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One person, one value

WHEN Dr B R AMBEDKAR rose to speak in the Constituent Assembly on November 25, 1949, it was evident that several issues of social equity and justice that had dominated the drafting of the Indian Constitution had remained unresolved. Ambedkar hinted at this in as many words: “On January 26, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics, we will be recognising the principle of one man-one vote and one vote-one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man-one value.”

The hint at continued exclusion in various spheres of social existence in this country came from a man who made an important contribution to the intellectual and institutional foundations of modern India. Ambedkar had warned: “If we continue to deny it (equality) for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”

But six decades later, millions of dalits continue to be denied the most basic of human rights — to be treated as equals. Women, also victims of the 'shastras', are excluded in their own homes and society. Other excluded sections include adivasis, de-notified tribes, religious minorities, the differently-abled, and sexual minorities, to mention just a few.

Though caste-based discrimination is less intense today, there is empirical evidence that untouchability persists, as the article in this issue by Sukhadeo Thorat illustrates. In rural India, restrictions on temple entry, access to drinking water sources, segregated seating arrangements in classrooms and so on are still the order of the day. In urban India — and even in the Indian diaspora — where caste distinctions seem to have blurred, the notional sense of untouchability remains pervasive even while adjusting to modern living.

Even when concessions are made to dalits, in education and jobs for example, they are perceived as favours and not rights. Intellectual discussions on caste-based reservations are largely confined to their impact on merit. The two are seen as incompatible by the privileged.



The strange thing is that India is so diverse. Over the centuries, people of all major religions of the world — Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Zoroastrianism, and Bahaism — have lived in India. According to B S Guha's classification, people of six racial stocks live in India, and, according to the 1971 census, there are 1,652 languages spoken as the mother-tongue across the country. The Mandal Commission alone lists 3,743 castes in addition to around 1,000 scheduled castes.

Despite this diversity we see widespread exclusion. Our lessons on India's 'unity in diversity' seem to be forgotten the moment we leave school, though the slogan popularised by Jawaharlal Nehru is still recalled during moments of national pride.

If we analyse the nature of exclusion in Indian society we will find exclusion on the basis of cultural heterogeneity — as seen in the recent outburst against north Indians in Mumbai; on the basis of faith — the most glaring example of which is the exclusion of Muslims and more recently of Christians; and on the basis of gender. Sex-selective abortion is the latest, most frightening form of exclusion. According to Unicef, India loses 7,000 girls every day through abortion. The British medical journal *The Lancet* estimates that 10 million female foetuses have been aborted in the past two decades in India.

It is important to understand that social and economic exclusion has more to do with group identity than income, productivity, or merit of individuals in the group. Unlike members of privileged groups, who may be excluded from education or work due to individual lack of income, low merit or poor skills, members of excluded groups are denied opportunities due to their identity as members of a certain social group.

Experts have long pointed out that few of the debates on poverty in India have questioned the links between poverty and social discrimination. But the big question is the extent to which social exclusion causes economic deprivation and thus poverty.

National Sample Survey (NSS) data reveals that the scheduled castes (SCs) (dalits) and scheduled tribes (STs) (adivasis) are particularly disadvantaged. Average per capita income of SC/STs at an all-India level is about one-third lower than other groups. Headcount poverty in 1999/2000 was 16% among non-deprived groups, 30% for minorities (Muslims), 36% for SCs, and 44% for STs.

Data also encapsulates gender differences. Census data shows female literacy increasing from 35% to just over 50% between 1991 and 2001, but the disparity between men and women in 2001 was still about 25 percentage points, and has only marginally declined since 1991. Health indicators, including maternal mortality, also highlight the considerable

disadvantages women face.

It is in this context that the struggle of 26-year-old Sumathi T N, a postgraduate in Arts, gains importance. Sumathi dared not reveal her dalit identity while employed as a teacher at a local school in Tumkur, a district town some 70 km from India's Silicon Valley, Bangalore. "I used to see how they treated the dalits; not letting them enter hotels or households and even beating them up if they dared to do so. I thought it was safer to say I was not a dalit," she told our contributor.

Sumathi had to quit her job after her caste identity was accidentally revealed to her colleagues and it took a while for her to come to terms with the fact: "...I learned about dalit history and culture and realised the importance of accepting my identity and fighting for my rights. I am not ashamed or afraid of my being dalit anymore."

This issue 'Against Exclusion' is about the struggles of many such individuals and groups. There is Moghubai from a nondescript village in Jharol block, Rajasthan, where widows are branded witches for any misfortune from a child getting chickenpox to a cow that has stopped giving milk. There are Tamil Nadu's approximately 300,000 transgenders or *aravanis* who have fought for and won major concessions including the introduction of a 'third gender' on ration cards and social visibility and acceptance as mediapersons and television anchors. There are IT companies that are increasingly employing persons with disability, not as a token CSR gesture but because it makes good business sense to do so. And there are the girls from the Meo Muslim community, who are finally getting an education thanks to Vinodkumar Kanathia who chucked up his job as a bank manager to set up a series of schools in Mewat region of north India.

"I was shocked by the vast disparities between Gurgaon and Mewat, located hardly 40 km of each other. If the yuppie crowd inside the plush malls of Gurgaon symbolise the new India, the toiling daughters of the impoverished Meos in Mewat are rude reminders of the uneven growth policies of a booming Indian economy," says Kanathia.

Their stories emphasise what Ambedkar had warned, that equality cannot be denied for long.

— Anosh Malekar

Towards inclusion and equity

Exclusion is the denial of control over natural resources; the denial of opportunities for healthcare, education, housing; the denial of the right to participate in social, economic, political and cultural life; the denial of human rights and human dignity. Because it is institutionalised and socially/religiously sanctioned, it is that much more difficult to change. But social exclusion *is* being challenged in India in multiple ways

PRAKASH LOUIS

SOCIAL EXCLUSION, discrimination and identity-formation have become the central focus of discourse in India today. Social exclusion and discrimination refer to the process and outcome of keeping social groups outside power centres and resources. Identity-formation, on the one hand, refers to the process and the effect of articulating this social alienation and on the other hand to the reformulation of one's social characteristics and consequently self-determination.

As long as excluded individuals and social groups remain silent there is no conflict. But the moment they articulate their exclusion and demand their constitutional and human rights, those who have subjected them to exclusion unleash a reign of terror on them. Exclusion, discrimination and identity-formation are both individual and collective processes, and take place in an interactional process.

Exclusion and discrimination take different forms in different societies. They adapt and change themselves according to changing social reality. To say that in a modern, liberal society and polity, exclusion and discrimination are reduced or eliminated would not be in tune with reality. To deny the scope of identity-formation even among the most discriminated social groups would also be unrealistic.

Since social exclusion as a term has come into use very recently, it becomes necessary to spell out some points of agreement amongst academicians and activists. There are some who use the term 'social exclusion' very frequently (but there are concepts that are equally important in understanding social processes in the Indian subcontinent, viz social interaction, power equations, distribution of resources, equal opportunity, domination and subjugation, etc). There are others who avoid using 'social exclusion' and prefer to use terms such as marginalisation and deprivation.

When one speaks of social exclusion one does not refer to the exclusion suffered by a particular social group but all social groups that are subjected to exclusion. Moreover, social exclusion does not limit itself to market discrimination but refers to discrimination and denial of access in all aspects of life.

Finally, social exclusion addresses the multiple and cumulative aspects of being excluded and the consequences that arise out of it. It is also a fact that 'social exclusion' is a term that was used by academics and activists in the West,

and is being used in India of late to address the process of social interaction.

Exclusion: A conceptual framework

- Exclusion is the denial of ownership, access and control over resources.
- Exclusion is the denial of rights over one's labour and rights over one's reproductive resources.
- Exclusion is the denial of opportunities for education, healthcare, housing, public amenities, recreational facilities and spaces, basic needs, etc.
- Exclusion is the denial of social interaction and denial of access to social spaces.
- Exclusion is the denial of the right to representation and participation in the social, economic, political and cultural aspects of society and polity.
- Exclusion is the deprivation of the right to mobility, right to practise one's religion and the right to organise and mobilise.
- Exclusion is the denial of human dignity.
- Exclusion is the denial of constitutional and human rights.

Social exclusion is a discriminatory practice. In the course of human development, exclusion has taken the form of segregating a group of people from the social, political, economic, cultural, educational and religious domains of societal life. But we need to stress that social exclusion does not limit itself to segregation and deprivation. Social seclusion and isolation provide a base for a sense of superiority and inferiority among members of the same society or culture. It also culminates in a system of domination and subjugation. All these processes ultimately lead to oppression and exploitation.

The basic social fact of segregation is that it is justified and legitimised by social and/or religious traditions. Like many social concepts, social exclusion also has evaded a neat definition. But some defining features of this social reality can be presented. According to Arjan de Haan, the concept has two main defining characteristics. First, it is a multi-dimensional concept. People may be excluded from livelihoods, employment, earnings, property, housing, minimum consumption, education, the welfare state,

citizenship, personal contacts or respect, etc. But the concept focuses on the multi-dimensionality of deprivation, on the fact that people are often deprived of different things at the same time. It refers to exclusion (deprivation) in the economic, social and political sphere.

Second, social exclusion implies a focus on the relations and processes that cause deprivation. People can be excluded by many different sorts of groups, often at the same time: landlords exclude people from access to land or housing; elite political groups exclude others from legal rights; priests in India may exclude scheduled castes from access to temples; minorities may be excluded from expressing their identity; labour markets, as also some trade unions, exclude people (non-members) from getting jobs; and so on.

Exclusion happens at each level of society. Group formation is a fundamental characteristic of human society, and this is accompanied by the exclusion of others. The concept takes us beyond mere descriptions of deprivation, and focuses attention on social relations, the processes and institutions that underlie and are part and parcel of deprivation.

It is irrefutable that exclusion and deprivation have social, cultural and historical roots. This led to a stratification of society, resulting in inequality. But the reason why these discriminatory behaviours exerted such a powerful influence is that they were presented as fixed and final, even 'divinely ordained'. It has been argued that since social stratification is a divine plan it cannot be altered. But of course the unequal division of society is a societal process and not a divine intervention. Social exclusion defines boundaries between groups, locates the different social groups in a hierarchy and regulates and guides their interaction. Since social exclusion is intimately and inherently related to systems of domination and oppression, it is often resistant to change and transformation. And thus social exclusion becomes a focal point for social conflict.

Excluded people

In the Indian context, the following are the most excluded:

Social groups: Dalits/untouchables/lower castes, tribals/adivasis/indigenous peoples, religious and linguistic minorities, the most backward castes, and women and children among these social groups.

Sectoral groups: Agricultural labourers, marginalised farmers, child labourers, domestic workers, informal workers/unorganised sector workers, contract workers, plantation workers, fisher communities, manual scavengers, rural and forest-based communities, vernacular-speaking social groups, people with disability, etc.

Social exclusion: A theoretical framework

Various forms of exclusion, deprivation and discrimination are perceived and propagated as a normal course of behaviour in most societies. But social scientists, social activists and human rights activists are realising that social exclusion is a framework for understanding deprivation,

marginalisation, exploitation and oppression. Since this is a framework for analysis of the process and outcome of discrimination and deprivation, social exclusion does not refer to a specific social group.

- Social exclusion is the process and outcome of excluding, casting out, depriving and denying equal space to some citizens of a country or some members of a society. It is denial of space in all senses and in all sectors.
- Social exclusion is closely associated with relative deprivation. In this regard it has been stated that the rising inequality in various countries has contributed to the exclusion of many social groups from opportunities.
- Social exclusion has also come to be seen as denial of capabilities and entitlements. In Amartya Sen's interpretation, capabilities are absolute requirements for full membership of society. Entitlements refer to rights, that is, the command of families over goods, using various economic, political and social opportunities within the legal system.
- Social exclusion is detrimental to social integration. In this sense, not just those who are excluded but also those who are excluding others are subject to the crisis and conflict that arise due to the disintegration that accompanies social exclusion.
- Social exclusion works against social solidarity in the long run. Since social exclusion discriminates and deprives members of one's own society and nation there is a lack of scope and space for solidarity among members. Further, even those who are poor or victimised in one way or the other do not come together to address the issue as they are divided due to social exclusion. This is especially true of societies that are hierarchical, skewed and ascribing membership to people based on their origin and descent.
- Since social exclusion denies social integration and solidarity, the social interaction that emerges in an excluding society is conflictual by nature. Thus, conflict becomes the mainstay of social interaction.

Measuring social exclusion

Social scientists have invested a lot in analysing and understanding social exclusion. Though poverty and, to some extent, deprivation did form an area of study for social scientists, they did not focus on social exclusion. Since most social scientists in South Asia came from the excluding communities they did not feel the need to undertake studies to unravel this widespread social phenomenon. But such studies were undertaken in European countries. For instance, the UNDP's Human Development Index focuses on the multi-dimensional aspects of deprivation. Likewise, the French Action Plan for Employment provides 35 quantitative evaluation indicators on social exclusion. The European Union is trying to establish quantitative indicators to evaluate social inclusion initiatives. British New Labour's 'poverty charter' proposed some 30 measures to track movement towards nationally defined social integration goals.

Some academic circles have been stressing the need to undertake a Dalit Development Index or Dalit Deprivation Index; similarly, a Tribal Development Index or Tribal Deprivation Index and possibly a development index for minorities and women too.

The life of the excluded

The most fundamental focus for any discourse on social exclusion should be on institutionalised attempts to exclude, segregate or cast out a segment of the population from the social order. Here we are not dealing with situations where a particular individual 'ill-treats' another person, but broader social processes that are discriminatory in principle and practice. Thus, social segregation is an institutionalised form of social distancing expressed in physical separation. It signifies the convergence of physical and social space and is to be distinguished from other social forms, which also structure social distance in spatial terms.

Since social exclusion provides space for domination, discrimination and deprivation, those who benefit from this social formation do not want to change the structure. This social system becomes very resistant to change and transformation.

Interestingly, it is not only those who discriminate against people considered 'inferior, incapable, less meritorious and lower' that resist change. Even those who are victims of discrimination are not in a position to mobilise and organise themselves to alter the existing social system. It is not as if these social groups want to remain in the dehumanising social order and therefore do not initiate change; they fear being subjected to repression if they resist exclusion and discrimination.

In the Indian context, dalits or untouchables, tribals/ adivasis/ indigenous peoples and minorities are the most excluded segment of the population. Let us look at the everyday forms of social exclusion suffered by these social groups.

Sudharak Olive

Bissanya of Chitrakoot, Uttar Pradesh, was raped by an upper caste man just a month after her child was born

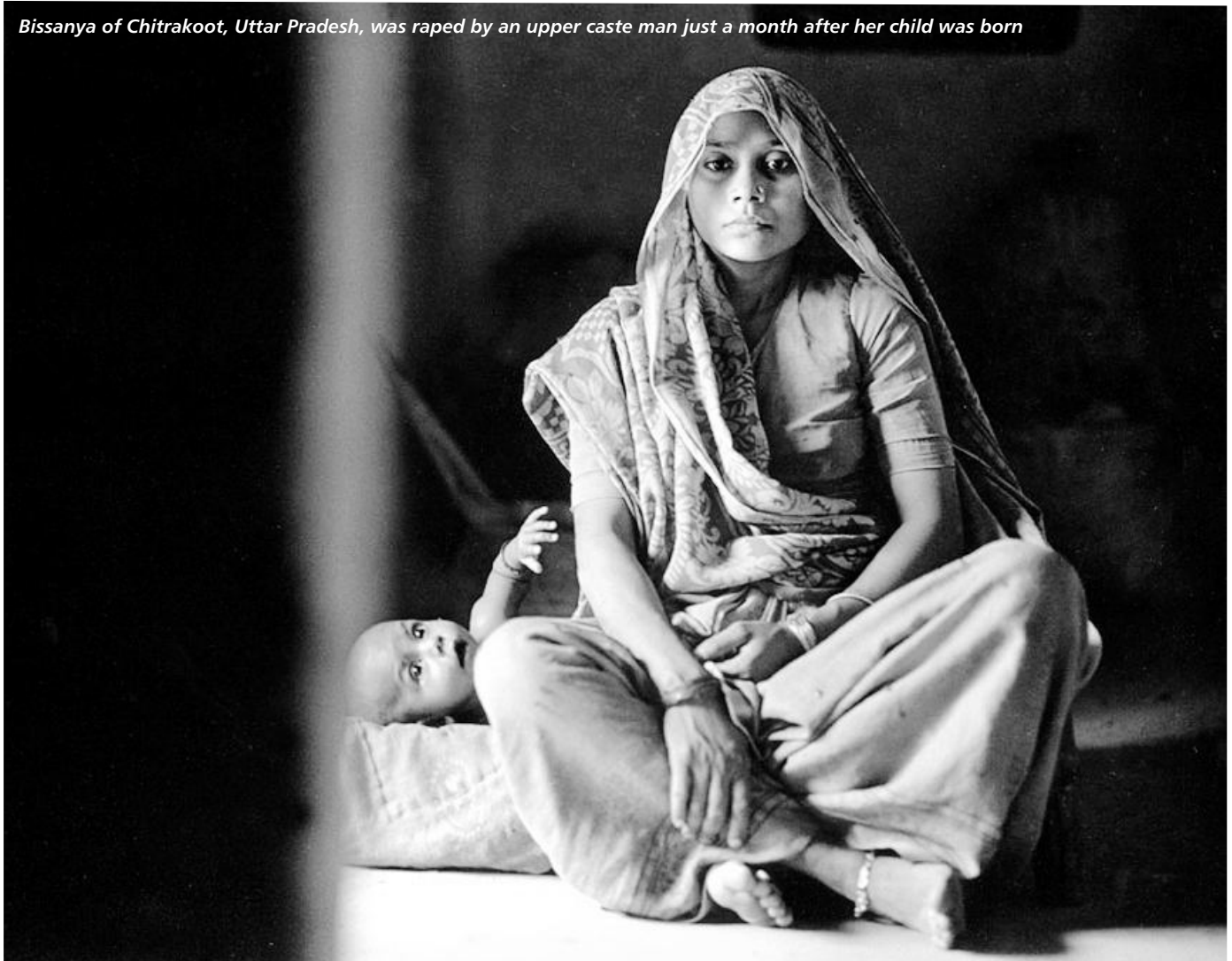


Table 1. Cultural discourse: Dalits and non-dalits

Dominant castes' perception of dalits	Dalits' perception of themselves
Dirty, filthy fellows	Capable, but no opportunities
Thieves, robbers	Hardworking but fruits of labour denied
Cunning	Honest, but due to situation steal, rob and lie
Lazy, <i>kaam-chor</i>	Assertive but fear of repression forces them to be subservient
Useless, good-for-nothing	Straightforward, less cunning
Gluttons, <i>petu, khau</i>	Culturally talented
Loose morals	Sensitive, emotional
Dishonest	Self-sacrificing
Quarrelsome, no unity	Sagacious, good judgement
Ungrateful	Collective, but victims of divide-and-rule policy

Source: Based on discussions held during workshops conducted on the reconstruction of dalit identity in six north Indian states

Table 2. A profile of dalits/tribals

S No	Area	Representation of dalits	Representation of tribals
1	Population	16.48	8.08
2	Literacy-total	54.69	47.10
3	Male	66.64	59.10
4	Female	41.90	34.76
5	Dropout by high school	79.88	86.72
6	Public sector Unit A grade	8.41	-
7	Cultivators	25.44	54.50
8	Agricultural labourers	49.04	32.69
9	Agricultural and allied activities	76.22	87.00
10	Households with drinking water, electricity, toilet facilities	6.62	3.23
11	Prime Minister of India	0	0
12	Chief Justice	0	0
13	Party leadership	10	10
14	In teaching profession	9.49	7.03
15	Below the poverty line	56.00	54.00
16	Manual scavenging	100	0
17	Discriminated against	100	100

Source: Various census reports

Table 3. Cultural discourse: Tribals and non-tribals

SC and ST Commission's perception	Tribals' perception
Isolation in forest	Casteless, classless, equal society
Tribal dialect	Community-oriented economic system
Animism	Symbiotic relationship with nature
Primitive occupation	Consensus-driven self-rule
Carnivorous diet	Struggle for dignity and self-determination
Naked or semi-naked	Collective historical sense
Nomadic habits	People-oriented art, history and dance
Love drink and dance	Changing with the times

The very term 'untouchables' is a socially excluding reference to a group of people who contribute to the overall cleanliness of society. This form of exclusion under the caste system gains legitimacy from religious texts. It is not only in the realm of nomenclature but also in their perception of themselves that dalits have initiated transformation. This has resulted in a serious cultural discourse between dalits and

the dominant castes.

This can be presented in a schematic form (Table 1).

The first column of the chart presents the perceptions of the dominant castes about dalits — they are negative, derogatory and simply untrue. Take for instance, dominant perceptions of dalits as *petu* or *khau* or gluttons. Like everyone else, dalits eat to survive. Those who have conducted studies on these castes have noted that since members of this community are deprived of a regular supply of food, they consume food as and whenever available. This is not out of choice but forced by living conditions.

