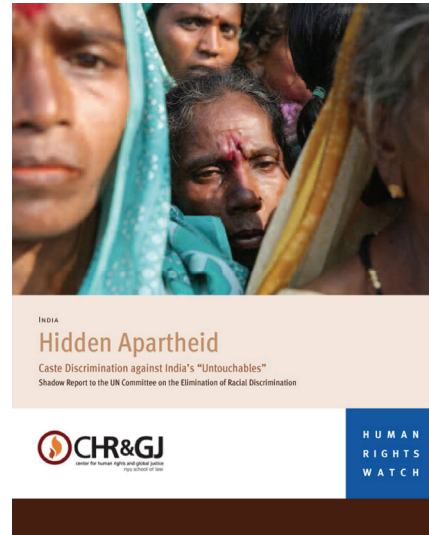


Hidden Apartheid Caste Discrimination against India's "Untouchables"

Summary

More than 165 million people in India remain vulnerable to discrimination, exploitation, and violence simply because of their caste. India's "hidden apartheid" relegates Dalits, or so-called untouchables, to a lifetime of segregation and abuse. Caste-based divisions continue to dominate in housing, marriage, employment, and general social interaction—divisions that are reinforced through economic boycotts and physical violence.



Hidden Apartheid was produced as a "shadow report" in response to India's submission to the United Nations Committee on the Elimination of Racial Discrimination ("Committee"), which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention"). The report documents India's systematic failure to respect, protect, and ensure Dalits' fundamental human rights.

Severe violations persist in access to education, health, housing, and property, and freedom of religion, free choice of employment, and equal treatment before the law. The report also documents routine violations of Dalits' right to life and security of person through state-sponsored or sanctioned acts of violence, including torture.

More than 165 million people in India continue to be subject to discrimination, exploitation, and violence simply because of their caste.

India's Obligations under the Convention

As a State Party to the Convention, India has an obligation to prohibit and bring to an end caste-based discrimination. **Article 1** of the Convention guarantees rights of non-discrimination on the basis of “race, colour, descent, or national or ethnic origin.” In 1996, the Committee concluded that the plight of Dalits falls under the prohibition of descent-based discrimination.

The Committee is a body of independent experts responsible for monitoring states’ compliance with the Convention. India’s report to the Committee was more than eight years overdue. Although it covers more than a decade of India’s compliance with the Convention (from 1996 to 2006), it does not contain a single mention of abuses against Dalits—abuses that India’s own governmental agencies have documented and verified.

Hidden Apartheid fills that gap and presents Committee members with information that is essential to a fair assessment of India’s record and, ultimately, to encouraging the government to live up to its domestic and international human rights obligations.

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

The information detailed in *Hidden Apartheid* demonstrates that India has failed to enforce its laws in violation of its obligations under **Article 2** of the Convention to **pursue by all appropriate means a policy of eliminating caste discrimination**, and to ensure that all public authorities and institutions do not engage in caste-based discrimination.

As a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination, India has an obligation to end caste-based abuses and segregation.

This failure is exemplified by police treatment of Dalits. India's National Human Rights Commission (NHRC)—a statutory government body that India describes as the apex national institution to protect human rights and redress grievances—has commented that the law enforcement machinery is the greatest violator of Dalits' human rights.

According to the NHRC, police responsibility for the widespread torture of Dalits in custody, rapes of Dalit women, and the looting of Dalit property “are condoned, or at best ignored.” Dalits, jurists, and human rights groups claim that a lack of political will and immunity laws that shield those responsible for human rights abuses from prosecution allow torture and other forms of custodial abuse to continue unchecked.

Under a theory of collective punishment, the police often target entire Dalit communities in search of select individuals. Dalit women are particularly vulnerable to sexual violence by the police. Dalits are also vulnerable to arrest under draconian security laws.

Under Article 2 India must also ensure the development and protection of particularly marginalized groups. India grants Dalits certain privileges, including “reservations” (quotas) in education, government jobs and political posts. Like many of the protective measures adopted, the reservation policy has not been faithfully implemented.

Caste-based occupational distribution is often reinforced in government employment quotas, with Dalits assigned primarily to the posts of sweepers. Reservations in higher education continue to be met with a great deal of resistance, leading to under-enforcement. Additionally, there has been widespread public opposition to reservations for Dalits in local government bodies, often leading to acts of violence against Dalit candidates.

According to government estimates in 2000, the unemployment rate for Dalits and tribal groups was double that of non-

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

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

Additionally, **India has failed to address the multiple forms of discrimination faced by Dalit women.** Even as compared to Dalit men, Dalit women do not have equal access to employment opportunities or justice mechanisms. They must contend with threats to their personal security, including trafficking and sexual violence. In some states in India, Dalit women are forced into prostitution under the *devadasi* system and are ultimately auctioned off to urban brothels. This puts them at particular risk of contracting HIV/AIDS.

