

# THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

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### ENTRENCHED DISCRIMINATION – THE CASE OF INDIA’S ‘UNTOUCHABLES’

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1. More than one-sixth of India’s population, some 160 million people, live a precarious existence, shunned by much of society because of their rank as “untouchables” or Dalits—literally meaning “broken” people—at the bottom of India’s caste system. Dalits are discriminated against, denied access to land, forced to work in degrading conditions, and routinely abused at the hands of the police and of higher-caste groups that enjoy the state’s protection. In what has been called India’s “hidden apartheid,” entire villages in many Indian states remain completely segregated by caste. National legislation and constitutional protections serve only to mask the social realities of discrimination and violence faced by those living below the “pollution line.”
2. For most of the world caste remains an ancient cultural artefact and untouchability a long eradicated practice. This paper attempts to shift the debate on caste and on broader issues pertaining to socially institutionalised discrimination. It begins with a brief description of the characteristics and mechanisms of caste discrimination and a summary overview of the Indian government’s response. It then attempts to dismantle those misperceptions that have allowed the system to survive, and comments on the barriers that keep the international community from effectively intervening against a practice that relegates millions of people to a lifetime of segregation, discrimination, and violence.
3. India’s caste system is perhaps the world’s longest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complex ordering of social groups on the basis of ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time. Differences in status are traditionally justified by the religious doctrine of *karma*, a belief that one’s place in life is determined by one’s deeds in previous lifetimes. Traditional scholarship has described this more than 2,000-year-old system within the context of the four principal *varnas*, or large caste categories. In order of precedence these are the Brahmins (priests and teachers), the Kshatriyas (rulers and soldiers), the Vaisyas (merchants and traders), and the Shudras (labourers and artisans). A fifth category falls outside the varna system and consists of those known as “untouchables” or Dalits; they are often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.

4. Within the four principal castes, there are thousands of sub-castes, also called *jatis*; endogamous groups that are further divided along occupational, sectarian, regional, and linguistic lines. Collectively all of these are sometimes referred to as “caste Hindus” or those falling within the caste system. The Dalits are described as *varna-sankara*: they are “outside the system”— so inferior to other castes that they are deemed polluting and therefore “untouchable.” Even as outcasts, they themselves are divided into further sub-castes and practice untouchability against those ranked below; the discrimination is wholly internalised. Although “untouchability” was abolished under Article 17 of the Indian constitution, the practice continues to determine the socio-economic and religious standing of those at the bottom of the caste hierarchy. Whereas the first four varnas are free to choose and change their occupation, Dalits have generally been confined to the occupational structures into which they are born.
5. With little land of their own to cultivate, Dalit men, women, and children numbering in the tens of millions work as agricultural labourers for a few kilograms of rice or less than US\$1 a day. Most live on the brink of destitution, barely able to feed their families and unable to send their children to school or break away from cycles of debt bondage that are passed on from generation to generation. At the end of day they return to a hut in their Dalit colony with no electricity, kilometres away from the nearest water source, and segregated from all non-Dalits, known as caste Hindus. They are forbidden by caste Hindus to enter places of worship, to draw water from public wells, or to wear shoes in caste Hindu presence. They are made to dig the village graves, dispose of dead animals, clean human waste with their bare hands, and to wash and use separate tea tumblers at neighbourhood tea stalls, all because — due to their caste status — they are deemed polluting and therefore untouchable.
6. In November 1999, after a cyclone slammed into the eastern state of Orissa, killing thousands and rendering millions homeless, the government brought in 200 Dalit manual scavengers from New Delhi, and planned to bring 500 more from other parts of Orissa, to load animal carcasses onto hand-drawn carts and take them away to be burned. Government officials had offered local upper-caste residents more than the daily minimum wage for each animal burned but they refused citing the decayed conditions of the carcasses and the fact that the task was beneath them: they had “some self-respect left.” Even in times of natural disaster, the laws of purity and pollution prevail and the government moves quickly to accommodate the prejudice. At all levels, and under all circumstances, the discrimination is institutionalised.
7. Dalit women face the triple burden of caste, class, and gender. Dalit girls have been forced to become prostitutes for upper-caste patrons and village priests. Sexual abuse and other forms of violence against women are used by landlords and the police to inflict political “lessons” and crush dissent within the community. According to a Tamil Nadu state government official, the raping of Dalit women exposes the hypocrisy of the caste system as “no one practices untouchability when it comes to sex.” Like other Indian women whose relatives are sought by the police, Dalit women have also been arrested and tortured in custody as a means of punishing their male relatives who are hiding from the authorities.
8. Any attempt to defy the social order is met with physical or economic retaliation. According to the most recent figures available, between 1994 and 1996 a total of 98,349 cases were registered with the police nationwide as crimes and atrocities against Dalits. Given that Dalits are both reluctant and unable (for lack of police co-operation) to report crimes against themselves, the actual number of abuses is presumably much higher. Whether the clashes are social, economic, or political in nature, they are premised on the same basic principle: any attempt to alter village customs or to demand land, increased wages, or political rights sets off a chain of events and leads to social boycotts and acts of retaliatory violence on the part of those most threatened by changes in the status quo. Dalit communities as a whole are summarily punished for individual