The second column deals with dalits' perceptions of themselves. Some would argue that this perception appears unrealistic or aspirational. But it underlines the fact that a community which is at the receiving end of injustice is also able to look at the realities of its life positively.

Further, social exclusion does not remain in the realm of attitude alone. It is built into the social structure. This needs to be highlighted. There are some who argue that it is attitude that leads to exclusion, so a change in attitude will take care of social exclusion. The reality is that attitudes do not come from thin air. They are an outcome of the social structure. The social structure of a society contributes to the formation of attitudes. Attitudes, in turn, contribute to maintaining the social structure. Table 2 presents the everyday forms of exclusion that dalits and tribals are subjected to in India.

Tribal communities are mobilising and organising themselves in contemporary India to secure the rights that are provided to them by the Constitution. On the one hand, they are making efforts to protect their culture, habitats and resources and on the other, they are breaking free from backwardness. But they are struck by the hard reality that they were victims of isolation in the past, now they are subjected to discrimination. This historical experience has provided space and scope for tribal identity-formation across the country. The interaction between tribals and non-tribals can be presented in a schematic form (Table 3).

From this chart it is clear that the non-tribal perception of tribals is derogatory. Food habits and ways of living, which are different from one's own, are salient features while culturally defining tribals. In contrast, tribals define themselves within their natural, social, cultural and economic surroundings.

There is growing awareness among tribals that they are alienated from their resources, denied their rights and also deprived of a decent living. This has given rise to a politicised identity for tribals. A resolution of the Indian Confederation of Indigenous and Tribal Peoples, in November 1993, stated: "We the tribals of India are proud of the fact that we are the first inhabitants of our motherland. We have contributed much to the culture, history and heritage of India. However, little respect is today shown to our culture, social systems, political structures and

economy. Efforts are made to integrate into the mainstream society as a low caste, though traditionally we have lived in an egalitarian and casteless society... Our culture is looked down upon... our languages are not respected."

Tribals and dalits constitute the backbone of Indian agriculture. But the area of operation in dalit possession is only 7.7%. Similarly, tribals have only 10.5% of total cultivable land. The other castes own over 81.8% of the land. More than 50% of tribals and dalits even today are engaged as landless agricultural labourers. The rest eke out a living as rickshawpullers, construction workers, domestic workers, manual scavengers, etc. Only a small percentage is engaged in non-farm employment. These facts and figures establish the multiple and cumulative exclusion of dalits and tribals in India.

Exclusion of women

Women in South Asia form the most excluded and discriminated segment of the population. Patriarchy is the principal cause. Patriarchy constrains women in many ways. Control of women's reproductive abilities and sexuality is placed in men's hands. Patriarchy limits women's ownership and control of property and other economic resources, including the products of their own labour. Women's mobility is constrained and their access to education and information hindered. Over the years, it has been recognised that the experiences of the majority of women are grounded in both poverty and patriarchy. Both these feed into each other and subject women to exclusion and exploitation. Over the past three decades, theorists, practitioners and activists involved in both women's movements and women's studies around the world have also focused on attitudinal underpinnings in the relationship between men and women. The very perception of women by men (Table 4) is an indication of the exclusion and discrimination women are subjected to. In these ways, patriarchal structures perpetuate the enduring gaps between the opportunities available to South Asian women and South Asian men. Along with the mindset, if one notes the structural exclusion of women (Table 5) one understands the outcome of exclusion of women in India.

Exclusion of minorities

The minority Muslim community is excluded in India. There are more Muslims below the poverty line than the total population. They earn less than the others. Only 21% of Muslims use the public distribution system (PDS) compared to 33.2% of the entire population (Table 6). Enrolment rates among them are lower, while dropout rates are higher. This data offers only a glimpse of the problem; if one were to examine the everyday forms of exclusion Muslims face, especially deprivation, it is pathetic. Muslims do not get their due as citizens either at the policy level or at the programmatic interventions level.

Affirmative action

There has recently been a growing awareness that exclusion

Table 4. Perceptions about men and women

Women	Men
Submissive	Ambitious
Sensitive	Rational
Gentle	Courageous
Emotional	Strong
Weak	Decisive
Sexy	Analytical
Nurturing	Manipulative
Jealous	Bold
Humble	Goal-oriented
Patient	Eloquent

Table 5. Profile of women in India

Area	Presence
Male-female ratio	933
Literacy rate	54.1
Literacy rate of dalit women	23.7
Literacy rate of tribal women	18.1
School enrolment of girl-child	48.1
Dropout of girls by primary school	45.97
Dropout of girls by middle school	65.1
Dropout of girls by high school	76.9
Participation in agricultural sector	81.2
Participation in unorganised sector	96.3
Participation in services sector	7.6
Casual labourers	41.9
Membership in Parliament, 1998	8.0

Source: Census of India 2001; select educational statistics 1990-91, Ministry of Human Resource Development, Government of India; NSSO Report, 50th Round 1997-98

Table 6. Levels of income and material wellbeing

	Muslims	All
Poverty head count ratio (%)	43.0	39.0
Household income (Rs)	22,807	25,653
Per capita income (Rs)	3,678	4,485
Work participation rate		
Male	48.0	51.9
Female	9.6	18.4
Source of income		
Agriculture	44.1	55.0
Artisanship	8.3	4.5
Salaried	14.7	16.5
Landholding — household (acres)	3.6	4.5
Kutcha houses (%)	65.9	55.4
Electric connection (%)	30.0	42.9
Protected water (%)	78.1	72.0
Having toilet (%)	26.7	15.3
Using PDS (%)	21.8	33.2

Source: Zoya Hasan, 'Muslims In India: Why are they Excluded and Discriminated?' A concept note prepared for DFID

is multiple and cumulative. Those subjected to exclusion suffer many forms of exclusion simultaneously and this has a collective impact, resulting in further discrimination. For instance, a dalit or tribal girl is excluded due to caste and gender. If she is rural-based she faces further exclusion. If she is differently-abled, she suffers even more exclusion. This crucial aspect of exclusion needs to be understood and

accepted for any kind of meaningful intervention in the lives of the excluded.

Any society that is hierarchical and highly skewed follows not only division of labour but division of people into inferior and superior. It is bound to practise exclusion. The very structure of society, economy and polity is built on exclusion. Various social groups are excluded on the basis of caste, class, gender, disability, ethnicity, age, location, etc. They are excluded from opportunities, outcomes of development, freedom of mobility, resources, citizenship in polity, and membership in society.

Those who propagate such a social order defend and maintain the status quo. And the excluded social groups, in turn, internalise the principles, practices and institutions that legitimise and enforce such a social order. Therefore, change is resisted by both excluding and excluded social groups.

One of the responses advocated for including excluded communities is affirmative action in countries like the United States, Malaysia, etc, and reservation in South Asia. In India, reservation has been viewed as a special provision for dalits and tribals since 1950, most backward castes since 1990 and religious minorities since 2000. It has been in operation for the last 60 years. But a careful reading will reveal that implementation of this special provision has been tardy and ineffective.

On the one hand, the Indian ruling class has doled out a number of special provisions, schemes and legislation that are supposed to ensure the uplift of weaker sections. On the other hand, they have exhibited immense acumen for subversion or non-implementation of their own policies and programmes. Thus, they have attempted to please the weaker sections through tokenism, at the same time maintaining the status quo.

Not surprisingly, the excluded in many countries are getting progressively disillusioned with affirmative action. They realise that these provisions are made to fool the excluded and that the social control of the ruling elite continues uncontested. In addition, they are also getting disillusioned with democracy. This could lead to crisis, conflict and violence.

Search for alternatives

At the ideological level some argue that attitudinal change will help address exclusion. But those who argue along these lines forget that attitude is an outcome of the social structure. It is the social location of a person that guides his or her attitude, and the attitude in turn either reinforces the skewed social order or calls for change. It is essential to map social reality to identify exclusion and discrimination.

It is also crucial to engage in a two-pronged exercise. Along with present and continuous inequality and exclusion, one needs to comprehend historical and changed forms of inequality and exclusion so as to respond in an appropriate manner.

The response to exclusion is inclusion. But this cannot be a passive exercise. Inclusion has to analyse and understand the processes and outcomes of exclusion and work out mechanisms for inclusion. Inclusion also cannot be forced.

One of the fundamental causes behind exclusion is the denial of ownership, access and control over resources (*jal, jungle, zamin*). The excluded are realising that the reasons for exclusion were invented to keep a vast majority of the population away from resources. Hence, the demand for ownership, access and control over resources is emerging as a collective claim.

The excluded in South Asia also realise that exclusion is a means to deny opportunities. Hence, they are demanding an Equal Employment Opportunity Act as well as an Equal Employment Opportunity Commission to implement the Act. This demand has been in the political arena for a decade or more, and has gained momentum in recent times.

Two interrelated processes are taking place among marginalised communities. On the one hand, they continue to be subjected to exclusion, deprivation and discrimination. On the other, they are protesting the oppression and exploitation they are subjected to and asserting their rights to be citizens of the nation and equal members of society. It is these interrelated processes which have led to identity-formation and assertion among excluded communities. Various stakeholders need to realise this and align with the excluded in their struggle for inclusion and equity.

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Garbage as a metaphor

There are many who claim that modern-day discrimination is based solely on economic terms, not on caste or communal lines. But the view from Kamatchi Devi's house in the Kodungaiyur garbage dump in Chennai is different. Where there is hazardous waste you will only find dalit and other backward castes. Like trash, some people are still considered disposable

NITYANAND
JAYARAMAN

Photographs:
SUDHARAK OLWE

SIXTEEN-YEAR-OLD RAMACHANDRA DIKSHITAR finishes his morning rituals early. Bathing is a waste, considering he will be neck-deep in garbage within the hour. But as a practising brahmin, *sandhya vandanam* — the thrice daily prayer to the gods at dawn, noon and dusk — is a part of his life. Ram, his mother and brother all work as ragpickers in the city's garbage dump. They live in a traditional *agraharam* — a cluster of brahmin households — built around a Shiva temple. All of this is now surrounded by the garbage dump. This is one of many garbage dumps that have come up near the *agraharams* of indigent brahmins across the country. As recently as a decade ago, the local Shiva temple used to attract numerous pilgrims. The livelihood of the brahmin families in the *agraharam* was, in one way or another, associated with the temple. Now, with the expanding

garbage dump, visits to the temple by pilgrims have dwindled, pushing the *agraharam* families into near destitution. Like many of the country's less fortunate, Ram's family and many other brahmins too saw the silver lining in the project imposed on his community and sought to earn a livelihood in ragpicking.

If the above story were true, or even conceivable, we could agree with the many who claim that modern-day discrimination is based solely on economic terms, not on caste or communal lines. But Dikshitar is fiction, as is his garbage-dump *agraharam* and the band of brahmin scavengers.

The real story goes like this.

A solid door with auspicious tantric motifs guards a





ramshackle hut that is falling apart at the roof and on all sides. There is nothing firsthand about this house. A piece of corrugated asbestos gone soft with age covers a portion of the roof. Wooden boards, some tarpaulin, mismatched pieces of bamboo, and plastic wires as lashings complete the picture. Every last item that went into the making of Kamatchi Devi's house was locally mined, hand-picked by her from the garbage dump within which the house is located. Barely five metres in front of her house runs a stream carrying a foul-smelling reddish-orange liquid — juice from the rotting mountains of garbage stretched out on all sides of her house. Across the juice river is a ramshackle temple to the God of Wars, Murugan.

No matter which way the wind blows, Kamatchi's house is assailed by toxic smoke from north Chennai's perennially smouldering dump. The Kodungaiyur garbage dump, which receives more than 2,000 tonnes of Chennai's daily garbage generation of 5,000 tonnes, is the largest in the city.

Kamatchi's house is one of 15 dalit households in the cynically named Panakkara Nagar (Rich Man's Nagar). Local reports say about 7,000 people make a full or partial living by extracting, sorting, processing and trading in resources relegated to the dump by the city's consumers. At least half of them are engaged in sifting through and sorting the garbage in the dump — glass, plastic, coconut shells, metals of different kinds, gunny sacks. A smelly sewer — the Captain Cotton canal — choked with plastic trash defines the western edge of the dump yard. All along this canal and a few streets on either side are flimsy hutments of thatch, tin, tarpaulin and any salvageable building material... MGR Nagar, Ezhil Nagar, RR Nagar. Around 6,000 households live with insecure tenure along the margins of the stinking canal. Another 1,500 households live in similarly squalid conditions in Raja Rathinam Nagar across the main road from the dump.

RR Nagar was constructed by the Tamil Nadu Slum Clearance Board to house the Chennai Corporation's conservancy workers in the early-1990s, nearly a decade after the dump was inaugurated. There were no takers among the workers for the 'dump-view' apartments. Eventually, the brand new houses in the tenements were filled with families evicted from various parts of the city. Residents from the beggars' colony in Chetpet, families ousted to make way for the Royapuram bridge, a few hundred Tamil refugee families from Sri Lanka were sent to the same place where Chennai sent its trash.

A major proportion of all these people — the workers in the dump, the residents of Panakkara Nagar, MGR Nagar, Ezhil Nagar, RR Nagar, the conservancy workers for whom the government chose to build the 'dump-view' tenements, the oustees who eventually took up residence in the tenements — belong to scheduled caste/scheduled tribe (SC/ST) communities.

The people here are too poor to have generated all the trash that surrounds them. Per capita garbage generation is a good measure of prosperity. Indeed, while the rest of the

city's trash is cleaned and brought here, the potholed mud lanes that pass for roads in this locality have never seen a municipality broom.

Is this a coincidence? Or is there an invisible quota for SC/STs and other backward communities in occupations that nobody wants for themselves — say, as garbage and sewage workers, as contract labourers engaged in the most hazardous of industries, in chemical units as cleaners of effluent treatment plants and reactors, in construction and road-building, in granite quarries and sand mining, in leather tanneries and dyeing units.

It is a fact that, as a matter of practice, garbage dumps don't come up near *agraharams*. It is also a fact that *agraharams* don't come up near garbage dumps.

In 2003, within Howrah municipal limits, a shameful incident occurred that highlights the face of modern-day untouchability. On February 3, more than 500 armed police and bulldozers descended on a massive dalit settlement in Bellilious Park. Armed with a court order in a case for city beautification filed by a professedly 'civil' society organisation, the Howrah municipal body cleaned the park of nearly 7,000 residents — all allegedly from the scheduled castes.

How did the dalits get to Bellilious Park? And where did they go when evicted?

According to a petition circulated by the Hong Kong-based Asian Human Rights Commission, the park was the place where night-soil headloaders, manual scavengers and conservancy workers were allowed to pitch camp more than 100 years ago because they were denied rented accommodation in the city on account of their low caste. Over the decades, many others similarly rejected by the growing metropolis of Kolkata found refuge in the park. Some even had title deeds to their holdings.

Many of those evicted that February morning from Bellilious Park ended up in makeshift tent camps in the Belgachia garbage dumping yard.

The Howrah incident is by no means an isolated one. In virtually every state of the country it is the poor, the dalits and the adivasis who have to move to make way for dumps, industries, roads, flyovers, bridges, dams, mines, parks...

Social exclusion is a theme that connects Kamatchi's life and choices with those of the Howrah oustees who moved into the secure, though Hades-like, confines of the Belgachia dump. As American scholar Mayra Buvinic points out, social exclusion involves "the denial of equal access to opportunities imposed by certain groups in society upon others".

The lack of access often translates into acceptance by marginalised communities of undesirable land use. In Gangaikondan — a scheduled caste-dominated village in southern Tamil Nadu, where Coca-Cola set up a controversial bottling plant in 2006 — the predominantly dalit (Pallar community) hosts did not oppose the plant too vociferously although all of them shared concerns about the impact the



plant would have on groundwater.

P Kirupairaj, a member of Puthiya Thamizhagam — a dalit political party led by Dr K Krishnaswamy — explains the dilemma that Pallar residents faced. “The reason why some people support the project is probably because it has been 15 years since (the industrial estate) started and there have been no takers. Some people feel that this area is being neglected because we’re Pallars, and that it is unwise to oppose the first company that comes here. People feel that resistance is futile; that all this is fated and that we don’t really have a choice.”

Evidence from the US suggests that racism plays a powerful role in identifying which communities will bear the brunt of our environmental problems, and which will gain the most from environmental solutions. In 1987, the Commission on Racial Justice, a wing of the United Church of Christ (UCC), published a watershed study titled ‘Toxic Wastes and Race in the United States’. The study concluded, with evidence, that “the best predictor of where to find hazardous waste is to classify communities by race, not income or real estate values”.

Studies prior to and following the UCC study have also confirmed that the discriminatory apportioning of environmental ills and goods transcends national boundaries, with the economic logic of the free trade ideal providing a convenient justification. This justification is best articulated by former World Bank Chief Economist Lawrence Summers who was immortalised by his infamous memo of December 1991, where he established the economic basis for environmental discrimination.

“The measurement of costs of health-impairing pollution depends on the foregone earnings from increased morbidity and mortality,” he wrote. “From this point of view, a given amount of health-impairing pollution should be done in the country with the lowest cost, which will be the country with the lowest wages. The economic logic of dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that.”

Economics as a confounder in caste analysis is not new. The debate around reservation in higher education too has to contend with the extent to which poverty, rather than caste, determines an individual’s access to opportunity.

But, as one dalit ideologue quite sharply pointed out to me, it is not poverty alone that drives a dalit to the garbage dump. The historical conditioning of society and the entrenched association of dalits with impurity, with traditional occupations that are considered too demeaning for the middle and upper castes to perform, determine who will clean up after the party is over. “Demeaning jobs should be eliminated,” says Ravikumar, a dalit ideologue and general secretary of the Tamil Nadu-based Viduthalai Chiruthaikal Katchi (Dalit Panthers of India). “Let all dirty jobs and dangerous jobs — where humans are not or should not be permitted — be mechanised. He (the dalit) is not born to clean shit. It is better to die than to live cleaning others’ shit,” he says.

Protection and encouragement of traditional occupations only perpetuate the caste-based economic structure. “Tradition and caste are one and the same,” emphasises Ravikumar.

The presence of dalits and some scheduled tribes in the conservancy sector is probably the result of an evolved casteism. The bhangis, the thotis, the valmikis were accommodated in new variants of their traditional occupations.

However, across the country, several ragpicker and *kabadiwallah* trade unions have come up. Most of these pay attention not merely to wages and working conditions of their members but also work to increase educational opportunities for their children. Not only is there no aim to perpetuate the demeaning occupation, action is taken to ensure that the children too do not fall into the same profession for want of access to better opportunities.

A caste-focused analysis of environmental issues would need to challenge the prevailing definition of environment as “everywhere but here”. Or the notion that what is worth saving are areas with abundant water reserves, multi-cropped agricultural lands, biodiverse, verdant forests and charismatic megafauna, or spectacular coral formation, or clean, green urban enclaves with nice-smelling, soft-spoken upper castes as residents. Seldom do blight spots and environmental disaster zones, or the marginal and arid scrub lands that provide succour to marginalised communities make it to the priority list of environmental campaigns.

In contrast, consider the definition of environment as put out by environmental justice advocates in the US. Environment is the place where we live, the air we breathe, the water we drink, the place where we work, and where our children play.

This definition makes it difficult for us to argue that Kamatchi — who has been denied a healthy environment in every sense — is truly being treated as an equal. As Kamatchi said: “No matter what happens, I will suffer. Due to the dump, because I live there, because of the burning, and of being in the profession of waste-picking. If the government decides to shut down the dump to improve things without offering me an alternative, I will suffer.” From the frying pan into the fire.

The American definition makes it difficult for us to even argue that Kamatchi’s exclusion is merely a function of economic criteria. Rather, it reaffirms a conviction that like trash, some people are still considered disposable.

Truly, in a caste-riven society like India, garbage is a metaphor.

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1,001 battles: Converting dalit numbers into dalit strength

In 1,001 villages of Tumkur district of Karnataka, dalits are organising themselves to wrest back their lands, learn about dalit history, celebrate dalit identity and demand participation in local governance. They will not talk about their sufferings any longer, they say. They will not endure discrimination either

PADMALATHA
RAVI

TWENTY-SIX-YEAR-OLD SUMATHI T N is a postgraduate in Arts. Till a couple of years ago she was employed as a teacher at a local school in Tumkur, a district town, some 70 km from India's Silicon Valley, Bangalore, in the southern Indian state of Karnataka. During the three years of her employment, Sumathi never revealed her dalit identity for fear of being shunned by the society she lived in.

Sumathi says: "I used to see how they treated the dalits; not letting them enter hotels or houses and even beating them up if they dared to do so. I thought it was safer to say I was not a dalit."

She kept up the pretence until she happened to meet her relatives in a dalit village during census duty. This led to suspicions being raised about her caste, and Sumathi had to face awkward questions from her colleagues. "At that point I got very scared of being caught lying and decided to quit my job," she says.