The Dalit woman faces triple discrimination because she is an untouchable, of a poor class and is a woman. – National Campaign on Dalit Human Rights (2006).

Residential segregation of Dalits is prevalent across the country, in violation of India's obligations under **Article 3**. Segregation is also evident in schools, in access to public services, and in access to services operated by the private sector. In his 1999 Annual Report, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance found "untouchability" to be "very much alive" in rural areas.

A recently published survey investigating the extent of "untouchability" in 565 villages in 11 Indian states found that the practice continues to profoundly affect the lives and psyches of millions of Dalits. "Untouchability" practices were documented in almost 80 percent of the villages surveyed.

The open dissemination of propaganda targeting both Dalits and religious minorities by Hindu nationalist groups—whose members have incited and engaged in widespread violence—calls into question India’s commitment to fulfill its **Article 4** obligations to **condemn the promotion of hatred and discrimination in any form**. Educational measures to combat caste-based prejudices are also sorely lacking.

Dalits’ fundamental civil, political, economic, social, and cultural rights are routinely violated by state actors and private individuals, in violation of **Article 5** of the Convention. Caste-motivated killings, rapes, and other abuses are a daily occurrence in India, resulting in routine violations of **Dalits’ right to security of person** and protection of the state. The police have systematically failed to protect Dalit homes and Dalit individuals from acts of looting, arson, sexual assault, torture, and other inhumane acts such as the tonsuring, stripping and parading of Dalit women, and forcing Dalits to drink urine and eat feces.

Much like cases of police abuse against Dalits, attacks by private actors often take the form of collective punishment—entire communities or villages may be punished for the perceived transgressions of individuals who seek to alter village customs or demand their rights.

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

In a study of 11 Indian states, the practice of “untouchability” was documented in almost 80 percent of the 565 villages surveyed. – Action Aid India (2006).

Every 20 minutes, a Dalit becomes a victim of crime. – India’s National Crime Records Bureau (2005).

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

Dalits' right to freedom of residence is severely curtailed by the practice of “untouchability,” which often dictates where Dalits must live. Dalits' right to freedom of movement within India is affected by conditions that make Dalits vulnerable to migratory labor and forced displacement, particularly in the aftermath of episodes of caste violence.

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

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The right to own property is systematically denied to Dalits. Landlessness—encompassing a lack of access to land, inability to own land, and forced evictions—constitutes a crucial element in the subordination of Dalits. Land reform legislation is neither implemented nor properly enforced. When Dalits do manage to acquire land, access to it is often denied. In 2004, the Dalits of Kalapatti village, Tamil Nadu, were forced to flee after an attack in which upper-caste neighbors burned and destroyed over 100 Dalit homes.

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Dalits in India face a number of restrictions on **their right to freedom of thought, conscience, and religion**. Dalits are frequently denied entry into places of worship. Some Dalits have responded to ill-treatment by upper-caste Hindus by converting en masse to Buddhism, Christianity, or Islam. However, the loss of constitutional privileges upon conversion (to Christianity and

Islam) is a serious impediment to Dalits' freedom to choose their religion. In addition, the introduction of anti-conversion legislation in several states has made religious conversion extremely difficult if not impossible. Tragically, even conversion does not guarantee escape since "untouchability" is practiced across all faiths in India.

The denial of the right to work and free choice of employment lies at the very heart of the caste system. Dalits are forced to perform tasks deemed too "polluting" or degrading for non-Dalits. According to unofficial estimates, more than 1.3 million Dalits—mostly women—are employed as manual scavengers to clear human waste from dry pit latrines. Dalits comprise the majority of agricultural, bonded, and child laborers in the country. Many survive on less than US\$1 a day. Dalits are also discriminated against in hiring and in the payment of wages by private employers. Laws designed to eradicate exploitative labor arrangements are largely ineffective.

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Dalits are often refused access to health care in violation of their **right to the highest attainable standard of health and social services.** In a number of cases, those who are admitted to hospitals receive discriminatory treatment. Caste-based occupations, such as manual scavenging and forced prostitution, frequently expose Dalits to serious and sometimes fatal health hazards.

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Manual scavengers are routinely exposed to both human and animal waste without proper protection. This has severe repercussions for their health; most suffer from anemia, diarrhea, vomiting, and respiratory diseases. In many cities, Dalits clear sewage blockages without protective gear. Over 100 die each year from inhaling toxic gases or from drowning in excrement.

The right to education free from discrimination is not secured for Dalit children. Ninety-nine percent of Dalit students are enrolled in government schools that lack basic infrastructure, classrooms, teachers, and teaching aids. They are made to sit in the back of classrooms and endure verbal and physical abuse from teachers and students. According to the UN Special Rapporteur on the right to education, teachers have been known to declare that Dalit pupils “cannot learn unless they are beaten.” The effect of such abuses is borne out by the low literacy and high drop-out rates for Dalits. Upper-caste hostility toward Dalits’ education is linked to the perception that Dalits are either incapable of being educated, or if educated, would pose a threat to village hierarchies and power relations.