transgressions; Dalits are cut off from their land and employment, women endure physical attacks, and letter of the law is rarely enforced.

9. Most of the conflicts take place within very narrow segments of the caste hierarchy, between the poor and the not so poor, the landless labourer and the marginal landowner. The differences lie in the considerable amount of leverage that the higher-caste Hindus or non-Dalits are able to wield over local police, district administrations, and even the state government. A theme that is almost universal in its application, it illustrates a crucial aspect of identity politics: one's identity as a person belonging to a certain caste is perceived not only by one's absolute rank but also by the relative treatment meted out to communities that are ranked below.
10. Building on constitutional provisions, the government of India has pursued a two-pronged approach to narrowing the gap between the socio-economic status of the Dalit population and the national average. The first approach involves regulatory measures designed to ensure that relevant legal provisions are adequately implemented, enforced, and monitored; the second focuses on increasing the self-sufficiency of the Dalit population through financial assistance for self-employment activities and through development programs to increase education and skills.
11. The protective component of this two-pronged strategy includes the implementation of legal provisions contained in state and central government legislation, and reservations or quotas in the arenas of government employment and higher education. India's policy of reservations is an attempt by the central government to remedy past injustices related to low-caste status. To allow for proportional representation in certain state and federal institutions, the constitution reserves 22.5 percent of seats in federal government jobs, state legislatures, the lower house of parliament, and educational institutions for scheduled castes and scheduled tribes.<sup>1</sup> Though some have benefited the reservation policy has not been successfully implemented and has yet to achieve its desired effect. Moreover, most of the landless and illiterate Dalits in the country are not in a position to avail themselves of any of their constitutional privileges. Controversy over the reservations scheme has also allowed the debate to predictably stagnate around the distribution of privilege, taking the focus away from violations of basic rights.
12. India's policy of economic liberalisation is also having an effect on Dalits and their livelihood. As the public sector shrinks due to privatisation, the reservations model is affecting — and able to assist — fewer people, inasmuch as government-related jobs are being drastically reduced. Globalisation has also led to coastal lands increasingly being acquired by multinationals (via the central government) for aquaculture projects. Dalits are the main labourers and tenants of coastal land areas and are increasingly being forced to leave these areas—to live as displaced people, for the most part—as foreign investment rises.
13. The persistence of caste-based prejudices and the denial of access to land, education, and political power have all contributed to an atmosphere of increasing intolerance. Violence against Dalits, which has steadily climbed since 1994, is only the most extreme form of that intolerance. In 1989 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted to prevent and punish caste-based abuses, to establish special courts for the trial of such offences, and to provide for victim relief and rehabilitation. Its enactment represented an acknowledgement on the part of the government that abuses, in their most degrading and violent forms, were still perpetrated against Dalits decades after independence.