It was some time later that Sumathi found out about the Rural Education for Development Society (REDS) and joined it as a *hobli* (division) leader. "It was here that I began to come to terms with my dalit identity. I learned about dalit history and culture and realised the importance of accepting my identity and fighting for my rights. I am not ashamed or afraid of being dalit any more," says a confident Sumathi today.

It's been two years since she joined REDS. Sumathi has climbed the ladder and heads a division of the organisation that is in charge of three talukas in Tumkur. She feels that women's leadership is a very important aspect of development, especially for achieving dalit empowerment.

Sumathi's husband Mahesh T R has his own tale of struggle to tell. After graduation, Mahesh set up a flower shop but found that he got orders only from dalits; upper caste people would not buy from him.

"Their problem was that they had to enter my house to place the order, which they didn't want to do," says Mahesh. Lack of patronage forced him to close shop.

Sumathi's involvement with the dalit movement has taught Mahesh a few lessons too. "I didn't think much of women's capabilities. In fact, I expressed my doubts when REDS approached my wife to lead a team. But now I am happy to see the progress she has made. I can see why it is important

to have women leaders for the community to make any progress," he says.

Mahesh now works as a taluka leader under the purview of the division that Sumathi heads.

REDS was set up in 1984 by Jyothi Raj and M C Raj, themselves dalits. The aim was to work towards a sustainable and holistic development of communities, based on class analysis. Once they started working with communities in the villages of Tumkur district, they realised that caste played a huge part in development. REDS then moved towards organising dalits into groups and has been leading the movement for social and economic equality since.

Jyothi Raj says the organisation is currently working on two important aspects: "strengthening women's leadership in the community" and "converting dalit numbers into strength" so as to gain bargaining power in the social and political system.

Today, REDS works in over 16 districts of Karnataka under the name Booshakthi Vedike for land reclamation and electoral reforms. In Tumkur district alone, it has a presence in 1,001 villages spread across nine talukas. In the last two decades, the movement has touched many lives in the region and the individual stories are accounts of courage and self-discovery.

Twenty-four-year-old Umapati K N is among the youngest dalit leaders at REDS. He grew up in a fairly secure environment and did not face any of the discrimination that has become part of dalit life.

Umapati, from Turvekere taluka in Tumkur, joined the organisation after graduation little realising the enormity of dalit issues. After two years at REDS, he says: "I didn't think too much about being a dalit. I always had friends from the same community and never wondered why the boys from other communities weren't interested in us. Today I know the reason and I am going to fight such discrimination."

"It is this kind of empowerment that we are striving to achieve," says M C Raj. Dalit panchayats (DPs) were formed in the year 2006, as an instrument of internal governance. This new initiative has been a huge success in nine out of 10 talukas in Tumkur district. DPs give the marginalised community an opportunity to participate in both internal

and external governance in the village.

The main aim is to build the capacity of dalits to participate in the instruments and mechanisms of local, regional and national governance. It also has the avowed purpose of strengthening the internal governance mechanisms of the dalit community. This, activists say, is necessary because in traditional village panchayats dalits are not allowed to voice their concerns and opinions. They are forced to accept punishments meted out to them.

The DP philosophy is that like all other communities, dalits should have the right to govern themselves as a community with their liberative norms and get integrated into national politics as an empowered people, not as an enslaved people.

Each DP has 10 members elected from the community, with an equal number of men and women representatives.

On April 14, 2008 (Ambedkar Jayanti) REDS announced that it had formed 1,017 dalit panchayats in Tumkur district. The trend is catching on in other states of the country too, say activists.

Every year, those associated with REDS gather for an annual meeting to review the struggles they undertook during the previous year and decide the future course of action. Typically, the meeting starts with a *puja* and prayer. But the goddess being worshipped is Booshakthi — Mother Earth — and the prayer in Kannada urges the ‘black’ people gathered to worship her. The black people referred to in the song are the dalits themselves. Creation of a strong dalit identity and pride is one of the many objectives of REDS. This is done through teaching ‘Dalitology’, a combination of Dr Babasaheb Ambedkar’s philosophy and alternative dalit thinking, an orientation to the history of dalits and dalit culture and religion, including Booshakthi and ancestral worship.

REDS has set up a training centre for this. A four-month short course, called Human Potential Development-Dalits (HPD-D), is especially designed to develop leadership amongst dalit youth. More than 40 participants are taken in each batch and, so far, 440 young people have been trained. REDS also conducts a two-year diploma course in dalit studies with women participants forming the majority. Apart from this, it conducts one-day training programmes on rights in the villages where the organisation works.

Forty-year-old Krishnamurthy from Koratagere taluka never went to school and has been a daily wage labourer all his life. He started working when he was barely a teenager and has been a victim of caste discrimination ever since. “I was never invited inside the house of the people I worked for. They always served me food in the backyard. In public places they kept a separate glass for us. I have endured all this for years,” he says.

Today, he is an elected minister of the local dalit panchayat. Krishnamurthy is extremely proud of having been given this position of importance, and says: “I now have the power. I am going to use it to change things and ensure my two sons

never face what I did.”

In the last two-and-a-half years that the dalit panchayats have been working there has been a significant drop in the number of cases of discrimination in the region. DP leaders have been diligently recording all the goings-on, and the records show a drop of nearly 70% in such cases.

The other significant achievement of this dalit movement has been in land reclamation. Rangaiah, who is in charge of the land struggle, says: “There are policies sanctioning land rights to dalits. But the upper castes have taken advantage of their illiteracy and managed to usurp all the land. We are now in the process of tracing all those documents and educating dalits on their rights.”

So far, 6,107 acres of land belonging to dalits in 133 villages have been found to be in the wrong hands. Through meticulous documenting and rigorous campaigning the movement has managed to reclaim 4,829.36 acres of land.

Rangaiah says apathetic bureaucrats are the biggest roadblock to reclaiming land. He adds that ownership of land is closely linked to development so the struggle will not end until dalits get all their land back.

Beluraiah of Turvukere taluka experienced a rare recent victory. A total of 4.39 acres of land was sanctioned in his name back in 1938. But the land had been usurped by upper caste people. The case was taken to court under the PTCL (Prevention of Transfer of Certain Land) Act in 1994. After nine long years, the court ordered that the land be returned to Beluraiah. However the rival party appealed in a higher court and the case dragged on.

In 2006, just after the formation of the dalit panchayat, the matter was transferred to it. With the help of the right set of documents, the DP delivered a verdict in favour of Beluraiah on January 21, 2008.

Success in Tumkur district is giving the dalit community a glimpse of what the future might hold. Land for all dalit families, the right to livelihood, right to education, the right to govern themselves, and the right to dignity are their priorities.

“We don’t want to talk about our sufferings anymore. We want to look beyond all that and ensure we have our rightful place in this country,” says Jyothi.

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Caste is the cruellest exclusion

Caste is a form of social exclusion that is firmly entrenched because it is justified by religious scriptures. Brahmanic theory gave religious sanction to an unequal society. This article traces both the history of caste and the history of opposition to it

GAIL OMVEDT

CASTE IS A FORM OF SOCIAL EXCLUSION unique to the South Asian subcontinent. It is most prevalent in India, but exists also in Nepal and in modified forms in Bangladesh, Sri Lanka and Pakistan. Castes or *jatis* are identified in a hierarchy; at the top are usually brahmins, members of various merchant or bania castes, and members of regionally-identified 'dominant castes' who are farmers and control much of the land. (These include the Maratha-Kunbis in Maharashtra, Patels in Gujarat, Lingayats and Vokkaliga in Karnataka, and many others. Other castes close to these in the hierarchy are the shepherds and cowherds, such as the Yadavas, Dhangars, etc.) Lower down are those performing artisanal skills within the *jajmani* system, and lowest of all are the ex-untouchables, now called dalits, who are considered ritually impure but also perform most of the agricultural labour and much of the casual labour in India. Then there are the various 'nomadic tribes' and 'scheduled tribes', or adivasis as they prefer to call themselves, who are outside the village but still linked to it by numerous ties of exchange and ritual relationships.

These *jatis* are classified, normally according to the four-*varna* system, as brahmin, kshatriya, vaishya, and shudra — though dalits and adivasis are outside this system.

Caste within Muslim society has its own classification; those who are considered ashraf (named Sheikh, etc, are supposedly derived from immigrants from Iran or the Turkish territories), and those considered alaf, the 'backward' or even dalit Muslims, who also often have occupational linkages.

Castes are identified with typical occupations, though usually these are not performed by the majority today. Nevertheless, the names of many castes derive from these — potter (kumbhar, in the Marathi term), carpenter (sutar), blacksmith (lohar), goldsmith (sonar), etc. Within all of them are important sub-castes (and clan-like groups among the various brahmin castes). Marriages, by normal rules, are only supposed to take place within the caste and sub-caste; thus what is called *roti-beti vyvahaar*, exchange of bread and daughters, is a defining feature of caste.

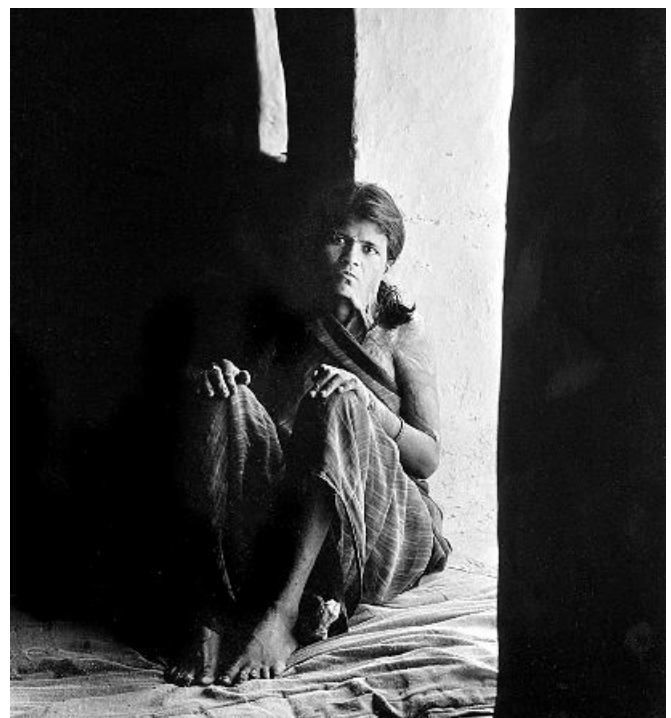
Caste is a system of social exclusion because the caste a person is born into is supposed to determine his or her occupation and status in life. Further, as a system of social exclusion it is — unlike most others, like racism for example — justified by the religious scriptures which have been

considered dominant in Indian society: the Vedas, the Dharmashastras, the Bhagavad Gita and the Puranas. This religious justification continues today and has a power that holds sway over millions of people.

Religious sanction

Several stories from the ancient Sanskrit symbolise caste exclusion: those of Shambuk, Ekalavya and Sita. In the cases of both Ekalavya and Shambuk, youth of great accomplishment from dalit and adivasi backgrounds were denied their due because of the hierarchy of caste: only a brahmin (or twice-born) could practise austerity; only a kshatriya could be a great archer. The youth were victims of social exclusion due to caste.

Sita was also a victim of India's caste-defined patriarchy. Cast away by her husband as a result of suspicion after her great ordeal, she had no independent access to property — as innumerable Indian women do not today. She was subject to the cruel norms of the day and to the



Sudharak Olive

whims of her husband.

Though the Vedic texts describe a stratified society, it was not yet a caste society. The first text to actually mention the four *varnas* is the Purush Sukta of the Rig Veda, which is considered relatively late (around the 10th century). This famous text describes the brahmin as being born from the mouth of the primordial man, the kshatriya from his shoulders, the vaishya from his thighs, and the shudra from his legs/feet. The inequality of this — the feet normally being considered lower (falling at a person’s feet is still widely practised in India as a way of declaring one’s humility before someone greater) — is clear.

So is the famous passage from the Chandogya Upanishad — part of a group of texts ordinarily considered high philosophy. This declares that birth into a particular caste results from actions in a previous life, the theory of karma. Notably it states that:

“...those who are of pleasant conduct here, the prospect [in rebirth] is indeed, that they will enter a pleasant womb, either the womb of a brahmin, or the womb of a kshatriya or the womb of a vaishya. But those who are of stinking conduct here, the prospect [in rebirth] is indeed that they will enter a stinking womb, either the womb of a dog [who is despised even today] or the womb of a swine, or the womb of a candela.” (5.10.7; translation by Michael Witzel)

Strikingly, here the untouchable or *chandala* is equated with a dog or a pig. This, among other things makes the racism in caste clear, that it is the denial of humanity to those of castes considered ‘low’.

But it is the Dharmashastras and later texts which offer the fullest elaboration of caste. The Manusmriti is quite clear on this, outlining the duties of the four *varnas* in great detail, and noting that a shudra cannot be relieved from service since it is his “essence” to serve. Indeed it was the notion of divided human essence — split into four major groups — that underlay much of caste.

Manu, like all ancient law-givers, considers *varna samkara* or intercaste marriage or unions, to be the greatest sin. But he and other Dharmashastra authors also use this as an explanation for the origin of the existing multitude of *jatis* considered low which did not fit in the orthodox *varna* system. They are considered products of such illegitimate unions between human beings of different *varnas*. Thus Manu and others have complex descriptions of various named groups or *jatis*, which are all classified as products of unions between members of different *varnas*.

“Among all the classes, only [children] who are born ‘with the grain,’ [or] in wives who are equal [in class] and have their maidenheads intact [at marriage] should be considered members of the caste. They say that sons begotten by twice-born men on wives of the very next [lower] class are similar [to their fathers] but despised for the flaw in their mothers.” (Laws of Manu, 234-5)

Then various ‘castes’ or *jatis* which are said to be products of mixed union are named, and Manu goes on to say:

“All of those castes who are excluded from the world of those who

were born from the mouth, arms, thighs and feet... are traditionally regarded as aliens, whether they speak barbarian languages or Aryan languages. Those who are traditionally regarded as outcastes [born] of the twice-born and as born of degradation should make their living by their innate activities, which are reviled by the twice-born.” (Laws of Manu, 241)

It is not simply the notorious Manusmriti which gives a justification for caste. So does the most exalted text of what Romila Thapar called “syndicated Hinduism,” that is, the Bhagavad Gita. In the final section, of course, there is the famous passage in which Krishna defines the duties of the four *varnas* (and, in fact, the whole Gita is in the context of an admonition to Arjuna to fight and thus do his duty, or follow his *dharma* as a kshatriya), and says that it is better to do one’s own duty badly than to do another’s duty well. This is the meaning of the notion of *swadharm*, which even Gandhi praised so much. And, in the first section, where Krishna explains the reason for his taking form as an *avatar* to save the world, he states that it is due in the end to *varnasamkara*:

*Upon destruction of the family, perish
The immemorial holy laws of the family;
When the laws have perished, the whole family
Lawlessness overwhelms also.
Because of the prevalence of lawlessness, Krishna,
The women of the family are corrupted;
When the women are corrupted, O Vrsni-clansman,
Mixture of castes ensues.
Mixture [of castes] leads to naught but hell.*

(Bhagavad Gita, part I, verses 40-42, translation by Frank Edgerton. Many modern translations of the Gita avoid this passage and translate *varnasamkara* by some other term)

In other words, the greatest sin was intercaste marriage; and one of the duties of a good king following this doctrine of brahmanism was to enforce the ban on *varnasamkara*. In historic times, the most famous example of this was that of the Veerasaivas in the 12th century: because their founder and leader Basava had arranged a marriage between a dalit boy and a brahmin girl, the parents of both were brutally executed by being dragged behind elephants, and in the resulting uproar the Veerasaivas were driven from the kingdom of Kalyana.

Today, of course, caste is prevalent in other religious communities as well; but this is true in the Indian context. Neither Buddhism nor Christianity nor Islam have anything similar to caste in other societies.

History

Neither the Indus civilisation nor Vedic society knew caste as such, though they had other forms of social stratification. The caste system is not, then, as normally believed, 5,000 years old. It can be said to have originated during the long period of the first millennium BCE. This was a period in which the Aryans were moving and settling in the Gangetic plain. The Indus cities had long ago disappeared, but with the growth of agriculture, the discovery of iron and new productivity came what historians often call the ‘second

Maya, a dalit from Chitrakoot, had her nose cut off. The villagers call her Naak-kati



urbanisation’: a growth in trade and commerce and the rise of cities and kingdoms. It was a turbulent period, one in which a new class society was coming into existence amidst conflicting ideas about what shape this society should have.

The two major streams of these conflicting ideas were the brahmanic and the shramanic. The brahmins derived from the earlier priests of the Vedic society (though many originated also from indigenous inhabitants), and influential sections of them were beginning to propagate a theory in which the Vedas were the original, unwritten, eternal sacred literature, the brahmins their authorised interpreters, and a *varnashrama* system (the four major *varnas* and the prescribed four stages of life, or *ashramas*) was the ideal social form in which Vedic sacrifices could be performed and the proper rituals maintained by the elites of society who were preserved from impurity by having ‘impure’ occupations performed by groups lower in the hierarchy. This theory was beginning to be put forward in clear terms by around the middle of the first millennium BCE.

Brahmanic theory gave religious sanction to a society of inequality. It has to be noted that we use the term ‘brahmanism’ for this, and not ‘Hinduism’. ‘Hinduism’ as a term for a religion only begins to be seen in very late Sanskrit texts after the Muslim period, and became generalised with the colonial era when it was identified as the religion of the ‘people of India’ and a number of disparate elements (including the sanctity of the Vedas, the various bhakti movements, and popular stories such as the Ramayana and Mahabharata) were brought together as the main components of this constructed religion. In the earlier period, the term ‘Hindu’ was unknown in India; it originated first as the mispronunciation of ‘Sind’ by people in the Iranian plateau, who pronounced ‘S’ as ‘H’, thus turning ‘asura’ into ‘ahura’ and ‘Sind’ into ‘Hind’. For a long period the area beyond the Indus (Sind) was known as ‘al-Hind’ to the Muslim world.

The shramana trend contested brahmanic inequality. The word *shramana* means ‘to strive’, and these trends consisted of those who renounced worldly life in striving for religious and social meaning. The shramanas included many groups: Buddhists, Jains, other important sects of the time such as the Ajivikas, and the materialists known as Lokayatas or, after their reputed founder, Carvak. These had many points of difference on spiritual and social issues, but they agreed on the important points of denying the authority and antiquity of the Vedas, denying the pre-eminence of brahmins, and rejecting *varnashrama* as a model of society. In other words, they were relatively egalitarian and the social model they were propagating for the newly emerging class society was an open one, in contrast to the closed system of the brahmins.

It is also significant that the shramanic groups, especially the Buddhists and Jains, were associated with the relatively open commercial and urban world, while brahmanism developed a more rural base. This is reflected in their literatures.

Buddhist literature (which is normally more socially realistic

than the Sanskrit) gives a clear picture of this contestation. In the Vasettha Sutta of the Sutta Nipata it is described how a young brahmin, Vasettha, comes to Buddha. He says: “My friend Bharadwaj and I have been having a dispute: what makes a brahmin. He asserts that it is birth (*jati*): a pure birth through seven generations produces a brahmin. I say it is action (*kamma*).” The Buddha then answers him by arguing that while there are *jat*is among plants and animals, human beings, from the hairs of their head to the nails of their feet, have no essential biological differences. Rather, it is action that makes a person: one who makes war is a soldier; one who farms is a farmer; one who does commerce is a trader, and so on. The debate depicts several features. First, there were differences also among brahmins about the emerging theory of ‘Brahmanism’. Second, there was a racial-biological element in the interpretation of caste even from the beginning, which the Buddha refutes (showing that he knew what the Hindu Council theorists do not know even today: there is no race among humans). And third, what was essential at the social level was not so much the *varnas* as the various occupations which were to become (in *varnashrama dharma*) described as caste duties.

The debates went on, and so did the contestations. It is important to realise that the caste system was never imposed all at once on Indian society: it took centuries — a full millennium — before caste became the hegemonic feature of society. This happened before the Muslim invasions, and came around the 5th-6th centuries with the defeat of Buddhism. But the beginnings were laid in the middle of the first millennium BCE, when the caste system was promulgated as a theory, a model of how to organise society, being propagated vigorously by the brahmins. They used their interpretations of earlier scriptures such as the Vedas (particularly the Purush Sukta), and then produced many ‘manuals’ of the social order, or Dhramashastras. Texts such as the Manusmriti are thus more prescriptive than descriptive. It is important to stress that the most severe interpretations of caste rigidity, such as the Manusmriti, came long before Islam even came into existence. The Hindutva theory that it was Muslim invasions that caused the rigidity of caste is historically impossible.

