nationalist manifestation of Hinduism, which encompasses a vision of India as a Hindu nation in which minorities must assimilate to and revere the Hindu religion, race and culture and which, in practice, seeks to preserve and defend the cultural hegemony of Hinduism at the expense of minority religions. Religious freedom obstructions and violations constitute a means of preventing Dalits from escaping the identity imposed upon them by caste. With specific reference to the Christian community, such religious freedom violations take the form of legislative obstacles to conversions (through state-level 'anti-conversion laws' and the loss of Scheduled Caste status and its concomitant benefits for members of this group which adopt Christianity or Islam) and social pressures which commonly erupt into violence perpetrated by Hindu extremist groups, often against Dalit converts or Christians working among Dalits. The perpetrators of such violence rarely face prosecution, leading to a damaging culture of impunity.

2. Legislative Protections against Caste-Based Abuses

Contrary to popular misunderstanding, the caste system and the observance thereof are not unconstitutional or illegal in India. However, Indian law contains detailed provisions to prohibit or abolish numerous manifestations of the caste system, including discrimination, exploitation and associated degrading forms of labour.

Article 15 of the Indian constitution prohibits discrimination on the basis of caste. Article 17 of the constitution abolishes 'untouchability', a specific symptom of the caste system. The Protection of Civil Rights Act, 1955, prescribes detailed punitive provisions for the practice of untouchability.

In addition, numerous laws exist to abolish various additional symptoms of the caste system, including the most degrading forms of labour associated with Dalits, as the lowest group in the caste hierarchy. The issue of caste-based violence against Dalits is addressed in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which prescribes measures for dealing with the particular forms of violence, humiliation and discrimination faced by Dalits and tribals.

Article 25 of the Constitution protects the right to practise and propagate a religion, while Article 15 prohibits discrimination on the basis of religion.

Several commissions have been established under Indian law, to protect the legal and constitutional rights of disenfranchised groups, including the Scheduled Castes, Backward Classes and minorities. The Protection of Human Rights Act, 1993, constituted the National Human Rights Commission (NHRC), with a remit of enquiry and limited intervention into human rights abuses. The Constitution (Sixty-Fifth) Amendment Act, 1990, established a National Commission for the Scheduled Castes and Scheduled Tribes, with a remit of monitoring the protection of these groups, enquiring into specific complaints and issuing recommendations. The Constitution (Eighty-Ninth) Amendment Act, 2003 bifurcated the Commission into the National Commission for Scheduled Castes, and a separate National Commission for Scheduled Tribes. A National Commission for Minorities was established by an Act of Parliament in 1992, to safeguard the rights of religious minorities and to make recommendations to the central or state governments. A National Commission for Backward Classes was created by a 1993 Act, to function as an advisory body pertaining to the definition of 'backward classes' other than Scheduled Castes. The relevant pieces of legislation also mandate the establishment of equivalent state-level commissions, but few have been established.

3. Themes of Caste-Based Discrimination and Exploitation

Dalits among India's majority rural population are particularly susceptible to caste-based violence and numerous forms of overt segregation and discrimination, described to a visiting CSW delegation by a Dalit activist in Nagpur as "the raw face" of caste-based discrimination. Dalits report facing discrimination not only in normal social transactions but also in their interaction with Indian officialdom; Dalits are commonly excluded from or prevented from taking up positions of influence, and there is a perception among many Dalits that discretionary authority of officials is often used to discriminate against them. The experiences of educated urban Dalits include subtler forms of discrimination, including in matters of employment and promotion.

Despite legislative prohibitions of caste-based discrimination, the implementation of these measures continues to be very poor. Dalit activists have asserted to CSW that legislative and socio-economic measures to undermine the impact of the caste system must be implemented fully, and complemented by measures to foster a changing mindset. It was also widely considered that the situation of the Dalits should become an international talking point with respect to India.

A full review of the themes of caste-based discrimination and exploitation is not possible within the bounds of this report, but several are highlighted here.