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<sup>1</sup> The term “scheduled castes,” by which Dalits are also called, refers to a list of socially deprived (“untouchable”) castes prepared by the British Government in 1935. The schedule of castes was intended to increase representation of scheduled-caste members in the legislature, in government employment, and in university placement. The term is also used in the constitution and various laws. The term “scheduled tribes” refers to a list of indigenous tribal populations who are entitled to much of the same compensatory treatment as scheduled castes.

14. A look at the offences made punishable by the act provides a glimpse into the retaliatory or customarily degrading treatment Dalits may receive. They include forcing members of a scheduled caste or scheduled tribe to drink or eat any inedible or obnoxious substance; dumping excreta, waste matter, carcasses or any other obnoxious substance in their premises or neighbourhood; forcibly removing clothes and parading them naked or with painted face or body; interfering with their rights to land; compelling a member of a scheduled caste or scheduled tribe into forms of forced or bonded labour; corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by scheduled castes or scheduled tribes; denying right of passage to a place of public resort; and using a position of dominance to exploit a scheduled caste or scheduled tribe woman sexually.
15. The potential of the law to bring about social change has been hampered by institutional prejudice and police corruption, with the result that many offences are not registered. Ignorance of procedures or a lack of knowledge of the act itself has also affected implementation. Even when cases are registered, the absence of special courts to try them can delay prosecutions for up to three to four years. Some state governments dominated by higher castes have even attempted to repeal the legislation altogether. Much like other “social welfare” legislation in India, the act remains a paper tiger with little actual effect.
16. The existence of constitutionally mandated quotas and a large body of legislation and administrative agency mandates assigned exclusively to deal with the plight of Dalits is held up by the government as a panacea to problems of discrimination. These so-called remedies have also shifted attention away from the institutional nature of caste prejudice. It would be difficult to convince the Dalits of Dholapur district, Rajasthan, that after over fifty years of independence, government intervention had made a difference. In April 1998, a Dalit of the area was assaulted by an upper-caste family who forcibly pierced his nostril, drew a string through his nose, paraded him around the village, and tied him to a cattle post — all because he refused to sell *bidis* (hand-rolled cigarettes) on credit to the nephew of the upper-caste village chief. The message sent from the judiciary on caste discrimination is equally grim: in July 1998 in the state of Uttar Pradesh, an Allahabad High Court judge had his chambers “purified with Ganga *jal*” (water from the River Ganges), because it had earlier been occupied by a Dalit judge.
17. India’s distinction as the “world’s largest democracy” also helps to mask the abuses. For Dalits throughout the country who suffer from de facto disenfranchisement, democracy has not been a self-fulfilling prophecy. During elections, those unpersuaded by typical electioneering are routinely threatened and beaten by political party strongmen in order to compel them to vote for certain candidates. Already under the thumb of local landlords and police officials, Dalit villagers who do not comply have been murdered, beaten, and harassed. Dalits who have contested political office in village councils and municipalities through seats that have been constitutionally “reserved” for them have been threatened with physical abuse and even death in order to get them to withdraw from the campaign. In Tamil Nadu in June 1997, a newly elected Dalit village council president was beheaded by caste Hindus displaced from their once secure elected positions. In 1999, a Dalit woman from Uttar Pradesh considered contesting elections. She was gang-raped and subsequently beaten and murdered as a lesson to other villagers not to disturb the status quo. As with most cases of violence against Dalits, the culprits have yet to be convicted.
18. Political mobilisation that has resulted in the emergence of powerful interest groups and political parties among middle- and low-caste groups throughout India since the mid-1980s has also largely bypassed Dalits. Dalits are courted by all political parties but generally forgotten once elections are over. The expanding power base of low-caste political parties, the election of low-caste chief ministers to state governments, and even the appointment of a Dalit as president of India in July 1997 all signal the increasing prominence of Dalits in the political landscape but

cumulatively have yet to yield any significant benefit for the majority of Dalits. Laws on land reform and protection for Dalits remain unimplemented in most of India's twenty-five states.