Resistance to caste

The history of resistance to caste exclusion includes the early shramanic religions; it includes much of the way in which Islam and Christianity functioned in India. There were also many indigenous religious movements that rejected caste, including the Nath Siddhas and others. Perhaps the most famous of these is the Bhakti movement, that is the movement which spread throughout much of India from the 12th century onwards. (Earlier Tamil Bhakti, which had the stamp of opposition to Buddhism, is perhaps an exception to this, but radicalism was very evident in some of the Saivite Siddhar groups). The Veerasaiva movement in Karnataka, the Varkaris in Maharashtra (Namdev, Jnandev, Tukaram, Cokhamela), the movement of Kabir and Ravidas in northern India are among the most famous of these.

Sikhism itself as a separate religion grew out of a Bhakti movement. Of these famous *sants*, none identified themselves as 'Hindus'; some, including Nanak and others (as well as some Sufis such as Bulle Shah) insisted that they were "neither Hindu nor Muslim (Turk)". Their opposition to caste was famous and was expressed very strongly by Kabir:

*Worship, libations, six sacred rites,
this dharma's full of ritual blights.
Four ages teaching Gayatri, I ask you, who won liberty?
You wash your body if you touch another,
tell me who could be lower than you?
Proud of your merit, puffed up with your rights,
no good comes out of such great pride.
How could he whose very name
is pride-destroyer endure the same?
Drop the limits of caste and clan,
seek for freedom's space,
destroy the shoot, destroy the seed,
seek the unembodied place. (Ramaini 35)
(Translation based on Hess and Singh in Kabir 1986)*

In a famous *doha* from the popular tradition, Kabir sings:

*Baman se gadaha bhalla, aan jaat se kutta,
mulla se murag bhalla, raat jaagaave suta
(A donkey's better than a brahmin, a dog beats other castes,
a cock is better than a mullah to tell us night is past [my
translation])*

Tuka (Tukaram), the famous Maharashtrian *sant* of the early-17th century, was brutal in his condemnation of brahmins for the practice of caste. In one song he contrasts the brahmin with the famous Ravidas:

*He's a devotionless brahman, let his face burn.
From what concubine was he born?
Blessed is the mother of the Vaishnava Chambhar;
both lineage and caste are pure.
It is not simply what I say —
this is the decision given anciently.
Tuka says, let this greatness burn up in fire,
I don't want to even see these evil ones. (#1319)*

In the end, however, the Bhakti movement failed to create a casteless society; it was absorbed and co-opted by a resurgent brahmanism that distorted the lives and teachings of the *sant*. This process was nearly complete by the 18th century, though it continues today. For example, there has been a widely popular movement in Maharashtra against the control of brahmin priests at the Pandharpur temple, centre of the Bhakti movement; but although the state finally took control in early-2008, it prescribed two things that went against the spirit of Bhakti: one, that only 'Hindus' (no Muslims) could be members of the controlling committee; and two, that the Purush Sukta must be part of the rituals observed!

It was during the colonial period that the strongest radical movement against caste exclusion took place, pioneered by Mahatma Jyotirao Phule in Maharashtra, Pandit Jyothee Thass in Tamil Nadu, and carried forward by E V Ramsami 'Periyar', Dr Ambedkar and a host of leaders and multitude of activists throughout India. These could, with the help of early British scholarship, give an historical and social

interpretation of caste — something the Bhakti radicals could not do. The non-brahmin movements in Maharashtra and Tamil Nadu, the movement of 'backward castes' in north India, and finally the dalit movement throughout India posed a challenge both to the dominant brahmanic leadership of Congress and to the British who, in the end, were upholding the dominant social order in India. It is this movement that is carried on today.

Caste in Independent India

The complex dialectic between a Gandhian and Nehruvite Congress, still much under the domination of brahmanic thinking but fighting for independence, and a movement of the less educated, less resourceful subalterns led finally by Ambedkar, Periyar and others, has left a mixed legacy to Independent India. Formally and legally, the country denies caste and considers untouchability a crime. But socially and ideologically, it persists in many ways. Thus we see a mixture today: the rise of a Mayawati symbolising dalit aspirations in a politically powerful way; the political power of 'other backward castes' symbolised by Lalu Prasad and Mulayam Singh Yadav; the existence of reservations and with it the slow but inevitable emergence of an intelligentsia from among dalits themselves; the fact that even with globalisation, dalits and other subalterns are making their way — overseas, into new professions, away from agriculture. And, on the other hand, the continuance of practices of exclusion that include much less access to land, food and water for the lower castes and dalits; the lack of a really solid business base (in the share of 'capital') for the dalit middle class — contrasted, for example, with African Americans in the US and, above all, the continuation of individual and group atrocities. Chhunduru in Andhra Pradesh, Jajjar in Haryana, Khairlanji in supposedly progressive Maharashtra are only a few examples. The famous dalit woman writer Bama relates that in a seminar on literature in France, when she brought up the issue of Jajjar, a brahmin writer present replied by saying: "But they had killed a cow!"

Caste exclusion, in other words, still exists, and it still enjoys religious sanction.

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Dalit exclusion: The empirical evidence

In 60% of Rajasthani villages surveyed, dalits are not hired to cook midday meals. In 25% of 555 villages surveyed nation-wide, dalits were paid less wages; in 35% they were not allowed to sell goods at village markets; and in 47% of villages they were not allowed to sell milk to cooperatives. No wonder dalits have lower human development and higher poverty levels

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SOCIAL EXCLUSION is the denial of equal opportunities imposed by certain groups of society on others, leading to the inability of an individual to participate in the basic political, economic and social functioning of society.

Amartya Sen draws attention to various meanings and dimensions of the concept of social exclusion. He draws a distinction between situations where some people are kept out (or left out), and where some people are included (forcibly) on deeply unfavourable terms. The two situations are described as “unfavourable exclusion” and “unfavourable inclusion”. Sen argues that it is important to distinguish between ‘active exclusion’ — fostering of exclusion through deliberate policy interventions by the government or by any other wilful agents (to exclude some people from some opportunity), and ‘passive exclusion’, which works through the social process in which there are no deliberate attempts to exclude, but nevertheless may result in exclusion from a set of circumstances.

Sen further distinguishes the “constitutive relevance” of exclusion from that of “instrumental importance”. In the former, exclusion or deprivation have an intrinsic importance of their own. For instance, not being able to relate to others and to take part in the life of the community can directly impoverish a person’s life, in addition to the further deprivation it may generate. This is different from social exclusion of “instrumental importance”, in which the exclusion in itself is not impoverishing but can lead to impoverishment of human life.

Mainstream economists have further elaborated the concept of discrimination that operates particularly through markets.

Caste exclusion and discrimination

In India, exclusion revolves around the societal interrelations and institutions that exclude, discriminate, isolate and deprive some groups on the basis of group identities like caste and ethnicity. It is caste-based exclusion which forms the basis for various anti-discriminatory policies.

Historically, the caste system has regulated the social and economic life of people in India. The organisational scheme of the caste system is based on the division of people into social groups (or castes) in which the civil, cultural and economic rights of each individual caste are predetermined or ascribed by birth and made hereditary. The assignment of

civil, cultural and economic rights is therefore unequal and hierarchical.

The most important feature of the caste system, however, is that it provides for a regulatory mechanism to enforce social and economic organisation through the instruments of social ostracism (or social and economic penalties), and reinforces it further with justification and support from philosophical elements in the Hindu religion (Lal, 1988; Ambedkar, 1936 and 1987).

The caste system’s fundamental characteristics of fixed civil, cultural and economic rights for each caste, with restrictions on change, implies “forced exclusion” of one caste from the rights of the other caste, or from undertaking the occupations of other castes. Exclusion and discrimination in civil, cultural, and particularly in economic spheres such as occupation and labour employment, are therefore internal to the system and a necessary outcome of its governing principles.

In the market economy framework, occupational immobility operates through restrictions in various markets such as land, labour, credit, other inputs and services necessary for any economic activity. Labour, being an integral part of the production process of any economic activity, would obviously become part of market discrimination. This implies that the caste system involves the negation of not only equality and freedom, but also of basic human rights, particularly of low-caste untouchables, thus becoming an impediment in personal development.

The principles of equality and freedom are not the governing principles of the caste system. This is because the underlying principles of the caste system assume particular notions of ‘human rights’. Unlike many other human societies, the caste system does not recognise the individual and his/her distinctiveness as the centre of the social purpose. In fact, for the purpose of rights and duties, the unit of Hindu society is not an individual. Even the family is not regarded as a unit in Hindu society, except for the purposes of marriage and inheritance. The primary unit in Hindu society is caste, and hence the rights and privileges (or lack of them) of an individual are on account of him/her being a member of a particular caste (Ambedkar; first published in 1987).

Also, due to differential ranking and the hierarchical nature of the caste system, the entitlements to various rights

become narrower and narrower as one goes down the hierarchical ladder within the caste system. Various castes get artfully interlinked and coupled with each other in a manner such that the rights and privileges of the higher castes become the causative reasons for the disadvantage and disability of the lower castes, particularly the untouchables.

As Ambedkar observed, a caste does not exist in a single number, only in plural. Castes exist as a system of endogenous groups that are interlinked with each other in an unequal measure of rights and relations in all walks of life. Castes at the top of the order enjoy more rights at the expense of those located at the bottom. Therefore, the untouchables located at the bottom of the caste hierarchy have much fewer economic and social rights.

Since the civil, cultural and economic rights (particularly with respect to occupation and property rights) of each caste are ascribed, and are compulsory, the institution of caste necessarily involves forced exclusion of one caste from the rights of another. The unequal and hierarchical assignment of economic and social rights by ascription obviously restricts freedom of occupation and human development.

Forms of caste exclusion and discrimination

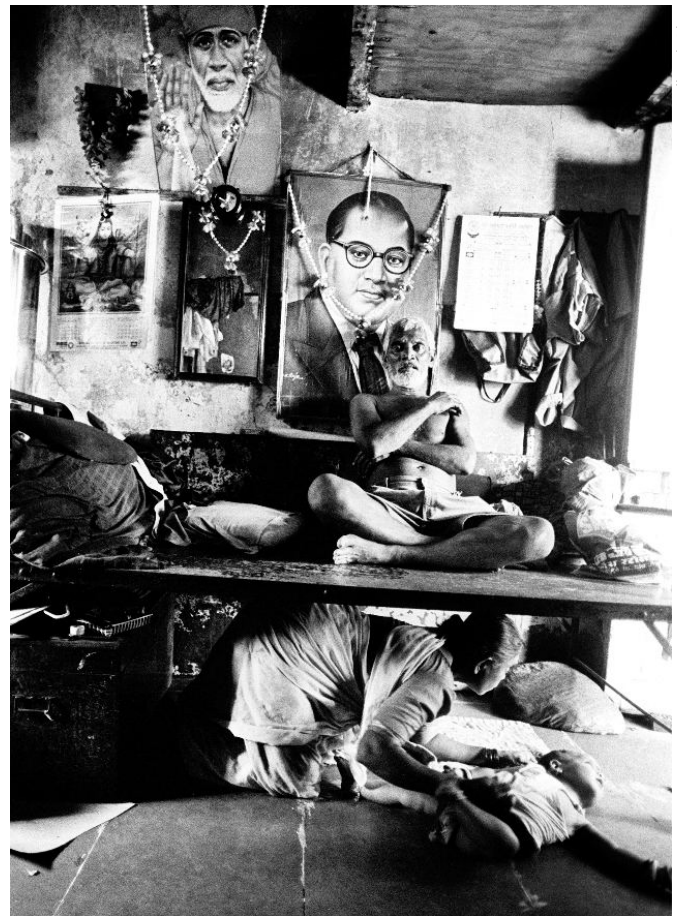
The practice of caste-based exclusion and discrimination thus involves what has been described as “living mode exclusion”, exclusion in political participation, and exclusion and disadvantage in social and economic opportunities (*Minorities at Risk*, UNDP HDR 2004).

Caste/untouchability and ethnicity-based exclusion reflects in the inability of individuals and groups like former untouchables, adivasis and similar groups to interact freely and productively with others and to take part in the full economic, social and political life of a community (Bhalla and Lapeyere, 1997). Incomplete citizenship or denial of civil rights (freedom of expression, rule of law, right to justice), political rights (right and means to participate in the exercise of political power), and socio-economic rights (economic security and equality of opportunities) are key dimensions of impoverished lives (Jonas Zoninsein, 2005).

Caste and untouchability-based exclusion and discrimination can be categorised in the economic, civil, cultural, and political spheres as follows:

Firstly, economic exclusion can be practised in the labour market through denial of jobs; in the capital market through denial of access to capital; in the agricultural land market through denial of sale and purchase or leasing of land; in the input market through denial in sale and purchase of factor inputs; and in the consumer market through denial in the sale and purchase of commodities and consumer goods.

Secondly, discrimination can occur through what Amartya Sen describes as “unfavourable inclusion”, through differential treatment in the terms and conditions of contract, one of them reflecting in discrimination in the prices charged and received by discriminated groups.



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Discriminated groups can get lower prices for the goods that they sell, and could pay higher prices for the goods that they buy, as compared with the market price or the price paid by other groups.

Thirdly, exclusion and discrimination can occur in access to social needs supplied by government or public institutions, or by private institutions in the fields of education, housing and health, including common property resources like waterbodies, grazing land and land for common use.

Fourthly, groups (particularly untouchables) may face exclusion and discrimination from participation in certain categories of jobs (the sweeper being excluded from household jobs) because of the notion of purity and pollution, and may be restricted to so-called “unclean” occupations.

In the civil and cultural spheres, untouchables may face discrimination and exclusion in the use of public services like roads, temples, waterbodies, and institutions delivering services like education, health and other public services.

In the political sphere, untouchables could face discrimination in the use of political rights, and in participation in the decision-making process. Due to physical (or residential) segregation, and social exclusion on account of the notion of untouchability, they may suffer from a

general societal exclusion.

Since there is a societal mechanism to regulate and enforce the customary norms and rules of the caste system, untouchables generally face opposition in the form of social and economic boycott, violence and such acts as a general deterrent to their right to development.

Caste and untouchability-based exclusion and discrimination are essentially “structural in nature” and comprehensive and multiple in coverage, involving the denial of equal opportunities.

Caste exclusion and discrimination: Empirical evidence

Studies show that dalits suffer from limited access to capital assets like agricultural land and non-land assets (and/or low productivity of those assets), less urbanisation and employment diversification away from agriculture, exceptionally high dependence on casual wage labour, high underemployment, lower daily wages, particularly in non-farm activities, and low levels of literacy and education compared with non-dalit/adivasi groups in Indian society.

The question is why dalits and adivasis, categorised as scheduled castes (SCs) and scheduled tribes (STs), have poor access to resources that directly and indirectly determine the level of income. Why their ownership of agricultural land and non-land capital assets is low compared with non-SC/STs. Why unemployment rates are high compared with non-SC/STs. Why daily wage earnings of SC/STs in non-farm activities are lower compared with non-SC/STs. Why literacy rates and education levels are much lower when compared with non-SC/STs.

We first need to look at the evidence on discrimination in civil, cultural and political spheres provided by official data, besides an all-India study and four regional studies. These include an all-India 2000 ActionAid study (‘Untouchability in Rural India’ by Ghanshyam Saha, Satish Deshpande, Sukhadeo Thorat, Harsh Mander, Amita Baviskar and research and other regional staff, Delhi), a study on Karnataka (1973-74 and 1991), Andhra Pradesh (1977), Orissa (1987-88) and Gujarat (1996). The all-India study presents evidence from 11 states. The studies based on village surveys bring out the actual magnitude of the exclusion, discrimination and atrocities against dalits.

Economic exclusion and discrimination

ActionAid’s study — conducted in 555 villages across 11 Indian states — found that discrimination in labour markets operates through exclusion in hiring, and unfair or low wages. In about 36% of the villages, SCs were denied casual employment in agriculture. In about 25% of villages, SCs faced discrimination in wage payments. SCs received daily wages at a rate that was less than the market wage rate, or wages paid to non-SC workers. Belief in the concept of purity and pollution also impacted hiring of SC labourers — in about one-third of villages SCs were excluded from employment in the construction of houses.

In the case of other markets, the study observed discriminatory treatment of SCs in access to irrigation water and public and private services. In a little more than one-third of the villages, SCs were denied access to water for agriculture. In case of agricultural land, selective evidence from some states brings out the restrictions placed by the high castes on SCs in the purchase of private agricultural land, and use of public land for agriculture and housing. In the case of access to common property resources like grazing land, fishing ponds, and other resources, SCs faced exclusion in about one-fifth of the sample villages.

The notion of pollution and purity reflected in the exclusionary and discriminatory behaviour of higher castes in the consumer markets — in the sale and purchase of consumer goods, particularly milk, vegetables and other such goods. In 35% of the villages surveyed, SCs were not allowed to sell any kind of goods at village-level markets. In about 47% of villages, SCs were not allowed to sell milk to village cooperatives and private buyers. The survey data also reveals some isolated evidence of exclusion and discrimination in the sale and purchase of consumer goods like bakery products and vegetables. Such restrictions compelled SCs to go to small towns and other nearby marketplaces where their caste identity was not so obvious, or was hidden.

Micro-level studies such as those from Andhra Pradesh (Venketeswarlu, 1990) and Karnataka (Khan, 1995) provide some evidence on economic discrimination in occupation, employment, wages, and the credit market as well as in other economic spheres. The Andhra Pradesh study observed that SCs faced restrictions in efforts to change their occupation. Similarly, the Karnataka study revealed that nearly 85% of SC respondents continue to be engaged in their traditional occupations, with only 15% able to make a switch-over. The Orissa study (Tripathy, 1994) observed discrimination in land lease, credit and labour markets in rural areas. Nearly 96% of untouchable respondents in one village and all untouchable respondents in the second village were discriminated against in wage payments with 28% in one village and 20% in another facing discrimination in payment of rent.

For urban areas, Banerjee and Knight (1991) observed that “there is indeed discrimination by caste, particularly job discrimination” and that “discrimination appears to operate at least in part through traditional mechanisms, with untouchables disproportionately represented in poorly-paid dead-end jobs... Even if discrimination is no longer practised, the effects of past discrimination could carry over to the present. This may help explain why discrimination is greatest in operative jobs in which contacts are more important for recruitment, and not in white-collar jobs in which recruitment involves formal methods.”

Such economic discrimination had obvious impacts on the earnings of SC households, and reflected in the incidence of high poverty among them.

Caste discrimination and the right to food

Empirical studies also show denial of access and differential treatment in food security programmes like the midday meal (MDM) scheme and fair price shops (FPS). The study on the midday meal scheme in Rajasthan reported the exclusion of scheduled caste persons from employment as cooks and helpers in almost 60% of the sample villages (Jean Dreze, 2003). Another study based on a sample of about 550 villages in five states — Uttar Pradesh, Bihar, Andhra Pradesh, Tamil Nadu and Rajasthan — reported exclusion and discriminatory treatment in the operation of midday meal schemes and fair price shops (Thorat and Lee, 2003).

In terms of scale, caste discrimination afflicts more than one out of three fair price shops and more than one out of three government schools serving midday meals. In terms of geographical spread, it is unquestionably a nationwide problem — from 24% in Andhra Pradesh to 52% in Rajasthan, to a vast majority in Uttar Pradesh and Bihar, respondent villages from every state reported problems of caste discrimination and exclusion in the midday meal scheme. Likewise with the FPS, no state is free of discrimination — from 17% in Andhra Pradesh to 86% in Bihar. For instance, every state reports a substantial percentage of dominant caste public distribution system (PDS) dealers practising caste-based discrimination in the distribution of PDS goods, for example preferential order of service by caste, or hierarchically segregated timings for dominant caste and dalit customers.

While the problem is nationwide, its degree varies considerably from state to state. Where higher percentages of midday meal cooks and organisers are dalit, and where a higher percentage of midday meals are held in dalit colonies, a lower incidence of caste discrimination in the scheme is reported. In Andhra Pradesh, where indicators of dalit participatory empowerment and access are relatively high (49% of respondent villages have dalit cooks, 45% have dalit organisers, and 46% are held in dalit localities), reported caste discrimination in the midday meal scheme stands at 24%. In Tamil Nadu, where the same empowerment and access indicators are lower (31%, 27% and 19%, respectively), reported discrimination stands at 36%. And in Rajasthan, where the indicators are alarmingly low (8% dalit cooks, 0% dalit organisers, 12% held in dalit colonies), reported discrimination was extremely high at 52%.

A similar pattern emerges in access to fair price shops, where higher proportions of dalit dealers and FPS in dalit colonies correspond with lower proportions of reported discrimination and 'untouchability' practices.

Exclusion and discrimination in civil and political spheres

Macro-level evidence

During 1999-2001, an average of 28,016 cases per year were registered by untouchables in the country under the Anti-Untouchability Act of 1955 and the SC and ST Prevention of Atrocities Act. This comes to about three cases per 100,000 population and included restrictions on access to temples,

wells, taps, tea stalls, restaurants, community baths, roads, and other services. The ratio of such cases was highest in Rajasthan (9.3), followed by Madhya Pradesh (7.7). The ratio was about three cases per 100,000 population in Orissa, Karnataka, Gujarat and Andhra Pradesh.