3.1. Retributive violence

Demands by Dalits to exercise their legally-protected rights are commonly met with violence. The most recently-published government statistics showed that over 26,000 crimes against Dalits were registered in 2005, including 1172 rapes and 669 murders. 8497 cases against Dalits were registered under the Prevention of Atrocities Act, 1989, a law designed to protect Dalits and tribals from the particular forms of violence, humiliation and exploitation which they face.¹ However, this is unlikely to represent the true extent of caste-related violence against Dalits: they commonly face discrimination in police stations, and pressures from more powerful members of 'higher' castes not to attempt to seek justice.

The roots of such violence often lie in caste-based divisions between Scheduled Castes and Other Backward Classes (the 'lowest' layer within the caste system) being exploited by 'higher' castes, in order to forestall political alliances between these two groups, to the detriment of their own political influence.

The culture of impunity for caste-based violence, and the failure of the police and judiciary to deal adequately with many cases is particularly concerning. The lack of convictions in the landmark case of the Khairlanji murders in September 2006, and the acquittal of police officials who dismissed the case, is emblematic of a wider pattern of failures to secure justice for victimised Dalits.

3.2. Labour exploitation and contemporary forms of slavery

Dalit activists giving testimony to CSW have asserted that a caste-based analysis of the various contemporary forms of slavery in India reveals to an overwhelming extent that the chief victims of human trafficking, bonded labour, sexual slavery and other forms of labour exploitation, are Dalits or members of 'low' castes. The implementation of laws to prevent such exploitation is extremely poor.

Human trafficking and sexual slavery are problems primarily associated with Dalits and 'low' caste groups. The majority of trafficked women are of this background.² The devadasi system provides a vehicle for institutionalised prostitution within temples, with Dalit women and minors dedicated to the temple god and subsequently serving as concubines to the priests and prostitutes for temple users.

Bonded labour is a problem which affects Dalits disproportionately; despite being banned under the Bonded Labour System (Abolition) Act, 1976, conviction rates have been low and rehabilitation programmes only partially successful, and it is widely estimated that millions of Dalits continue to be engaged in bonded labour.

Labour exploitation is a common narrative for Dalits, as a product of the system of descent-based occupations. A particularly egregious form of labour exploitation is the theoretically illegal practice of 'manual scavenging' (the manual cleaning of human excrement from dry latrines) in some parts of India, which is thought to employ at least 700,000 people.

¹ National Crime Records Bureau 2005 report: <http://ncrb.nic.in/crime2005/cii-2005/CHAP7.pdf>.

² In February 2006, Bihar-based NGO Bhoomika Vihar found in a localised survey, *Bojh*, that 98% of trafficked women were Dalits, 'low' castes and Muslims.

3.3. Discrimination

Current trends of urbanisation and increasing access to education are often portrayed as contributing towards the relaxation of caste barriers. A key indicator of the veracity of this claim is the experience of well-educated urban Dalits. However, Dalits continue to report facing patterns of discrimination in every sphere, including at all levels of education, in employment and in their career development.

4. Hindutva and Religious Freedom Abuses

The culture of impunity in India extends to infringements of religious freedom and attempts to subjugate religious minority communities. Abuses of religious freedom are symptomatic both of the ideology of Hindutva, and of attempts to counteract the relatively widespread Dalit perception, transmitted from Dr B.R. Ambedkar, that religious conversions constitute a means of escaping the identity imposed by caste. This is complicated by the fact that caste is practised, to some extent, within all religious communities in India.

Proponents of the radical nationalist ideology of Hindutva claim that Hinduism is proper to India, and religious conversions are therefore contrary to national identity. In the view of many religious minority activists, caste is a highly important factor within Hindutva, linked to a fear that the religious conversions of Dalits undermine the dominance of 'upper' castes.

Freedom of religion is infringed by legislative means: specially through religious discrimination in reservation policy and through state-level 'anti-conversion' laws. It is also threatened by religiously-motivated violence against the minority Christian and Muslim communities, which is typically committed with impunity.