19. Political parties have frequently fashioned their manifestos and campaign slogans around the need for "upliftment" of these marginalised sectors, while political leaders, mostly drawn from higher castes, offer the promise of equal status and equal rights. However, the laws have benefited very few and, due to a lack of political will, development programs and welfare projects designed to improve economic conditions for Dalits have generally had little effect. Dalits rarely break free from bondage or economic exploitation by upper-caste landowners.
20. Equally insidious, though not as apparent, is the fact that Dalits are denied their place in the public consciousness. The plight of India's "untouchables" elicits only sporadic attention within the country. Public outrage over large-scale incidents of violence or particularly egregious examples of discrimination fades quickly, and the state is under little pressure to undertake more meaningful reforms. Despite ambitious calls for action by central and state governments in the aftermath publicity of massacres and police raids, the Indian authorities have shown little commitment to resolving the root causes of caste conflicts. Society as a whole has turned a blind eye to the institutional character of caste-based abuse and discrimination. Laws are openly flouted, police allegiance is routinely up for sale, and society continues to sanction what the legislature defines as crimes. In the eastern state of Bihar, for example, the first person to be convicted under a decades-old law combating child labour was in 1998.
21. A loss of faith in the state machinery and increasing intolerance of their abusive treatment has led many Dalit communities into organised movements to claim their rights. In response, state and private actors have engaged in a pattern of repression to preserve the status quo. Unable to find sustainable alliances within, and in an effort to counter their invisibility at home, Dalit movements have from time to time turned outward to look for parallels in struggles abroad. During the 1970s, for example, the Dalit Panthers emerged outside the framework of recognised political parties and aligned themselves ideologically to the Black Panther movement in the United States. During the same period, Dalit literature, painting, and theatre challenged the very premise and nature of established art forms and their depiction of society and religion. Many of these new Dalit artists formed the first generation of the Dalit Panther movement that sought to wage an organised struggle against the varna system. Dalit Panthers visited atrocity sites, organised marches and rallies in villages, and raised slogans of direct militant action against their upper-caste aggressors.
22. The determined stance of the Dalit Panthers served to arouse and unite many Dalits, particularly Dalit youth and students. The defeat of ruling party candidates and the boycott of elections in some areas forced the government to take notice of the movement: Panther leaders were often harassed and removed from districts for speaking out against the government and Hindu religion. They also became frequent targets of police brutality and arbitrary detentions. Disagreements over the future of the movement and inclusion of other caste groups ultimately led to a dispersal of Dalit Panther leadership. The former aggressiveness and militancy of the Dalit Panthers has for the most part dissipated, though small splinter groups or groups that have adopted the name still survive.
23. In the 1960s, leftist guerrilla organisations with Marxist, Leninist, and Maoist orientations began advocating the use of violence to achieve land redistribution. By 1970, these so-called Naxalites had initiated a series of peasant uprisings to seize land, burn property records, and assassinate exploitative landlords and others identified as "class enemies" in large areas of the countryside stretching from West Bengal to the southern state of Kerala. Although the Naxalite insurgency was brought to an end in most parts of the country by a brutal police crackdown designed to eliminate the militants and their supporters, the movement continues to survive, albeit with some

splits and regroupings, in the rural areas of West Bengal, Orissa, Andhra Pradesh, and Bihar. Higher-caste landlords in Bihar have organised private militias to counter the Naxalite threat. These militias, or *senas*, also target Dalit villagers believed to be sympathetic to Naxalites. Senas are believed responsible for the murders of many hundreds of Dalits in Bihar since 1987.