The break-up of crimes against untouchables for the year 2000 include 526 cases of murder, 3,497 of grievous hurt, 290 cases of arson, 1,000 cases of sexual assault, and 11,587 cases of other offences. During a nine-year period between 1992 and 2000, a total of 252,370 cases of crime, including cases of discrimination and atrocities, were registered by untouchables.

Evidence from primary surveys

First, the results of the most comprehensive study based on an intensive survey of 555 villages in 11 states across India. In this section, we consider the practice of discrimination in the "secular public sphere", including access to water sources, public thoroughfares, transport, and other village-level services and amenities like tea shops, barbers' or watermen's services, and so on.

Out of all the villages surveyed, complete denial was observed in a little less than half the villages — 48.4% in terms of access to public water/drinking places, 36% in terms of access to shops, 26% in terms of the use of restaurants/hotels, 21% in terms of entry to health centres/clinics, 9.2% in terms of public transport, and 3.2% in terms of entry to cinema halls/recreation facilities, etc.

In the case of individual service-providers also, the denial was more than apparent. Out of all the villages surveyed, denial of barber services was reported in 46% of the villages, washerperson services in 46% of the villages, carpenter services in 26% of the villages, and potter services in about 20% of the villages. While complete denial of access to particular water sources (well, tank, tubewell, etc), village shops, health clinics, transport used for public purposes, services offered by washerpersons, carpenters, tailors, potters, etc, is the most evident form of social exclusion, what is more common is the imposition of differential treatment in access to these and other public services, which takes various forms. This was observed in one-third of the villages in the form of separate seating arrangements and a separate set of cups at tea stalls/restaurants for untouchables. Similar forms of discrimination were observed in purchases from shops, entry into public transport, and treatment at private health clinics, etc.

Karnataka study

The Karnataka study for 1973-74 is based on a fairly large sample of 76 villages, 38 urban centres and 3,330 households. Of the total households, 73% are untouchables (Parvathamma, 1984). A little more than half the untouchable respondents were not allowed to draw water from the public well in the village. The magnitude of the problem was less severe in urban centres, but even in urban areas 15% of respondents reported restrictions on the use of public waterbodies. The practice of untouchability was more

widespread in terms of access to the village temple and access to high-caste houses. More than 60% of untouchables were not allowed into the village temple. A little less than half the dalits were not allowed free access to the local village tea shop. In urban areas, the discrimination was much less (only 6%). In essential services, the practice of untouchability was widespread. A little more than half of the respondents did not receive the services of a barber and washerman in the village. In urban areas, access improved considerably.

In public services like postal services, health and education, the practice of untouchability was much less. Almost all had access to postal services, but half of the respondents faced some kind of discrimination insofar as postmen avoided entering dalit residential areas. Generally, discrimination in services rendered by government doctors and nurses and the village school was less.

Still, in the early-1970s, one out of 10 persons among the scheduled castes was not allowed inside the village shops. One out of 10 persons among the scheduled castes could not wear clothes or ornaments of their own choice without being harassed.

Nearly 20 years later, another study was conducted in Karnataka taking 941 respondents from 52 villages and from most of the districts (Khan, 1995). In the political sphere (that is, sitting together or drinking tea in the village panchayat office), the discrimination was much less. Otherwise, not much had happened in the two decades since the previous study was carried out. About three out of four respondents were denied entry into the village temple and also denied participation in religious processions. Social mixing or relations across caste barriers were also not allowed. Most people among the untouchables did not have free access to the water taps of the high castes, and three-fourths of them had no access to the village tank.

Orissa study

The Orissa study covered 65 untouchable respondents from two villages (one small and one large) in 1987-88 (Tripathy, 1994). In both villages, the settlements of untouchables were separated from those belonging to the upper castes. An overwhelming majority — 80% — of respondents in the small village and 70% in the large village were prohibited from drinking water from the public well and public tubewell. In the large village there were separate pulleys in wells for the untouchables.

At village community feasts and marriages in both the villages, the former untouchables were treated unequally. The same is true for temple worship, barber services, washerman services, priest services, etc. Sixty-four per cent in the large village and 100% in the small village were treated unequally in the village meeting. Eighty per cent of the respondents in both villages did not have access to tea shops; 70% in the large village and 80% in the small village faced unequal treatment or discrimination in getting services from grocery shops. Their small number, poverty and fear (in

the small village) discouraged the dalits from contesting elections. But dalits had free access to schools and hospitals in both villages.

Gujarat study

The Gujarat study was conducted in 69 villages, in 1996, to observe changes in the practice of untouchability (Shah, 1998). The study examined 17 spheres of village life. The practice of untouchability in the seating arrangement of students in village schools was negligible and non-SC students mingled freely in the school. Non-SC teachers do not discriminate against SC students, but they are not easily accessible to SC students outside the school boundary.

Not all schools have drinking water facilities for students. Where it exists, all students take water from a common vessel. Nearly 10% of village schools have teachers belonging to SCs. None of them complained that their colleagues discriminated against them in school. However, except in south Gujarat, these teachers do not get accommodation in the high caste locality of the village. They either commute from their village or the nearby town, or they rent a house in the SC locality.

Almost all villages are covered by state transport. Except in 7% of the villages, untouchability is not observed whilst boarding and sitting in the bus.

Open or subtle untouchability is practised at panchayat meetings in 30% of the villages. The seating arrangement in panchayat offices is common for all members, but there is a tacit convention whereby certain seats are marked for SC members. Though tea and snacks are served to everyone, separate plates and cups are reserved for SC members, and they are stored separately. In most village temples, 75% of SCs are not allowed to enter beyond the threshold, though they may worship from a distance. Many villages with large numbers of dalits have constructed temples in their localities to avoid confrontation.

In 46 villages, SCs had separate water facilities near their localities. In the remaining 23 villages in which untouchables take water from a common source, SC women take water after the upper caste women. In seven villages (11% of the sample) SC women are not allowed to fetch water from the well. They have to wait till the upper caste women pour water into their pots. The upper caste women shout at them constantly and humiliate the SC women: “Keep distance, do not pollute us!”

Most tailors do not practise untouchability. However, in most cases, they do not alter the used clothes of SCs. Nearly one-third of potters observe untouchability while selling pots to SC clients. Most barbers (nearly 70%) refuse their services to SC males. The extent of untouchability has remained almost intact in the sphere of house entry. Except for a few villages, SC members of villages do not get entry beyond the outer room of the houses of high castes. Even in villages where the young folk do not believe in physical untouchability, and who serve tea to SC guests in their houses, entry into the

dining room is not encouraged.

The practice of untouchability has considerably reduced in some public spheres that are directly managed by state laws, such as schools, postal services and elected panchayats. The practice of untouchability on public roads, restricting free movement of SCs, has considerably declined although it is too soon to say that dalits are not discriminated against in the public sphere.

Access to justice

A number of anti-discrimination statutes and other legal provisions exist as legal safeguards against caste and untouchability-based discrimination. As mentioned earlier, the primary piece of legislation designed to provide a measure of protection to people from scheduled castes and scheduled tribes and to enforce their rights are the Anti-Untouchability Act, 1955 (in 1979 it was re-named the Civil Rights Act) and the Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act, 1989.

There are limited studies that examine the effectiveness of these legislations and access to institutions of justice. However, available evidence indicates that these legislative provisions are highly underutilised. SC/STs also suffer from discriminatory access to institutions of justice such as the police and the judiciary. Studies indicate that the scheduled castes/tribes face insurmountable obstacles at various levels from village-level functionaries like sarpanchs to the police, public prosecutors and other functionaries who are extremely non-cooperative and discriminatory. This is essentially reflected in denial of justice to SC/STs.

Official data on civil rights cases shows that of the total number of cases registered in 1991, only 1.56% were convicted. The conviction rate came down to .60% in 1999 and .85% in 2000. This shows that the conviction rate in cases relating to civil rights violations and atrocities was less than 1% and close to 0%.

Analysis of 100 documented cases of atrocity during 2000-2003 in Andhra Pradesh throws some light on the reasons for the low conviction rate. The case studies indicated “a disturbing trend of subversion of the rights of dalits to justice and compensation under the law once an atrocity takes place” (Agrawal and Gonsalves, *Dalit Human Rights Monitor 2003*). The study observed negligence and collusion at the stages of registration, chargesheeting and investigation, at seeking justice before the law in the courts, and in giving compensation. About the role of the judiciary, *Dalit Human Rights Monitor 2003* observed: “If the low conviction rate under the Act is any indication, the judiciary has responded poorly to the Act. Judiciary delay and dilution of the scope, applicability and meaning of the SC/ST Act has resulted in denial of justice to the dalits” (Dalit Human Rights Report — 2000, AP 109).

The interface of caste and gender

Assessments of human development at the aggregate level hide gender differences. Women belonging to marginalised

groups suffer triple deprivations arising out of lack of access to economic resources, caste and gender discrimination. SC and ST women constitute perhaps the most economically deprived section of Indian society. Most of them don't own agricultural land and work as wage labourers.

In 2001, about 57% of SC and 37% of ST women respectively were agricultural wage labour in rural areas, as compared with 29% for non-SC/STs. In urban areas, 16% SC and 14% ST women were daily wage labourers as compared with only 6% for non-SC/STs. Only 21% of SC women were cultivators compared with 51% for STs and 45% for non-SC/STs. SC/ST women also faced differential treatment in wage-earning, particularly in urban areas. In 2000, SC and ST women casual labourers received daily wages of Rs 37 and Rs 34 respectively, compared with Rs 56 for non-SC/ST women; the national average was Rs 42.

Besides this, a large number of SC women are engaged in so-called 'unclean' occupations, like scavenging. Because of their association with these occupations, the women face discrimination in the social and economic spheres.

Lack of educational development is another important problem. In 2000, the literacy rate among SC and ST rural women (aged 15 and above) was 24% and 23% respectively, compared with 41% for non-SC/ST women. The literacy rate among SC women in urban areas was 48%, compared with 54% and 70% for ST and non-SC/ST women respectively. The dropout rate among SC and ST women is also relatively high at every stage of education. The high dependence on casual labour, with relatively low earnings, among SC and ST women induced a high degree of deprivation and poverty among them.

The gender break-up of poverty is not available. However, the high degree of deprivation is reflected in other indicators of wellbeing — undernutrition and health. About 65% and 56% of ST and SC women respectively suffered from anaemia compared to 47.6% of non-SC/ST women. In 1998-99, 21.2% of SC and 26% of ST children under four years of age suffered from malnutrition (based on weight-for-age). Of these underweight children, 54% of SCs and 56% of STs were severely undernourished. There is a significant difference between SC and ST children and non-SC/ST children, 13.80% and 41.1% of whom are malnourished and undernourished respectively.

While the Government of India has adopted the national goal of reducing the present infant mortality rate (IMR) to 60 by 2000, the SC's IMR, child mortality and under-5 mortality is 83.00, 39.50 and 119.3, respectively. Compare this with 61.8, 22.2 and 82.6 for non-SC/STs, respectively. Similarly, IMR, child mortality and under-5 mortality are 84, 46.3 and 126 among STs.

About 72% of births to SC women and 81% of births to ST women took place at home; the corresponding figure for others is 59%.

Because of their lower social status, sexual exploitation of

SC/ST women is also high. There are some caste-related social customs and religious practices in Hindu society that exploit only women from dalit communities. One of these customs is *devdasi* or *jogini*, involving religious prostitution imposed on unfortunate girls who are married to a village god and then become the subject of sexual exploitation by upper caste men in a village. A primary survey estimates the number of *joginis* in six districts of Andhra Pradesh at 21,421. There are similar practices in states like Tamil Nadu, Karnataka and Maharashtra where dalit women are designated *devdasis* or ‘devotees of god’.

Conclusion

From the empirical evidence it becomes clear that caste-based exclusion and discrimination of SCs in the past and its continuation in the present (through residual traditional attributes) continues to be one of the main reasons for their lower human development and higher deprivation and poverty levels.

The approach of Indian policymakers to overcoming discrimination and addressing social exclusion includes such policy interventions as legal enforcement of anti-discrimination laws, reservation and preferential and general empowering measures that form part of anti-poverty programmes. These policies have brought about positive changes, but the rate of improvement has not been fast enough to reduce the absolute level of deprivation and the gap between the excluded group of scheduled castes and tribes and other advanced sections. The continuing exclusion-induced deprivation of disadvantaged groups of SCs indicates that addressing social exclusion is often much more difficult than addressing poverty.

Social and cultural sources of exclusion (in economic, civil and political spheres) are rooted in informal social structures and institutions of caste and untouchability covering not only the private but public domain governed by the State. In this context, the inclusion of excluded groups is different from the social inclusion of materially deprived people. Poverty, even when broadly defined as exclusion from the means necessary for full participation in the normal activities of society, is largely a question of access to resources and services. The social exclusion of groups or individuals within that group is foremost a denial of equal opportunity, respect and recognition of the right to development. Fighting discrimination therefore calls for additional policies complementing anti-poverty and economic development programmes. But there is also considerable overlap, and therefore the need to combine and complement, and not divide, programmes against poverty and economic deprivation and policies for equal rights and social inclusion of disadvantaged groups.

Excerpted from ‘Caste, Social Exclusion and Poverty Linkages — Concept, Measurement and Empirical Evidence’ by Sukhadeo Thorat, available at www.empowerpoor.org

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Caste in the West

Caste discrimination amongst the Indian diaspora is a relatively recent phenomenon and it’s getting stronger

NIKKI VAN DER GAAG

DAVINDER PRASAD is very proud of his daughters. His oldest, Rena, works in the media; the second is doing a degree in fashion, and the youngest, Indira, named after India’s former prime minister, is still at school. Davinder works as a laboratory manager at an American aerospace company and his wife Vimla teaches at a primary school.

They live in a detached bungalow with beautiful wooden floors. Goldfish swim in a tank in the living room and on the walls hang wooden artefacts from India and a large framed photograph of the family in front of the Taj Mahal.

They do not, however, live in India, but in Britain. And Davinder has another, more unusual, preoccupation. He is one of the founders of CasteWatch UK, an organisation set up in 2003 to combat caste discrimination in Britain.

It was something he had not expected to encounter when he arrived in the country as a young man 26 years ago. When the Indian diaspora first started settling in the West from the 1950s onwards, caste was not much of an issue. In any case, many immigrants were from the lower castes, perhaps because, technically, the ancient Laws of Manu, which many devout Hindus attempt to follow, prohibit the higher castes from living outside the land of their birth. But as diaspora communities grew, so did caste distinctions.

While 95% of Hindus live in India and 98% in South Asia, there are 4.5 million living in other parts of the world, including a million in the US. As Dr Ambedkar noted: “Wherever a Hindu goes, he [sic] will take his caste system with him.”

Davinder feels there is ample evidence of this. He shows me a British school textbook on Hinduism, which describes caste without challenging it in any way. “If I were writing that book I would point out that caste was not a part of Hindu society to begin with. I would say that it was a form of racial discrimination and that it was not acceptable.” He also says that he was surprised to find caste discrimination among Sikhs who traditionally reject such distinctions.

He has a file bursting with details of incidents, radio programmes, newspaper cuttings and even a glossy leaflet from a Hindu temple in London, all evidence of caste prejudice or discrimination. There are as yet no statistics on this in the West. Stories remain anecdotal, like that of the man, recently arrived in Britain from India, who had a surname that belonged to a caste higher than his own. The people he was staying with offered him all the help they

could give — found him a job, supported and encouraged him. A few months later, however, during a conversation, it emerged that he was actually of a lower caste than his name suggested and as soon as this was known he was given the cold shoulder. It was a complete rejection. All of a sudden the support he had come to rely on was yanked away; he lost his job and ended up looking for another place to stay.

Caste permeates the whole diaspora community. Everywhere in the West, advertisements aiming to arrange marriages among the community will advertise caste as part of the package — age, height, caste, nationality, educational qualifications, profession, hobbies... Some will state 'caste no bar'; others, including those from so-called 'untouchable' castes, will make statements like 'Prefers a Ravidassa girl, but will welcome other castes'; 'Khatri family seeks...'; 'Jat Sikh educated family seeks...'

Marriage matters

In North America, large meetings are held with the purpose of getting young people from the same caste together. In Atlanta, the Patidar Samaj meeting drew 4,000 people and resulted in 100 marriages. Many people return to South Asia to marry someone from their own caste. Parar Bagawar of Suman Bureau, a matrimonial agency in Britain, says: "People are still mentioning the issue of caste and bringing it up when it comes to marriage, and generally...people don't want to marry into a lower caste. We also find that those who originate from a lower caste prefer to meet someone of the same background because they know that they may be victimised because they are of a lower caste." She says only 25% of marriages take place across caste barriers.

But Balbir Grewal of the Sikh Guru Granth Sahib temple in London says: "Everybody should be proud of whatever creed or caste they are and I think we should stick to it. It's like roots. How can you plant a tropical plant in a cold country? If this carries on, the time will come when nobody will know which background, religion or caste they come from."

Many from the former 'untouchable' castes disagree. Their concern is that as identity (both religious and ethnic) becomes increasingly important, caste becomes more entrenched. Davinder Prasad says: "Children today are asked at school: 'What is your caste?' If they don't want to say, then they are asked: 'Why not? Is there something wrong with your caste?'" Vimla tells of an incident in school where one little boy was biting his shoe and she overheard another teacher say: "Stop it, you chamar (dalit sub-caste)!" "I was shocked that this still continues," she says.

Increasingly popular among the young, Punjabi bhangra music often celebrates the pride of *jat* or caste. (Jats are also a particular landowning feudal caste.) Bobby Friction from BBC Radio 1's Asian underground music programme notes: "There are many songs about Jat pride, about the life of a Jat... Jat nationalism is running rampant in bhangra music now to the point where every bhangra album that comes out in Britain has at least one track that alludes to the power

of the Jats."

Religious fundamentalism

There are now many caste-based groups in the US and it is alleged that they provide substantial amounts of funding to caste, political and religious groups in South Asia. Many fear that their support for right-wing Hindu groups is leading to an increase in religious fundamentalism and reinforcing caste in India. Angana Chatterji, Professor of Social and Cultural Anthropology at the California Institute of Integral Studies in San Francisco, says that such groups "are utilising religion to foment communal violence towards organising ultra-right, non-secular and undemocratic nationalism in India". In addition, "justification of caste inequities, subordination of dalits, women, adivasis (indigenous peoples) and other minorities, and the consolidation of a cohesive middle class base are critical to its momentum".

But, as in Britain, there are movements to combat caste in both the US and Canada. The Chetna Association of Canada documents incidents of caste discrimination. In the US, the International Bahujan Organisation (IBO) in New York has over 5,000 members (*New York Times*, October 24, 2004). There is a Dalit International Newsletter published in Connecticut, US, and one in Britain published by the Dalit Solidarity Network. The first World Dalit Convention was held in Kuala Lumpur in October 1998. It was chaired by Senator M G Pandithan of Malaysia, and brought together Indian dalit leaders as well as many from the diaspora. Following on from the 2001 World Conference on Racism in South Africa, where dalits ensured that caste was given high priority, the European Union and the United Nations have put caste issues, or "discrimination based on work and descent" on their agendas. Dalits in the diaspora have also lobbied to ensure that international aid agencies employ dalit staff in the countries where they work.

They also want to ensure that discrimination on grounds of caste is against the law in western countries. Davinder Prasad notes that in Britain, where there are laws against discrimination on grounds of race or sex, it is not unlawful to call someone an 'untouchable'. He proposes that the Race Relations Act 1976 be amended and brought up-to-date to include casteism. "One of the main objectives of CasteWatch UK is for there to be laws against caste discrimination. If we could get it outlawed in the UK it would send a signal around the world that this is not acceptable."

He continues: "In this country we are British, and a Briton cannot be an untouchable. I want my children to think of themselves as British. I want them to have the values of this society, this country. I want them never to have to fear discrimination because of their caste. And I want them to be aware of human rights, equality and justice."

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Giving adivasis a voice

The 80 million adivasis and 60 million de-notified tribes in India are possibly amongst the most excluded communities. How should their exclusion be addressed, even as their language and culture are protected? This article documents how the Bhasha Institute, which was set up to record and preserve adivasi languages and oral traditions, moved on to address other important needs

G N DEVY

INDIAN SOCIETY is distributed into castes and adivasis; there are about 1,500 major and minor castes and about 600 adivasi communities. The current population of adivasis is approximately 87 million. They have continued to live side by side with the castes throughout India's history, sometimes crossing over, occasionally clashing with each other, but generally remaining affably indifferent to each other.

Traditionally, adivasi communities have been hunter-gatherers, nomads, pastoralists, feudal war clans, and, in some cases, agriculturists. The imposition of colonial civil, criminal and forest law, which was rooted in sedentary norms of production and governance, caused serious disruptions in adivasi communities and started bringing them into conflict with the State.