4.1. Religious discrimination in reservation policy

Under current legislation, Dalits who convert to Christianity or Islam lose their Scheduled Caste status, and consequently their eligibility for the affirmative action-style system of reservation. Since caste-based discrimination continues to be practised to some extent in all religious communities, this generates social and economic penalties for those embracing Christianity and Islam. This configuration is currently being challenged through a Supreme Court case, and the government-appointed National Commission for Religious and Linguistic Minorities has recommended that Scheduled Caste status no longer be linked to religious identity. However, this has met with considerable opposition from proponents of Hindutva, including the Rashtriya Swayamsevak Sangh (RSS), and is yet to be implemented.

4.2. 'Anti-conversion' legislation ³

State-level Freedom of Religion Acts, known colloquially as 'anti-conversion' laws, are currently in force in Orissa, Madhya Pradesh, Chhattisgarh and Himachal Pradesh states. Similar laws have been passed in Arunachal Pradesh, Gujarat and Rajasthan, but are not officially implemented. 'Anti-conversion' laws are primarily associated with the Hindu nationalist Bharatiya Janata Party (BJP), although the most recent law was passed by a Congress Party administration in Himachal Pradesh.

³ For further detail, see the CSW report, 'Religious Violence and Discrimination against Christians in India (2006)', pp. 4-6.

These laws prohibit conversions by 'force', 'fraud' or 'allurement',⁴ but these categories are sufficiently loosely-defined as to threaten legitimate religious activities, including charitable and educational institutions (of which Dalits are typically among the main beneficiaries). The laws also impose administrative formalities on the process of conversions, creating a significant obstacle for would-be converts afraid of approaching potentially hostile authorities. This concern is particularly pertinent with regard to the Gujarat law, which stipulates that the prior permission of a district magistrate is required before a conversion may take place.

CSW heard testimony from Christians in Himachal Pradesh state in October 2007, in which it was claimed that the passage of the 'anti-conversion' law in the state emboldened groups espousing a Hindutva ideology (collectively known as the Sangh Parivar) to target Christian activities through threats and physical violence. The incidence of violence against Christians has begun to rise significantly in Himachal Pradesh following the introduction of an anti-conversion law.

CSW also heard testimony from Christians in Gujarat in October 2007, to the effect that although the law has not been implemented, its existence on the statute books is a source of intimidation for Christians and would-be converts unaware of the nuances of the procedure by which the legislation is introduced. There is little public awareness that the law is not enforceable.

4.3. Religiously-motivated violence ⁵

During 2007, an average of approximately four attacks per week are recorded against the small Christian minority community, usually carried out or incited by Sangh Parivar groups, chief among which is the RSS and its subsidiary organisations. This pattern of violence, which includes retributive murders, rapes, arson attacks, mob beatings and physical abuse, has continued for over a decade and is usually committed with impunity and in some cases, with clear police complicity.

It remains extremely concerning that the credible allegations of police and government complicity in the 2002 mass attacks on Muslims in Gujarat have never been satisfactorily investigated.

5. Recommendations

During this Universal Periodic Review, the OHCHR should pay particular attention to the areas of caste-based discrimination, as an interpretative tool for all major human rights abuses in India, and the religious intolerance associated with the ideology of Hindutva.

The OHCHR should assess the human rights situation in India not only on the basis of her constitutional and legislative framework, but on the chronic deficiencies in the implementation of the law. The culture of impunity for violators of human rights is especially concerning.

⁴ 'Inducement' in the Orissa law.

⁵ For further detail of attacks against Christians in 2006, see the CSW report, 'Religious Violence and Discrimination against Christians in India (2006)', pp. 7-40. A similar report covering 2007 will be released in January 2008. See also the US State Department 'Annual Report on International Religious Freedom 2007'.

The OHCHR should strongly encourage India to engage fully with the recommendations set out in the Concluding Observations of the UN Committee for the Elimination of Racial Discrimination,⁶ and to permit the UN Special Rapporteur on Freedom of Religion or Belief free and full access to victims of religious freedom abuses during the course of her scheduled upcoming visit.

⁶ CERD/C/IND/CO/19.