24. Though offshoots of militant movements still thrive in many parts of the country, the strategy for the actualisation of rights has in the past fifteen years undergone a major shift. Beginning in the 1980s, a handful of Dalit organisations began turning to the United Nations as a possible forum for the mobilisation of international support and condemnation of caste-based abuses. However, the difficulty of slotting caste-based abuses into standard categories of human rights violations, and the prevalence of constitutional and legislative protections at the national level, has allowed these abuses to escape international scrutiny. The government of India has consistently asserted that the caste issue does not fall within the mandate of various “race”-based UNHCHR bodies. The government has also refused to allow relevant working groups and special rapporteurs to gain access to the country.
25. In turn, the response of the international community has been superficial at best. Dalit activists now find themselves struggling to overcome their invisibility abroad. Though caste identity is used as a justification for segregation and exploitation, the discrimination is so entrenched that the victims’ shared membership in lower-caste communities is often ignored by upper-caste families and international bodies alike. While the world was united in its condemnation of increasing attacks on India’s Christian community this past year, for example, it ignored a significant underlying cause: a majority of Christians in India are Dalits and tribals for whom conversion offers a partial escape from untouchability and exploitation. Conversions are therefore threatening to the social and economic status quo.
26. Like evaluating the symptoms without diagnosing the disease, most international interventions have also overlooked the fact that Dalits, numbering in the tens of millions, comprise the majority of those driven to bonded labour, manual scavenging, and forced prostitution, under conditions that violate national law and their basic human rights. Despite their mandate of reaching the “poorest of the poor,” international development institutions have yet to understand that for those at the bottom of its hierarchy, caste is a determinative factor for the attainment of social, political, civil, and economic rights.
27. Which strategies then are likely to be effective in reforming socially institutionalised discrimination? Part of the answer lies in supporting the work of grassroots Dalit and human rights activists throughout the country who for many years have assumed many state-like functions and have stepped in where the administration has failed. The second part is to involve the international community in forcing the government to remedy its failures.
28. In 1998, the National Campaign for Dalit Human Rights was born out of an initiative of grassroots Dalit activists in eight Indian states. Many of these activists were involved in the drafting of over forty recommendations to the government of India and the international community that are contained in a Human Rights Watch report on caste violence released earlier this year.<sup>2</sup> The campaign, which has since expanded to include fourteen states and eleven countries, seeks to mobilise a national coalition that operates at the grassroots level while eliciting the participation of the international community in its struggle. Still, there are other prejudices to be overcome before such participation can be ensured. Internationally, the cyclone in India received little attention in comparison to other recent tragedies of similar or lesser magnitude. Like disparities in responding to crises in Europe and Africa, the “otherness” of those most vividly affected by violence, disaster, or day-to-day deprivation, eases the decision not to

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<sup>2</sup> See Human Rights Watch, *Broken People: Caste Violence Against India’s “Untouchables”* (New York: Human Rights Watch, 1999), pp. 11-22.

respond. When the victims of attacks, even massacres, are non-Christian Dalits, the news barely breaks into international headlines.

29. Interventions on caste discrimination, if any, have been limited to inquiries regarding the mechanisms of protection offered by the state, without asking for evidence of their effective implementation (which, generally speaking, is a recurring problem in the nature of international intervention on race and ethnicity matters). The Indian government needs to place a priority on strengthening institutional mechanisms aimed at addressing issues of violence and discrimination. But it also needs the active support of — and pressure from — the United Nations, multilateral financial institutions, trading partners, and national and international non-governmental organisations to eradicate the pervasive problem of caste-based abuse. Will the international community respond or even apply the necessary pressure to stimulate domestic political will? Or will it continue to deny Dalits and others their place in the public consciousness?
30. Entrenched forms of discrimination stemming from the world's longest surviving system of social hierarchy may offer some lessons as we prepare for a global forum on modern day "racism." The first and most obvious is to look beyond race as the only arbiter of rights. The second is to look beyond democracy, affirmative action, and the existence of domestic legislation as sufficient guarantors of basic freedoms. The third is to recognise the resilience and adaptability of ancient custom to contemporary global trends. The fourth is to scrutinise the discrimination inherent in the international community's decision to act, and more importantly, in its failure to respond.