The forms of knowledge and memory developed by adivasis have been oral. Even if tribals could paint, and even if they had their own methods of measuring and counting things, they did not develop scripts to record linguistic or economic transactions. During the early-19th century the main Indian languages were brought into the print medium; but due to the cultural and geographical isolation of the adivasis, print technology did not reach their languages. As such, when modern India was distributed into linguistic states, the adivasi speech communities were left out of consideration.

Not having their own language states meant not having schools, colleges and universities that use adivasi languages as the medium of instruction. Since none of them became an official language of administration, there have been no employment opportunities in the domain of the adivasi languages. As a result, adivasi languages in India started becoming extinct in quick succession. The 1971 Census of India listed around 90 adivasi languages as mother-tongues, each claimed by a minimum of 10,000 persons. In the 1991 census, this figure dropped by 18, bringing the number to 72. In other words, in India, one adivasi language perishes every year.

But just because these languages did not evolve scripts, except in a few cases, does not mean that adivasis do not have any significant imaginative literature. All that literature is a valuable cultural heritage of India.

'Bhasha', which means 'language' or 'voice' was founded as a research and publications centre for the documentation and study of literature in adivasi languages. The ultimate

horizon of obligations for Bhasha at the moment of its inception was to document and publish 50 bilingual volumes of adivasi literature. Little did we know at the time that beyond the horizon many new worlds were waiting for us.

Within months of commencing work on the 50-volume series, many adivasi writers and scholars approached me with the idea of starting a magazine in adivasi languages, aimed at adivasi communities, to be read out rather than for individual reading. Bhasha accepted the idea. The magazine was called *Dhol* (drums), a term that has a totemic cultural significance for adivasis. We started using the state scripts combined with moderate use of diacritical marks to represent these languages.

The response to the magazine was tremendous. More adivasis approached Bhasha and asked for versions of *Dhol* in their own language. In two years, *Dhol* started appearing in 10 adivasi languages of western India.

When the first issue of *Dhol* in the Chaudhary language was released it sold 700 copies on the first day. This was a record of sorts for a little magazine. Inspired by the success of the magazine, our adivasi collaborators started bringing Bhasha manuscripts of their autobiographies, poems, essays, even anthropological studies of their communities that they wanted us to publish. Subsequently, in order to highlight the



Ekta Parishad/Simon Williams

oral nature of the adivasi culture, we launched a weekly radio magazine which was relayed throughout the adivasi areas of Gujarat and Maharashtra.

All these initiatives together gave birth to a small but focused publishing and book distribution house that now works under the name 'Samas' and is the first community-owned publishing programme for adivasis and nomadic communities in India. It is not so much a commercial venture as a cultural and literary platform for intellectual concerns, and a forum for expression in people's own languages.

Oral literature, unlike written literature, is not an exclusive verbal or lexical art. It is inevitably intermixed with song, music, dance, ritual and craft. So, Bhasha was drawn to the craft of adivasi communities, initially in western India and subsequently all over India. This resulted in Bhasha's craft collection and craft-training initiatives, and then to the formation of an adivasi craft cooperative under the name 'Tribals First'. The objects identified as craft are not produced in adivasi communities for aesthetic pleasure alone. They are invariably an integral part of daily life. Often, such objects carry with them an imprint of the supernatural as conceived in the myth and imagination of the adivasis. The shapes, colours and forms of these objects reflect transactions in the adivasis' collective unconscious.

Often one overlooks the fact that the metaphysical matrix of the adivasi thought process differs markedly from the philosophical assumptions of the dominant cultural traditions in India. Therefore, sometimes simple concepts and ideas that look perfectly natural and secular can provoke adivasis into reacting negatively, even violently. Any intervention in an adivasi community is likely to have a better chance of making a lasting impact if it is preceded by a sympathetic understanding, if not careful study of the interior landscape of the adivasi mind. The rituals, arts and crafts of the adivasis reflect the complexities of their cultural norms and thought patterns as nothing else does.

I learnt the hard way that there is a common source for the dominance of the colour red in adivasi art, and their utter unwillingness to donate blood even when a kinsman is in dire need of it — the supernatural belief that the domain of witchcraft is red in colour. This incidental insight came in handy when we found ourselves involved in a haematological crisis involving sickle cell anaemia. Reports from the Amravati district of Maharashtra, inhabited by the Korku adivasis, about a large number of untimely child deaths, and similar reports from Wyanad in the south, drew our attention to the sickle cell phenomenon. Medical science maintains that a certain genetic mutation required to fight malarial fevers has made adivasis prone to the sickle cell disease.

On learning about the Korku trauma, we decided to check the statistics of sickle cell anaemia in our own area. Blood-testing among adivasis is a challenging task. So we decided to draw up mathematical models, and, at the same time, composed an extensive family tree, through a survey that

took us over two years to complete, to isolate certain localities, villages and families that could provide clues for coming up with the most reliable projections. We found that nearly 34% of Gujarat's adivasis are carriers of the gene disorder, and about 3.5% of the population are its direct victim. This means, around 210,000 of Gujarat's 7 million adivasis are likely not to attain the age of 30. What's even sadder is that the available healthcare system has not been sensitive to the epidemic scale of the gene disorder; in most cases, healthcare remains inaccessible.

This revelation was shocking, to say the least. Bhasha decided to launch its own healthcare programme under the title 'Prakriti'. Obviously, we did not wish to set up a large hospital, rather a small functional clinic, and to train local people as community health workers so that patients in a crisis situation could be identified and provided with immediate relief locally, and be referred to city clinics for long-term treatment.

Thus, beginning with aesthetics we arrived at anaesthetics!

Specific diseases may have universal scientific definitions, but the general notion of 'illness' as distinct from 'wellbeing' does not have a universal grammar. In a given community, illness and wellness are divided by an invisible line and the introduction of new medicines keeps pushing the line, enlarging the domain of anaesthetics, that is, the management of pain, and encroaching on the domain of aesthetics, which is the management of pleasure. This, in turn increases the desire for instant curbing of pain, and, at the same time, the longing for instant gratification of the senses.

The distribution of pain and pleasure on the cultural spectrum corresponds directly with the distribution between craft and product on the economic spectrum. Often, shortages caused by larger economic forces push a social sector from its subsistence-farming character into becoming impoverished labour-providers. The acute food shortages faced by adivasis in Kalahandi and Koraput, in Orissa, and the mass migration of adivasis to the mining districts are not exceptional stories. Though their main occupation is agriculture, adivasis have been undernourished throughout India, and, sadly enough, death by starvation is not news to them.

Bhasha decided to set up foodgrain banks for adivasi women to address the issue of food insecurity. Initially, we decided to follow the government model of foodgrain banks, but we realised that they had come to be seen by adivasi villagers as charity distribution events. So we chose to set up the grain banks without any government contribution and entirely through local participation. We were convinced that no effort to reduce the incidence of sickle cell anaemia was likely to succeed if it was seen in isolation from the question of forced migration and food insecurity. For us, food security and healthcare are a single concern.

Soon after the Bhasha Trust was established, it decided to

institute an annual lecture series named after the legendary Dr Verrier Elwin, a long-time friend of India's adivasis. For the 1998 Elwin Lecture, we chose the theme 'De-notified and Nomadic Tribals'. In India there are about 191 communities that were once wrongly notified as 'criminal tribes', owing to the colonial government's lack of understanding of the nomadic way of life. They were restricted by law to specific localities, prevented from moving, put to unpaid labour and stigmatised beyond redemption. After their 'de-notification' in 1952, these communities, now known as DNT, continued to suffer stigma, social isolation and acute economic disadvantage. Utterly dispossessed, these landless, illiterate and hounded people have been unsuccessfully trying to shake off their identity. Their estimated population is around 60 million.

Moved by the Elwin Lecture delivered by the eminent activist Mahashweta Devi, we decided to establish the DNT Rights Action Group. It was the first national campaign ever taken up for the cause of DNT rights. Under the campaign, we moved the National Human Rights Commission and various ministries of the central government to abolish the Habitual Offenders Act, and to provide a rights protection mechanism for DNT.

Bhasha's energetic campaign for DNT rights received an overwhelming response from the de-notified communities. We had exposed a long-festering wound. As a leader of that campaign I had to give very serious thought to turning the anger and frustration among the demonised, brutalised and politically vandalised DNT into a constructive energy. I decided to use the most ancient method of getting people angry without making them destructive — theatre. My experience with handling the violence within the minds of these communities left me convinced that theatre is probably the most powerful cultural means of sensitising communities on the mutual entanglement and dependence of economic, social and cultural rights of several competing and clashing social sectors.

Bhasha now has its own theatre group called Budhan Theatre, named after Budhan, a DNT killed whilst in police custody. Apart from Budhan Theatre, we have so far successfully established four annual cultural festivals in as many locations in Gujarat, one of which is Dandi — the place made sacred by Gandhi's salt satyagraha. Adivasi and nomadic performers travel to the four locations on their own, and thousands of people from several states participate. These *melas* are now here to stay.

Ever since adivasis were brought under the provisions of the colonial forest department, their access to forest produce has been steadily diminishing. They constantly face the possibility of losing their agricultural lands due to conflicting notions of land records between them and the administration. At the same time, most adivasis have to depend on rain-fed cropping patterns. This historical legacy has forced them into chronic indebtedness, made worse by the rising cost of seeds, fertiliser, fodder and electricity, as

well as education and healthcare expenses. Unlike caste Indians, who first earn and then spend, adivasis, by and large, like to first spend and then earn just enough to meet those expenses. Their need for short-term borrowing has increased over the years. However they rarely default on repayment of their loans, even when no written contracts have been signed. In fact, the needs and habits of adivasis should have been seen as a great opportunity by the formal banking sector, which is barely in existence in remote and inaccessible adivasi villages. Credit delivery to adivasis is not only pathetically poor but almost non-existent, and it invariably takes third-party intervention to make the system work. For a majority of adivasis, institutional banking that involves written records at every stage is a completely alien concept, whereas the simple procedures of private moneylenders are easily comprehended despite the exorbitant interest rates.

When we noticed that these interest rates could range from 60% to 120%, we felt the need to intervene. So we took up the task of forming microcredit self-help groups. We faced a number of challenges: getting adivasis to understand and recognise the formal banking system was hard, but even more difficult was the task of educating bank employees on their own schemes, the microcredit policies of NABARD, and the economic concerns of an NGO like Bhasha. The trickiest issue was the peculiar social character of the private moneylender. For one thing, moneylenders in adivasi areas are extremely influential. They maintain extremely complicated and not easily terminable accounts with their adivasi clients, through a system that treats cash, land, grain and labour as inter-convertible currencies. Not surprisingly therefore, the moneylenders teamed up against Bhasha's self-help groups as soon as the adivasi farmers stopped going to them. I was amazed when some self-help group members started bringing in new and serially numbered currency notes to pay off the bank loans they had received barely a month earlier. On enquiring, we found that the moneylenders had been distributing the notes liberally to whoever was prepared to step out of the group!

The moneylenders' unease grew as Bhasha's microfinance programme began to cut into the private credit market. There were moments when I felt we should enter into a dialogue in order to circumvent the conflict, and introduce an ethical element in their operations. But I had the naïve hope that the formal banking system would quickly step in and grab the opportunity. The moneylenders continued to feel threatened and destroyed. Their fury expressed itself in March 2002, when Hindu moneylenders bribed, coaxed and threatened a pliable section of the adivasis into staging violent attacks on the families and properties of Muslim moneylenders. Several hundred houses were burnt down, hundreds were injured, many lost their lives, and the livelihoods of thousands of adivasis and Muslims were adversely affected.

In the essay 'Kikiyario', I wrote elaborate analytical reports on the genealogy of the adivasi riots in Gujarat and how the

microfinance intervention had become a significant component. At the height of the riots we felt that the moneylenders would succeed in restoring their stranglehold on the adivasi economy. But we found that more adivasis started forming SHGs after the riots. Since then, for our general SHG meetings, the number of adivasis wanting to participate has kept multiplying.

Bhasha has been providing training for the management of groups, directing them to establish viable occupations for increased incomes, and enabling them to form a federation of SHGs. Some of the new occupational avenues we have opened up include honey-cultivation, specialised gum-tree plantation, brick-making and masonry, craft training, and organic cropping. As regards the choice of micro-enterprise, the minimum guiding principle we have followed is that new income-generating activities should not cause adivasis to migrate to urban centres where the urban infrastructure has no space for the adivasi poor, nor does the caste-bound society have any social respect for adivasis. Therefore, we have been focusing more on para-agricultural or value-added agricultural activities.

Over the years, I have noticed a great hunger for learning among the adivasis. Contrary to the popular impression, adivasis do want to send their children to schools. Their aspirations are belied because primary education in adivasi villages is burdened with its own numerous structural problems. I have noticed that given a set of dedicated teachers, children in even the tiniest adivasi hamlets shape up to become potentially excellent university entrants. And so, at Bhasha we decided to take up a programme to help adivasi children by establishing, in about 80 villages, support schools to help those who have missed the bus altogether or those who lag behind in their school studies.

The results have been excellent. When I see the children in these non-formal learning centres playing, singing, painting and reading, my faith in the future of the adivasis is strengthened.

Bhasha Trust established the Adivasi Academy at Tejgadh in 1999. Since 2000, we have been teaching young men and women a subject we call 'Tribal Studies', by which we mean the study and understanding of how adivasis perceive the world. The idea is to make our students reflect on their own situation, motivate them and put them onto the great task of empowering adivasi villages by helping them become self-reliant. The academy offers short-term training in microfinance, and diploma courses in tribal rights, food security and development, publication and rural journalism, and tribal arts and museum studies. As a rule, we do not hold examinations; students are required to go out in the villages and set up SHGs, grain banks and water banks and promote the use of solar energy and organic farming. Based on their experience of field work, the students are then required to write dissertations.

The Adivasi Academy is not a place for cutting-edge

theoretical knowledge. It is meant to forge strategies to improve the lives and economic condition of adivasis, to build durable and sustainable assets for the community, to instil respect for their cultural heritage, and to provide a forum and a space to voice adivasi concerns in their own idiom.

The academy is today managed mostly by adivasis. It has its own library and a Museum of Voice. I am often asked if the Museum of Voice is the centrepiece of the academy and whether cultural concerns are more important than economic issues. My answer is that for communities that are culturally marginalised and economically disadvantaged, an element of pride in their identity comes in handy as a strategy to empower them. Besides, cultural diversity too is part of the nation's wealth.

For the first two years, classes were held under a majestic mahua tree. Then we built a small hut. Finally we have a structure with red-brick and arches, built against the backdrop of Koraj hill. I cannot help mentioning Koraj hill. It houses several rock paintings dating back 12,000-15,000 years, and has at its foot relics of an historical fortification belonging to the 12th or 13th century. When one stands on top of Koraj hill, one can see a huge expanse of land spreading into Gujarat, Madhya Pradesh and Maharashtra, within which several hundred adivasi villages have been waiting for over two centuries for an intervention such as the Adivasi Academy. Visitors come to us from all parts of India and the world. A former chief justice of India, Justice M N Venkatachaliah visited the academy and, when asked a number of questions by the students, said: "If a tribal boy can ask the chief justice of India these questions, India still has hope."

The ambassador of Netherlands and his wife were so delighted to be with the adivasis that they sat down with them for long hours and broke the same coarse bread with them.

In the early part of my journey, I was alone. Now we are over 150 people. My hope is that the Adivasi Academy will become the source of many more new journeys. Of course, the road ahead of us is not easy. Eighty-three million adivasis and 60 million DNT is not a small number. And their problems do not have easy and ready solutions. What we have undertaken is only an experiment in shaping an alternative model of development. It is too early to judge if it will produce what it seeks to create. Yet I agree with the poet Shelley that one must "hope, till hope creates the thing it contemplates".

Dr Ganesh Devy is a Sahitya Akademi Award-winning multi-lingual writer and activist based in Baroda. He gave up his job as Professor of English at the M S University to work with the adivasis of India. He is the founder of Bhasha Research and Publication Centre, Baroda, the Adivasi Academy, Tejgadh, and the De-notified and Nomadic Tribes Rights Action Group

Queer azadi

The Pride marches in Delhi, Kolkata, Bangalore and Mumbai this year marked the coming of age of a more confident and open queer community in India. It has taken many years of patient organising to reach this far. Whether it is mobilising the community or working on legal reform, the LGBT movement has gradually worked towards making this an issue that people cannot ignore any longer

SIDDHARTH
NARRAIN

“HOW DID THE MARCH-PAST GO,” asked a friend’s mother, enquiring about her son’s recent trip to Bangalore. The ‘march-past’ she was referring to was Bangalore’s first-ever Pride march, held on June 29, 2008. Christened the Bengaluru Pride by its organisers, the event was a landmark in the history of the queer struggle in the city, and, together with parallel marches in Delhi and Kolkata, became a national ‘coming out’ for the country’s queer population. These three marches were followed by a Queer Azadi march in Mumbai, a day after Independence Day this year. Estimates of the number of people who participated in the march vary from 2,000 to 2,500. Covered extensively by regional, national and international media, the Indian Pride marches marked the coming of age of the lesbian, gay,

bisexual and transgender (LGBT) movement in the country.

The three marches on June 29 coincided with Stone Wall Day, commemorated globally to mark the anniversary of the Stone Wall riots where, for the first time, queer people who frequented Stone Wall Inn in New York rioted protesting against police harassment. While the cultural significance of this event may not be immediately obvious to queer people in India, queer activists in the country tapped into the global nature of the events and media attention to make their local demands heard. Besides the repeal of Section 377 of the Indian Penal Code (IPC) some of these demands include legal recognition of sex change operations, prevention of violence against sexual minorities, and social entitlements like voter IDs and ration cards.

The cheeky slogans and posters, as well as some of the more innovative demands that queer activists made during the Pride marches, were lapped up by the media. In Kolkata, organisers distributed rainbow-coloured sweets during the march. In Delhi, marchers carried a massive rainbow flag. In Bangalore, people marched on a 4 km stretch beginning in the more conservative southern part of the city and ending in a symbolic show of strength at the city’s Town Hall. In Mumbai, queer activists demanded an apology from the British government for introducing Section 377 on Indian soil. They said that the colonial legislation, framed by the British in 1860, introduced Victorian discomfort with same-sex desire, thus destroying earlier traditions of tolerance towards same-sex love and desire.

Reactions to the Pride amongst the queer community ranged from joy to sheer disbelief. Many of those who did not manage to participate were on the telephone with friends who were marching or monitoring their telephones. Many of the older generation of queer activists felt that an event of this kind would not have been possible even 10 years ago.

A lot of those participating in a public rally for the first time felt that it was an opportunity to meet others from the LGBT community. For many heterosexuals, the Pride was a chance to show their solidarity. Describing the enormity of the occasion, Akshay Khanna, a queer activist, said: “Large mobilisation and excellent liaising with media folk has created a huge splash, the waves of which travel not just to the Delhi High Court (hopefully), but across the world as mass media juxtaposes images of Delhi, Bangalore and



I AM

- a son
- a brother
- an uncle
- a cousin
- an INDIAN

I AM ALSO

GAY



Calcutta alongside San Francisco, Rio and London. Even now, every time I watch clips of the marches on YouTube I find my skin spontaneously raising its follicles in unison with your voices. There is a sense of enormity to the moment and sitting here in Edinburgh I imagine the world has changed.”

Demanding law reform

The timing of the Queer Pride marches coincided with the ongoing arguments in the Naz Foundation case in the Delhi High Court, where the validity of Section 377 of the IPC — the law that criminalises homosexuality in the country — has been challenged. The marches have been followed by statements from Prime Minister Manmohan Singh and Health Minister Anbumani Ramadoss indicating that there is a strong view from within the government that Section 377 needs to go, as it is impeding HIV/AIDS prevention work.

Instances of discrimination, violence and harassment of lesbian, gay, bisexual and transgendered persons in India would not be possible without the overall framework of the

law that criminalises “unnatural sexual offences” — Section 377 of the IPC. Introduced by the British in 1860, this law criminalises “carnal intercourse against the order of nature” interpreted by courts to include all non-penile-vaginal sexual acts, even if they are between consenting adults.

While Section 377 has been used very rarely to prosecute sex between consenting adults, it has been widely used to perpetuate violence and discrimination against LGBT persons in India, and effectively brand them criminal, deviant and unnatural. This law is not just about sexual acts committed between LGBT persons. In effect, this law criminalises romantic love, relationships and intimacy between people of different sexual orientation and gender identities.

In 2001, following a police raid on its office in Lucknow, Naz Foundation (India) Trust, an NGO that works in the area of HIV/AIDS prevention, challenged the constitutionality of Section 377 in the Delhi High Court. Naz argued that Section 377 violates the constitutional rights to life, liberty and non-



Sudharak Olwe

discrimination, and has a devastating impact on efforts to prevent HIV/AIDS.