Dalits are denied equal access to public places, such as police stations, government ration shops, post offices, schools, water facilities, and village council offices. More than 20 percent of Dalits do not have access to safe drinking water. Only 10 percent of Dalit households have access to sanitation (as compared to 27 percent for non-Dalit households), and the vast majority of Dalits depend on the “goodwill” of upper-caste community members for access to water from public wells. Dalits are also excluded from, or receive discriminatory treatment in, private businesses such as food stalls, barber shops, and cinemas. Dalits are made to use separate crockery and cutlery and drink from separate tea glasses which they are then required to wash.

Attempts by Dalits to defy the caste order, to demand their rights, or to lay claim to land that is legally theirs are consistently met with economic boycotts or retaliatory violence. For example, on January 5, 2006 Punjabi Dalit activist Bant Singh was beaten to the point of losing his limbs for seeking justice for the gang rape of his daughter. On September 26, 2006 in Kherlanji village, Maharashtra, members of a Dalit family were brutally beaten and killed by an upper-caste mob because they refused to let upper-caste farmers take their land.

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Both state and private actors commit the abuses documented in *Hidden Apartheid* with impunity. In violation of India's **Article 6** obligations to **ensure effective remedies against acts of discrimination**, police, prosecutors, and judges routinely fail to properly pursue cases brought by Dalits. Police systematically fail to properly register these crimes under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1995. Even on the relatively rare occasions on which a case reaches court, the most likely outcome is acquittal.

The innocuous treatment of the caste system in school textbooks and curricula, along with insufficient media attention to Dalit issues, all suggest that the Indian government is failing to take effective measures to counter caste prejudice, in contravention of **Article 7** of the Convention.

Dalit Rights Movements

In response to centuries of inhuman and degrading treatment, and in spite of tremendous obstacles, **Dalit rights movements across the country are growing**, as are their demands for basic dignity and human rights.

Dalits have also begun to raise their voices in international forums, such as the 2001 UN World Conference Against Racism, successive World Social Forums, and in hearings before various UN human rights bodies.

International scrutiny is growing and with it the condemnation of abuses resulting from the caste system and the government's failure to protect Dalits' rights.

They have got my limbs, but I have still got my voice, I can sing. – Dalit activist Bant Singh (2006). Singh was beaten to the point of losing his limbs for seeking justice for the gang rape of his daughter.

On December 27, 2006 Manmohan Singh became the first sitting Indian prime minister to openly acknowledge the parallel between the practice of “untouchability” and the crime of apartheid. According to Singh, “The only parallel to the practice of ‘untouchability’ was Apartheid in South Africa. ‘Untouchability’ is not just social discrimination. It is a blot on humanity.” Singh added that “even after 60 years of constitutional and legal protection and state support, there is still social discrimination against Dalits in many parts of our country.”

We welcome Prime Minister Singh’s remarks and hope that this statement will prompt vigorous reforms and state action that will begin to close the gap between India’s human rights commitments and the daily reality faced by over 165 million of its citizens.

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– Indian Prime Minister Dr. Manmohan Singh (December 2006).

Recommendations

The Center for Human Rights and Global Justice and Human Rights Watch call on the Indian government to take active steps to comply with its obligations under international human rights law and respect, protect, and ensure the rights of Dalits. In particular, India should:

- Eradicate caste-based segregation in residential areas and schools, and in access to public services.
- Implement laws and government policies to protect Dalits, and Dalit women in particular, from physical and sexual violence.
- Ensure appropriate reforms to eliminate police abuses against Dalits and other marginalized communities.
- Ensure proper investigation and prosecution of crimes against Dalits.
- Identify obstacles in the implementation of legislation designed to protect Dalits and take steps to overcome these obstacles. In particular, ensure the effective eradication of exploitative labor arrangements and implement rehabilitation schemes for Dalit bonded and child laborers, manual scavengers, and for Dalit women forced into prostitution.
- Combat hate speech and other actions inciting caste or religion based discrimination and violence.
- Implement the recommendations of the 2004 National Human Rights Commission report on atrocities against Dalits.
- Ensure proper implementation of the “reservations” policy, including providing protection for Dalit candidates in local elections.
- Ensure proper implementation and monitoring of Dalit development programs.

About the Report

Hidden Apartheid is based on in-depth investigations by the Center for Human Rights and Global Justice, Human Rights Watch, Indian non-governmental organizations, and media sources. The pervasiveness of abuses against Dalits is corroborated by the reports of Indian governmental agencies, including the National Human Rights Commission, and the National Commission on Scheduled Castes and Scheduled Tribes. These and other sources were compiled, investigated, and analyzed under international law by NYU School of Law's International Human Rights Clinic.

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