Earlier this year (May 2008), almost seven years after the Naz Foundation case was filed, the Delhi High Court began hearing final arguments in the case challenging the legality of Section 377. So far, the central government is speaking in contradictory voices — while the National AIDS Control Organisation (NACO), a wing of the Union health ministry, has said that Section 377 should go because it impedes HIV/AIDS prevention work by preventing homosexuals from accessing condoms, the Union home ministry wants the law to remain. In its affidavit, the central government has said that the government should be allowed to retain the law in the interests of public safety and “the protection of health and morals”.

There are three interveners in this case — Joint Action Council (Kannur) (JACK), which has challenged the link between HIV and AIDS, former BJP Rajya Sabha member B P Singhal who has argued that homosexuality is ‘unnatural’, and Voices Against 377, a coalition of child rights, women’s rights and LGBT rights groups that has focused on concrete examples of instances when Section 377 has been used to discriminate against the human rights of LGBT persons.

The Pride marches have added to the attention around the case, sending out the signal that the demands in the petition are being strongly supported by a wide variety of rights groups.

Lesbian, gay, bisexual participation

A unique feature of the Pride marches this time around was the large number of gay, bisexual and lesbian men and women who joined their hijra, kothi and transsexual counterparts in occupying public space. While much has been written about the issues faced by the kothi and transgender community, there are serious issues that the gay, lesbian and bisexual community faces.

The participation of queer women in the Pride marches went a long way in addressing the ‘invisibility’ of this section of society. One of the major issues queer women face has been the abduction of partners by parents, and the increasing number of lesbian suicides. The lack of public spaces to meet other women, the pressure to get married early, and the possibility of violence from within the family add to the nature of the discrimination they face.

A classic case is that of Christy and Rukmani. On May 17, 2008, Christy Jayanthi Malar (38) and Rukmani (40), two married women from Chennai, died hugging each other after setting themselves on fire in Chennai. Christy and Rukmani had studied in the same class at school, and met again after both of them had got married. They had been lovers for the past 10 years against the wishes of their families and husbands. The day before their deaths, Rukmani’s family, realising that she had gone to Christy’s house, had abused her.

For gay men, issues of immediate concern include tackling

homophobia in medical establishments and at the workplace. Psychiatrists continue to prescribe shock therapy to change the orientation of homosexuals, and many gay men are reluctant to talk about their sexuality at the workplace, fearing discrimination and the risk of losing their jobs. Demands from gay men are bound to extend beyond Section 377 to equal opportunities in a wide range of areas including adoption, inheritance, partnership rights, and possibly even same-sex marriage.

However, the real battle lies in societal change. Even now, only a minority of gay men have ‘come out’ to their families about their sexuality. ‘Coming out’ remains a difficult, painful process, sometimes taking years of effort. Many gay men succumb to the pressures of getting married, leading to messy divorces and situations where the women they marry find themselves in unfair positions.

The participation of a large number of gay, bisexual and lesbian persons in the Pride marches is a sign that the community is getting more confident and organised, ready to challenge existing societal stereotypes and prejudices.

The way forward

Reflections on the Pride marches from within the queer community have been varied. Some look at the Pride as an opportunity to mainstream queer issues, and to say, “We are no different”. Others look at this as an opportunity to say, “We are different and proud of it”. Whatever the message, it has become much harder for anyone to claim that homosexuality does not exist in India. While the Pride marches are the face of a more confident and open queer Indian community, it has taken many years of patient organising and brave work to reach this far. Whether it is mobilising the community, working on legal reform, speaking out in the media, or advocacy efforts with the government, the LGBT movement has gradually worked towards making this an issue that people cannot ignore any longer.

If the success of the Pride marches is anything to go by, chances are that the marches are going to become annual events in a number of cities across India. For the organisers of the event, its institutionalising will bring with it a new set of questions. Do they accept corporate sponsorship? Should they concentrate on building participation or getting more publicity? How do they get more people involved with the kind of media coverage that is anticipated? How do they consciously avoid the Pride marches from overshadowing other forms of activism and queer celebration, and becoming the only standard by which queer activism in a city is judged?

In countries across the world, queer rights activists feel that the radical potential of such events is often co-opted by sponsors, resulting in the events becoming one big sponsored party. What remains to be seen is whether the energy that is generated in the Pride can be channelised towards strengthening the queer movement, while at the same time being as colourful as possible.

Siddharth Narrain is a lawyer and queer rights activist working with the Alternative Law Forum, Bangalore

Tamil Nadu pioneers transgender inclusion

The 300,000-strong community of transgenders in Tamil Nadu, until recently ghettoised and reduced to begging or doing sex work, has won major battles for inclusion, notable among which is a special ‘third gender’ category for transgenders on ration cards. The cloak of invisibility transgenders have worn for generations is slowly slipping, and it is community-based organisations that are driving the change

ANUPAMA SEKHAR

“WHEN I REALISED I WAS DIFFERENT, I left home,” says Kamali, 28, a transgender (TG) now living in north Chennai’s working-class Perumbur suburb. “That was eight years ago and I have not returned home since,” she continues. “Even though I dressed only in trousers and shirts back then, I was constantly mocked for my mannerisms. This led me to wonder why I should not simply wear a saree, as I desired, and let the world see me for what I am.”

Kamali’s is not an unusual story among Tamil Nadu’s approximately 300,000 transgenders or *aravanis* as they are locally known. Like her, many have left their unsympathetic families to join others like themselves, who are mostly biologically male but with “deeply female souls”. Together, they have built “closed” communities that operate according to *guru-chela* (teacher-apprentice) or mother-daughter hierarchies.

Eking out a living from begging and commercial sex work, transgenders remain a largely ghettoised, disempowered group in the country, although their presence has been recorded in Indian culture for over 4,000 years.

Change, however, appears to be on the horizon if the considerable gains won in Tamil Nadu are indicators of increasing success in the battle for inclusion. In an unprecedented move, the state has accorded official recognition for the community with the issue of ration cards with a separate ‘third gender’ category. This is, without doubt, a major step forward in the demand for citizenship rights, as only two sexes — male and female — are recognised in Indian civil law. Further, government orders have been issued announcing unfettered access to education and counselling services. More recently, the state’s social welfare department announced the constitution of a separate welfare board for transgenders.

After decades of alienation on the fringes of society, these measures appear as a silver lining for the community. “For too long we have endured the stigma of our transgendered identity,” explains Dhanam, 39, a field worker also based in Perumbur suburb. “Viewed as nothing more than sex workers, we have always been considered unworthy of even the most basic rights and amenities. We only want to live our lives the way ordinary men and women aspire to. With dignity.”

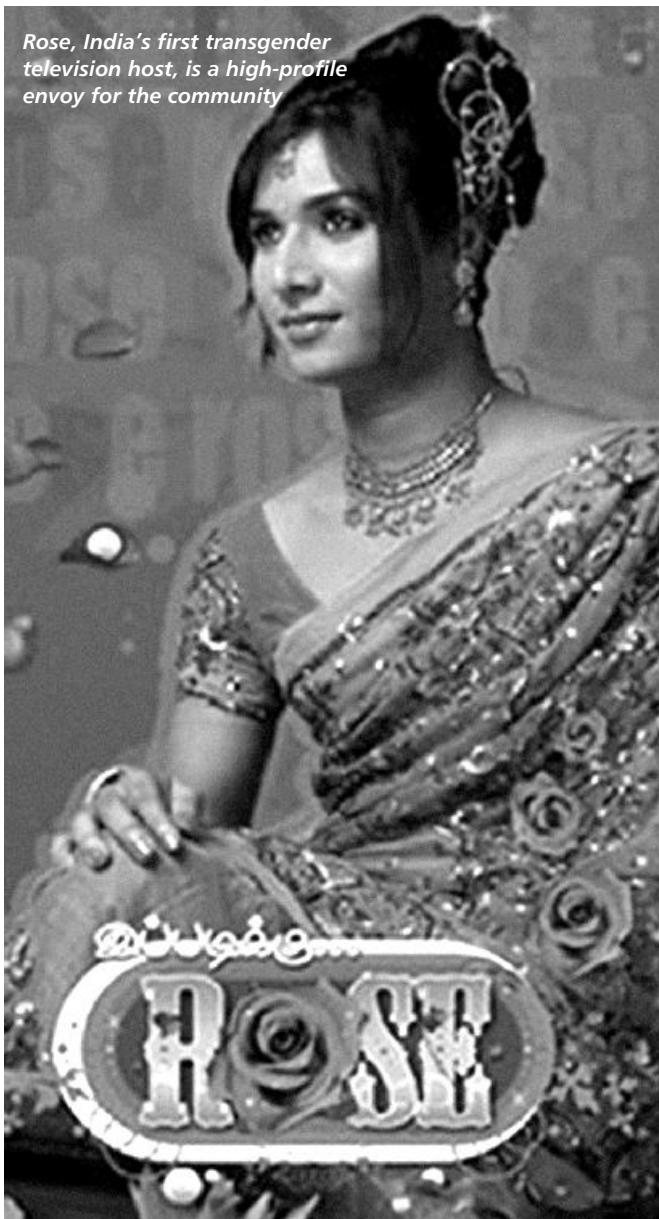
Even five years ago addressing TG rights was actively discouraged, remembers Dr R Lakshmibai, project director of the Chennai-based Tamil Nadu AIDS Initiative (TAI) whose pioneering campaign has played no small role in mobilising a community conspicuous by its absence in the larger human rights movement. Adds A J Hariharan, Founder Secretary, Indian Community Welfare Organisation (ICWO), a Chennai-based NGO partner of TAI: “When I started working with the community, I was constantly being asked exactly why I was interested in TG issues and if I was one myself.” The rights of TGs, he adds, were avoided in most discussions on development issues owing to two factors: the high degree of taboo associated with the community, and widespread ignorance about their origin and nature amongst the public and in the media.

That scenario has, over the last five years, altered dramatically in Tamil Nadu with the result that the cloak of invisibility surrounding TGs is slowly slipping. The emergence of TG icons and role models, regularly feted by the media, is a definite indicator of the nascent public interest in this once-neglected community. One such brand ambassador for the community is Noori, who heads the South India Positive Network, a Chennai-based organisation that administers projects to cater to the needs of around 2,000 HIV-positive members.

Sitting in her office in north Chennai’s Periyar Nagar, Noori, 58, is a picture of composed authority, instructing staff and welcoming visitors with the calm confidence acquired through practice. She is also an *aravani* living with the virus. “I am living proof that it is possible to live a healthy and productive life with treatment,” asserts Noori, currently undergoing ART with second-line drugs at Chennai’s Kilpauk Medical College Hospital.

Noori’s story begins in 1987 when she was diagnosed HIV-positive. She subsequently left commercial sex work to become a peer educator in the field of prevention, support and care for people living with HIV/AIDS (PLWHA). “My singular aim,” she declares, “is to dispel the fear among the HIV-positive that it is not possible to live with freedom and dignity after being diagnosed positive.”

A new high-profile envoy for the community is Rose, billed as ‘India’s first TG television host’. Her immensely popular half-hour chat show ‘Ippadika, Rose’ (Yours, Rose) on Star



Rose, India's first transgender television host, is a high-profile envoy for the community

Vijay, a part of Rupert Murdoch's Star network, regularly broaches controversial topics such as pre-marital sex and legalisation of prostitution. "This show has definitely altered my perceptions of TGs," admits one regular viewer, Mallika Subramanian. "In my mind, Rose is first a talented and confident media person, then a TG," she adds of the US-educated presenter who holds a master's degree in biomedical engineering and went by the name of Ramesh Venkatesan in her former life.

These new public faces of the community — a far cry from the negative stereotypes oft-repeated in popular culture — are indicative of larger, fundamental changes in a group increasingly entering the mainstream in Tamil Nadu.

TAI is at the forefront of the campaign for change in the

state. Administered by the Voluntary Health Services and funded by Avahan, the India AIDS initiative of the Bill and Melinda Gates Foundation, in 2004, the initiative began working on disease prevention among sex workers — nearly 9,000 of them transgenders — through 25 NGO partners in 14 districts of Tamil Nadu.

Given that an estimated 80% of the community depends on commercial sex work for a living, issues surrounding sexual health remain a priority. "TGs are more vulnerable than female sex workers," explains Dr Lakshmibai. "They command less pay for more hazardous encounters, and are unable to negotiate for safe sex."

Violence from clients, enforcement agencies and thugs is another significant concern, one that has been traced back to the 1897 amendment to the Criminal Tribes Act of 1871 (subtitled 'An Act for the Registration of Criminal Tribes and Eunuchs') by a 2003 People's Union for Civil Liberties report on kothi and hijra sex workers in Bangalore. "Once we address violence, the space for negotiation will open up," argues ICWO's Hariharan. TAI's Araychi Mani (Bell of Distress) violence redressal mechanism has succeeded in doing just that by ensuring response to instances of violence within 24 hours through medical, legal and counselling aid. "If an act of violence occurs," says Dr Lakshmibai, "then the community has a voice to respond with".

These emerging voices have been speaking not merely to the outside world, but — significantly — to each other as well. One such safe space for sharing, dialogue and transformation is the Friends Club or Natpukoodam attached to 22 TAI clinics across the state. At these drop-in centres, the community has access to low-cost beauty services, food and clothes banks as well as much-needed information on safe sex practices. "The very feeling that a place such as the Natpukoodam is available gives them self-confidence," explains TAI's community advisor Aruna. "The centre becomes a place for them to enhance their general knowledge, forge close friendships and experience real bonds."

Dr Lakshmibai explains the need for such developmental initiatives alongside disease prevention programmes in the context of STDs. "We realised that variables such as low self-esteem and guilt considerably affect the behaviour of TGs. So we included behavioural and life issues in our programmes, focusing on human values such as honesty, modesty, thrift and hard work rather than any moral preaching."

This holistic approach has begun to yield fruit and changes are visible even at the annual gathering of TGs in the village of Koovagam in Tamil Nadu's Villupuram district, for the symbolic ritual of marriage and widowhood. Nearly 100,000 TGs from across the country are believed to descend on the Koothandavar temple here in the Tamil month of Chitarai (April-May) each year to re-enact the story of Arjuna's son Aravan from the Mahabharata. Legend goes that the warrior asked to get married and enjoy a night of conjugal bliss

before being sacrificed by the Pandavas for victory in the war of Kurukshetra. It is believed that Krishna assumed the enchanting form of Mohini to become Aravan's bride for a night. The re-enactment of the wedding night at Koovagam is one of high sexual activity with clients converging from nearby villages and towns. Campaigns advocating modest dressing at the festival have met with considerable success. "The message has registered strongly in the minds of the community," says Dr Lakshmbai. "Further, we have been actively advocating decreased sexual activity during the festival and have literally challenged the community to make the atmosphere holy."

A major challenge in the mobilisation process has been motivating TGs to actively demand rights and services. "As long as they were complacent that someone else was working for their cause, I was certain there would not be much progress," explains ICWO's Hariharan. With the incubation of collectives and CBOs, a community-led movement has clearly begun to emerge. "Initially we lacked confidence," admits Dhanam. "Questions of sustainability, quality and efficiency cropped up." Adds Shankari, 45, a

senior TG community leader: "The community has finally come out of its isolation and learnt to work with those genuinely interested in them, be they lawyers, social workers, individuals or the government."

TAI's Peer Jeevan Collective, spread across 13 districts of Tamil Nadu, is a case in point. The Collective comprises 1,650 peer educators (aptly called Peer Jeevans because of their potential to give new life to their peers) reaching out to 30 TGs in the locality with information on STDs, HIV/AIDS and legal aid. Additionally, the Jeevans distribute condoms, coordinate SHGs and Friends Clubs and work to address violence within 24 hours through the Araychi Mani rapid response mechanism.

Another successful example are the 18 CBOs — called TAI Vizhuthugal — functioning in 14 districts under elected community representatives at the district and state levels to protect community rights.

Such developments have been complemented by a series of progressive measures announced by the government of Tamil Nadu.



Most recently, the state social welfare department has constituted a board for TGs “to rehabilitate and to achieve equality for them in the community and security in society”. With a budget of Rs 50 lakh for the first year (2008-09), the mandate of the board is to look into “various problems faced by the community and to formulate and execute welfare schemes for the betterment” of the community.

Acting on the recommendations of a sub-committee for the rehabilitation of TGs, the state government issued orders, in late-2006, directing the school and higher education departments to ensure that TGs are not denied admission to schools and colleges. Counselling has been made compulsory in schools (through teachers, counsellors and NGOs) for students with behavioural issues, and their families.

Under directions from the government, exclusive grievance redressal meetings are being organised once in three months by district collectors. This initiative has been particularly successful in opening direct channels for dialogue and negotiation between the community and the administration.

Grievances and demands were also at the heart of a public hearing organised by the Tamil Nadu State Commission for Women, Tamil Nadu AIDS Solidarity Action and ActionAid, in Chennai, in December 2007. Attended by 300 TGs from across Tamil Nadu, the hearing resulted in a series of recommendations by the citizens jury (that included a retired high court judge and a former director-general of police) to the state government including issuing of public distribution system (PDS) cards for subsidised food and fuel, and the repeal of Section 377 of the Indian Penal Code, which criminalises sexual expression by homosexuals, bisexuals and transsexuals.

Interestingly, some campaigns to mainstream the community have also involved a conscious stepping away from making demands. Since 2004, TAI’s ‘We Too for a Healthy Society’ campaign has been actively encouraging TGs “to use their stamina for others”. As a result, TGs across Tamil Nadu have been planting trees, praying for sick children and pledging their eyes as gestures of goodwill towards their local communities. A particularly successful project was the partnering of *aravanis* with anganwadi workers (village-level social workers) to deliver social messages on foeticide, medical insurance and tuberculosis to the public in five districts of Tamil Nadu, as part of a campaign launched by TAI and the state-run Integrated Child Development Services. The strategy was to “pleasantly surprise” the public that is unaccustomed to seeing TGs as social messengers.

Thanks to such initiatives, the atmosphere of mistrust surrounding the community is steadily dissipating in Tamil Nadu with the result that previously inaccessible social spaces are slowly opening up. “Initially we were social outcasts,” recalls Kamali, “but increasingly we are invited to social gatherings in our neighbourhoods, including weddings. This marks a major shift in people’s attitudes

towards us.” “There is a new respect in people’s dealings with us,” adds Shankari. “When people looked at us, they usually assumed the worst,” explains Dhanam. “We have finally managed to change that.”

At this stage in their journey, the key challenge for the community is retaining its newly acquired public goodwill. To succeed in this, TGs must necessarily begin to explore new occupational opportunities. “It is quite simply the lack of job opportunities that force TGs to resort to begging or sex work,” says Aasha Bharati, President, Tamil Nadu Aravanigal Association (THAA). Increasingly, TGs are choosing to work on community issues, earning a living whilst also contributing to the cause. “I now work as a field worker on a safe sex awareness campaign,” says Dhanam of THAA. “I no longer have to rely on selling my body.”

The performing arts are also providing much-needed supplementary income. Kaaviya, a registered CBO of 50 folk artistes, has evolved from TG community members of TAI projects with a basic interest but no prior training in the performing arts. Following rigorous training in theatre and the folk arts of Tamil Nadu, the cultural troupe has started successfully disseminating messages on health, stigma and discrimination across the state.

Vocational training opportunities are increasingly becoming available. “It would be worthwhile to invest in the education of older TGs, even those in their mid-20s and early-30s,” argues Hariharan. TAI has been training TGs to become beauticians, tailors, data entry and video camera operators. The Secretaries Guild of India is offering training to TGs in office management skills. The Electronics Corporation of Tamil Nadu has recently trained the first batch of 20 TGs in data entry operations. The Tamil Nadu Women’s Development Corporation — which has been implementing exclusive SHG schemes for TGs since 2003 — is currently expanding its work with groups to include special vocational and skills development training and disbursement of small loans.

Challenges from within the community are equally pressing. The *guru-chela* system prevalent in the community has often proved to be an obstacle for juniors seeking opportunities for a better life. Senior community members have been slow in taking the lead. “Perhaps because they are not educated enough,” explains Hariharan. “The need of the hour is for at least 100-200 TGs to be groomed as leaders. Only then will members of the community develop a sense of responsibility and ownership towards the movement.”

Despite these hurdles, the movement in Tamil Nadu — a state where *aravanis* have traditionally been very visible — has doubtless made massive strides towards securing citizenship rights for the oft-neglected and regularly oppressed third gender. It’s certainly an example that the rest of the country can strive to emulate.

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The silence of same sex desiring women

Same sex desiring women in India are living their lives and fighting their battles in homes, streets, courts and police stations. Their lives are complicated by virtue of them being women, and further complicated by class, caste and regional subjectivities. Over the last two decades, however, there has been a greater visibility of same sex desiring women in the public sphere, giving them some space to assert their rights

PONNI ARASU

IN 1998, FILMMAKER DEEPA MEHTA made a film called *Fire*. The movie tells the story of two middle class Hindu housewives in Delhi who find refuge in each other in the midst of their unhappy married lives. This refuge takes a sexual turn as well. The touching story has a not-so-happy ending.

The film took same sex desiring women to the front pages of the country's newspapers and to the attention of right-wing Hindu fundamentalists. It also brought some lesbians onto the streets. Cinema halls that screened the film were attacked by the Bajrang Dal and, simultaneously, Campaign for Lesbian Rights (CALERI), one of the first groups to engage in public campaigning on these issues, was formed in India.

Even before 1998, in the 1980s, there were small groups in various cities in India running helplines and other support services for same sex desiring women. We know that there were scores of individuals from various backgrounds who lived their lives at a time when an article like this would not, and could not, be written or even thought of.

One such couple who not only lived their lives but had it discussed widely in the media was Leela Namdeo and Urmila Srivastav. The two policewomen married as early as 1987 in a temple in rural Madhya Pradesh. They were promptly thrown out of service. Theirs was one of the first known lesbian 'marriages'; many more followed. While none of the marriages have any legal standing in India today, they remain a significant source of emotional strength and security for many women.

Many of the same sex desiring women we hear about are from poor backgrounds and also regions where access to education and independent employment for women can be a formidable challenge. Other same sex desiring women from upper and middle class backgrounds who live in cities, are educated and, in most cases, live independent lives have their own set of issues to deal with. These women have put in place support structures such as e-groups and regular meetings.

Lesbian suicides

A recurring theme in any description of same sex desiring women in India is that of suicide. While a number of suicides are reported in the mainstream media, many others are known only to activists working locally on such issues. Same sex desire is often coupled with threats of or instances of forced

marriage. Many of these suicides involve two women who die together. In every case there are allegations of 'deviant' desire and violent oppression of it, primarily within the home, which leads the women to end their lives. Their lack of mobility and limited or no access to education and employment by virtue of being women only propels their decision.

There has however been a significant change in the direction of support. There are helplines for same sex desiring women in all major cities in the country. There are organisations that, although they don't run helplines, assist women who ask for help in this context. They include Sangama in Bangalore, Sangini in Delhi, Stree Sangam and LABIA in Mumbai, Sahayatrika in Kerala, and PARMA in Ahmedabad. Many of them work primarily with lower middle class women from rural backgrounds. Various women's rights and human rights organisations in most cities acknowledge the issue of same sex desiring women well within their mandate and provide spaces and forums for discussion of issues.

The law

The law that is often viewed as being significant in the lives of lesbian, gay, bisexual and transgender (LGBT) communities in India is Section 377 of the Indian Penal Code. This law criminalises "any carnal intercourse against the order of nature". While the law is the only statute that addresses child sexual abuse not involving peno-vaginal intercourse, it is also one that criminalises adult consensual same sex activity. A case challenging this law is currently being heard in the Delhi High Court, essentially based on two arguments. First, that the law is absolutely inadequate to deal with child sexual abuse and that a more comprehensive statute needs to be put in place for this. And second, that it goes against the Indian Constitution and various international dictates as it violates the basic human rights of LGBTs in India. The case is in its final arguments stage; a verdict is expected within the next few months.

The position of same sex desiring women vis-à-vis the law is a bit more complicated. Section 377 does have a profound impact as a statute that criminalises the desire and very existence of a whole community of same sex desiring people. But there are a range of other provisions in Indian law that have been used against same sex desiring women as also others in the LGBT community. These cases have just begun to be documented.

Section 340 and Section 339 of the Indian Penal Code make confinement in a wrongful manner a crime. Wrongful confinement means being confined by a person who does not have the authority to restrict your movement. In cases involving heterosexual women this section has been used by natal families to file charges against male lovers or husbands. It has been used in the case of same sex desiring women both by parents against their daughter's lover, and vice-versa.

Under Section 361 — kidnapping from lawful guardianship — if a person 'entices' or takes a minor (under the age of 18 in the case of girls) from legal guardianship without the consent of the legal guardian, he/she can be charged with kidnapping. The court does not take into consideration the consent of the 'kidnapped' woman/girl. In such cases, as in others, it's interesting to note the trouble that's taken to prove the minor status of the woman in order to keep her in the family's custody. In fact, the courts have also often sent an adult woman back to the home that she does not wish to live in. Section 362, or abduction, which is also used, is a variation of 361; the allegation is that one of the women enticed the other away with the intent of committing a crime such as having an illicit sexual relationship.

Section 366, which criminalises kidnapping with the intention of compelling someone to marry them, has also been used in the case of same sex desiring women. This section is used widely by the parents of heterosexual couples who elope. In the case of same sex desiring women however, use of this law is inconsistent as no legal marriage is possible between people of the same gender in India.

Section 377, combined with the social stigma surrounding same sex relationships, leads most parties involved in a case, including same sex couples, to actively hide the nature of their relationship during the course of the trial. Activists, couples and lawyers know that declaration of a same sex relationship could lead to serious repercussions in court and outside it, legally and socially.

The focus therefore of all those who support the right of these couples to live together is on the age of the women in question, to prove that they are majors and thus have the right to live with whoever they please. This fact also makes many such cases legally flawed; a factor almost never considered by the police or the courts. And the argument does not always guarantee a favourable judgment, as women, no matter how old, are always to be taken care of and must 'belong' one way or another to the family. And so, many same sex desiring women are forced to fight for the right to live with their lovers without ever declaring (and in fact carefully guarding) the fact that they are lovers. This silence, ironically, is their strength both in court and in the world at large.

Support

As mentioned earlier, support for the rights of same sex desiring women both in emergency situations and otherwise is slowly emerging in the Indian context. While at least one organisation exists in most major Indian cities, others also

function in places with a stronger stigma, such as Sahayatrika in Kerala or PARMA in Ahmedabad, which exists in the midst of Gujarat's strong Hindu fundamentalist politics.

The LGBT movement has been in constant conversation with women's organisations of various political leanings in different parts of the country. The immediate point of connection, apart from the larger politics of gender and sexuality, is that of women's rights, thus making same sex desiring women the focus of many of these conversations. Numerous NGOs and other autonomous women's groups have begun to acknowledge and/or work actively on the issue of sexuality in general, making their organisations spaces that are supportive of same sex desiring women. This is not a general trend but is one that is progressing gradually. Conversations have come a long way since they began with left-based women's groups in 2000. In 2004, same sex desiring women might not have made it to the list of issues on the handout of the March 8 protest rally organised by these groups in Delhi, but they did march with placards declaring their sexual identity.

Over the past two decades or more we have seen the growing visibility of LGBT people and struggles in both the mainstream media as well as academic writing. Same sex desiring women are also part of this trend. Not all the visibility is desirable, but the hope is that if the issues are discussed in the public sphere, at least there will be space for contestation — and thus assertion — of rights.

In the meantime, the lives of these women, by their very existence regenerate older questions and contentions vis-à-vis feminism and patriarchy, while creating newer challenges in looking at issues of gender and sexuality. The subjective positions of many same sex desiring women also symbolise challenges to the LGBT movement that are often not acknowledged enough, like the fact that identities and the resulting politics of caste, class, region, gender and sexuality are all related, and one cannot be addressed without being placed in the perspective of another. The most apparent manifestation of this intersectional perspective is the way the lives of same sex desiring women are complicated by virtue of them being women. This is then further complicated by their class, caste and regional subjectivities.

It is important for the LGBT movement and the women's movement — among other human rights movements — to acknowledge these issues and productively engage with the challenge same sex desiring women pose to these movements. Meanwhile, same sex desiring women in India, like many other oppressed communities/individuals, will continue to live their lives and fight their fights in homes, streets, courts and police stations. This fight, we hope, will be strengthened by small support structures, growing social movements, increased visibility and the broadening of minds to facilitate the basic right of any human being to live life with dignity and respect.

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No white for these widows

For centuries, social reforms for widows and other single women in India have meant the setting up of ashrams and widow re-marriage. The widows who have banded together to contest their exclusion under the banner of the Ekal Nari Sangathan, in Rajasthan and other states, reject those dated solutions. These women are demanding their rights and bringing colour back into their lives

FRENY
MANECKSHA

Two dalit widows of Manyadih village, Dhanbad, Jharkhand, were accused of practising black magic, tortured and forced to eat excreta. — The Times of India, April 7, 2008

DAKKHAN (WITCH). Raan (whore). Epithets like these are routinely hurled at widows who are blamed for any misfortune that may befall the community — from a child getting chickenpox to a cow that has stopped giving milk.

But Moghubai from Jharol block, in Rajasthan's Udaipur district, would have none of it. She filed a defamation case against the woman who branded her a witch and lodged a case against her brother-in-law when he tried to usurp the land that belonged to her late husband. She knew she need never feel vulnerable and alone with the Ekal Nari Sangathan (Women Alone Association) backing her.

Kamal Patik of Rajasthan defied societal taboos that view widows as inauspicious. Her 'alternative family' (members of the sangathan) draped a red *chunari* around her and put a *bindi* on her forehead as she celebrated her son's nuptials in defiance of her in-laws.

A movement that was spearheaded in Rajasthan has now gathered momentum, with several other states forming similar associations that enable low-income single women to come together on a common platform to fight for their rights in a patriarchal society.

It was Harvard scholar Dr Marty Chen's revelation in the 1990s, that 8% of all women in India were widows, that sparked off the movement. "The study was an eye-opener. It meant that, at the time, there were 33,000,000 women in India who were amongst the most marginalised," says Dr Ginni Shrivastava of Astha, a civil society organisation that facilitated the formation of the Ekal Nari Sangathan (ENS).

Excluded from all celebrations because of custom, ostracised because of superstition, left vulnerable to sexual exploitation, and done out of their property rights because of illiteracy and poverty, these women lived under conditions "that were a blot on human rights". Government workers and civil society organisations were not ready to work with their problems. The women's movement had done nothing to include them. "Yet, from the work Astha had done it knew that these widows were very strong and that the women's movement would benefit from them," says Shrivastava.

The dream was to build a strong organisation that would enable women to solve problems both individually and collectively. Priority would be given to low-income widows, but the association would be inclusive of all castes, cutting across religious and age barriers.

In November 1999, the first convention was held in Bassi, 20 km from Jaipur; it was attended by 425 low-income women from 21 districts. In January 2000, the mass-based organisation included separated women — those who had been thrown out, abandoned or tortured so badly that they had walked out.

The sangathan was formally registered in 2002 and, in October 2004, at the request of various civil society organisations in Jharkhand, Himachal Pradesh and Bhuj in Gujarat, similar associations were set up in these states too.

In Himachal Pradesh, the association known as Ekal Nari Shakti Sangathan has taken up, in particular, the problems of women who have been deserted. Globalisation has been responsible for large numbers of men migrating out of the state and abandoning their families. The association focuses on advocacy efforts. It has demanded that the state aim its policies and programmes at providing rights that enable the single woman to live with dignity, instead of extending patronage. It also seeks support for women in tribal areas to secure their property, as several tribal laws do not give women land rights.

In Jharkhand, the association known as Ekal Nari Shashakti Sangathan has to grapple with the problem of young tribal girls who are extremely mobile and vulnerable and are consequently duped by false promises of marriage by people at the worksite.

The strategy in forming these various sangathans is based on three assumptions. The first is that the women are intrinsically strong and knowledgeable and therefore a rights-based approach will be adopted. There will be no setting up of 'ashrams' traditionally associated with widows. Nor will re-marriage be part of the campaign. Whilst the associations are not anti-marriage, the emphasis is on free choice — women do not have to go down that route if they do not want to.

The sangathans work at two levels. The block-level committee is the frontline of the organisation. Meetings are



Widows are bringing colour and smiles back into their lives

held every month where problems are taken up and new members enrolled. The state-level committee works on issues of advocacy — lobbying with the government to initiate schemes, change laws and influence policy, like successfully persuading the government to allot drought-relief work to low-income single women, in Rajasthan. Or lobbying to have a special column for single women within the format of the state's policy on women, in Jharkhand.

At the block level the sangathan grapples with the socio-economic problems of widowhood. Most stem from procuring land and property rights. As Justice Leila Seth points out, customary law and statutory law might give a widow certain rights. In actual practice, however, none of these are effective because the woman is not socially empowered to assert these rights.

The Hindu Succession Act, for example, clearly gives wives and daughters legal rights to land owned by their husband and father. But institutionalised patriarchy ensures that few can actually possess the land. Often, social customs connive to deprive a woman of these rights. Land transfer procedures should be initiated shortly after the death of the landowner, but custom dictates that widows stay indoors, in a darkened room, for a month or even a year. Land transfer procedures consequently become much more difficult, necessitating endless trips to tehsil-level offices.

As Seth notes, what is crucial is how widows regard

themselves with respect to property, what their social perceptions are and how aware they are of the law. Normally, widows do not like to raise disputes and go along with societal norms.

The practice of branding single women *dakkhan* is often a ploy used by unscrupulous brothers-in-law or others to terrorise the woman and usurp her land. Among certain tribal communities, levirate marriages (in which a widow re-marries or cohabits with her brother-in-law) are common. But, as a study by Grameen Development Services of Lalitpur, Uttar Pradesh, on the plight of Sahariya widows observes, this practice does not really translate to any real economic or social security for them. In many instances the widow is robbed of her land. In some instances she is forced to migrate with her new partner to worksites, abandoning her small children to the care of an aged mother.

Jharkhand and Maharashtra now have specific laws making it an offence to brand a woman a witch. Although Rajasthan does not have any such laws, ENS uses Section 499 that deals with defamation of character and which has harsher sentences for imprisonment than the anti-witchcraft laws.

In its strategy to counter land-grabbing, ENS of Rajasthan has found that an administrative approach is more practical and faster than filing a legal case especially as courts display an equally patriarchal attitude towards the concept of a woman owning property. In such cases, ENS first verifies

After the Bassi convention many widows went back home, opened their trunks and began wearing their colourful sarees. At gatherings they adorn each other's hands with *henna* or put on *bindis* or drape the *chunari* on the shoulders of a mother during her son's nuptials. It is their gesture to demonstrate that life is not over just because one relationship has ended

with the *patwari* that the land is registered in the name of the woman. Then, a delegation meets the collector and asks him to send the *tehsildar* to a public gathering where the transfer can officially take place. The superintendent of police is informed to ensure there is no violence on the day of the handover. Several representatives of the government and media are invited to the gathering as are women's organisations. Then, in the presence of everyone assembled, the widow is helped to take possession of the land. In most cases these tactics work and the embarrassed male who tried to usurp the land refuses to turn up.

If the case does have to go to court ENS has a special fund for legal aid.

ENS also helps widows access government schemes like widow pensions and old age pensions or the various schemes that state governments offer. Here again the main problem is that records and ration cards are generally in the possession of the in-laws, as the tribals of Maharashtra testified at a massive public hearing in Jawahar, Thane district, on March 14, 2008. Three widows of the particularly vulnerable Katkari tribe — Laxmi Dagdu Mukne, Soni Bhika Mukne and Dhavli Mukne of Mokhada taluka, Thane district

— testified that they were living under a tree and begging because they did not have the relevant documents.

Collective clout is marshalled to combat cruelty and atrocities against single women. Here again the strategy is to first try and resolve it at the village level. Sangathan members approach the *mukhiya* and urge him to take responsibility for the concerned woman's safety. The clear message is that the woman is not alone. She has her sangathan sisters behind her.

This tactic is also used to counter sexual harassment. Says Savitri Bai of Jharol: "As single women we are considered an easy target. Drunken or loutish men knock on our doors at night. Even the police can harass a single woman. But now that the sangathan women have banded together, and they have demonstrated that they know how to file FIRs and will not be intimidated, I feel less insecure."

A noteworthy case study is that of Choklibai of Girwa tehsil, Udaipur district. She was so savagely beaten by her brothers-in-law over a land dispute that in her distraught state she jumped into a well. Fortunately, someone informed the sangathan members who rescued her. Some time later she was again beaten and almost raped. This time a case was registered against the brothers-in-law but they were released on bail after four days. The sangathan members then insisted that the panchayat take up the case. Although they were not allowed to be present at the meeting they lobbied actively with all the women of the village, urging them to support Choklibai.

The decision at the meeting went in Choklibai's favour. Even when a brother-in-law tried to insist she must live with them the village women were firm that it was Choklibai's right to decide. An out-of-court settlement was arrived at whereby the land was equally divided and registered. The offenders were ordered to pay Rs 10,000 towards Choklibai's medical treatment and court expenses.

The most heartening spin-off of the movement has been the self-confidence it has given these single women: they now understand the need to assert their rights as equals.

After the Bassi convention many widows went back home, opened their trunks and began wearing their colourful sarees. At gatherings they adorn each other's hands with *henna* or put on *bindis* or drape the *chunari* on the shoulders of a mother during her son's nuptials. It is their gesture to demonstrate that life is not over just because one relationship has ended.

"*Aadmi mar gaya, mein thodi na mari,*" (My husband died but I am still very much alive). "*Hum adhure toh nahin,*" (We are not incomplete without a partner), the women emphasised at one of the meetings I attended.

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Hukumnama against female foeticide

In Punjab, the state with the lowest sex ratio in India at 798 girls per 1,000 boys, the Sikh clergy has been roped into the effort to save the girl-child. The Shiromani Gurdwara Prabandhak Committee is planning to set up cradles to receive unwanted girl-children at gurdwaras, while the state administration has already started its own cradle baby scheme. Will this strategy work in a state where 50 discarded female foetuses were found at the bottom of a well in 2006?

ANOSH MALEKAR

HER ARRIVAL SET OFF A FLURRY of activity at the district branch of the Red Cross. A woman attendant rushed out followed by her male colleague from administration. "A baby has just been abandoned in the *pangura* (cradle) outside," they shouted and waved to me to follow them into the sunny courtyard.

An old woman was standing at the gates with a newborn wrapped in an old bedsheet. "It is a girl; her mother wants me to hand her over to your organisation," the old woman whispered to the attendant after introducing herself as Manjit Kaur, maternal grandmother of the newborn.

The baby girl had been born a week earlier, and was nameless. After directing the attendant to feed and wrap the baby in a clean blanket, the man from administration got onto the telephone. Between making calls he explained how this girl-child was lucky not to have been dumped in some dark, stinky toilet at the railway station or a bus terminus.

A senior official arrived soon, followed by the media. The nameless baby girl, now wrapped neatly in a clean blanket, was taken to the specially built metal cradle by the busy road. The frenzied photographers and cameramen wanted to photograph the old woman abandoning the baby girl in the cradle and then pressing the alarm bell, while the senior official patiently awaited his turn to be photographed receiving the baby girl.

I was in Amritsar, spiritual and cultural centre of the Sikhs, and famously home to the Harmandir Sahib or Golden Temple that attracts more visitors than the Taj Mahal in Agra. I was looking at efforts to save the girl-child in Punjab, a state that is struggling with a sex ratio that, the authorities fear, dipped further in 2003 to 776 for every 1,000 boys — the lowest in the country.

In November 2007, the Shiromani Gurdwara Prabandhak Committee (SGPC) announced it would set up cradles at select gurdwaras to receive unwanted children so as to give the parents a humane alternative to female foeticide/infanticide.

The SGPC cradles were nowhere in sight. But the deputy commissioner of Amritsar, K S Pannu, had taken the initiative to start a cradle scheme, Pangura, with the help of the Red Cross early in 2008. The nameless seven-day-old whose arrival I was accidental witness to on March 4 was the

second girl-child to have been abandoned at the Red Cross's *pangura* in Amritsar.

Grandmother Manjit Kaur, who belongs to Thobe village in Ajnala taluka, said: "My daughter, Gurjit Kaur, was pregnant when she got a divorce a few months ago. We want to marry her off again but the prospective groom had a condition — he would adopt her newborn only if it was a boy."

Manjit Kaur added that they were farm labourers. "We are very poor and may not be able to look after the girl well. Instead of abandoning her I brought her to the Red Cross."

Earlier, on January 8, 2008, a mother of two girls handed over her third child, a one-month-old baby girl, to the *pangura*. Praveen Kaur, who worked as a domestic help, mentions in the official document that "my husband is handicapped and our family is too poor to bring up a third child".

According to Amritsar's additional district collector Paramjit Singh, not all abandoned girls come from families too poor to feed them, but the administration, aware of the social trends, does not quiz the family members on this. "We expect that it will be largely girls who will be left in the cradle. Boys are abandoned in our society only if they are disabled or are born to single mothers," he said.

"We make the parents or guardians sign a legal agreement wherein they relinquish all claims to the children before putting them up for adoption through the five NGOs approved by the state government," Singh added.

The cradle scheme was launched due to growing concerns over the increase in female infanticide after the official clampdown on sex-selective abortions in the state. In September 2006, the police uncovered over 50 discarded female foetuses at the bottom of a well at Patran in Patiala district, sparking an aggressive statewide crackdown.

The additional district collector noted that girl-children like those abandoned at the Red Cross cradle were lucky survivors of a society where it has always been dangerous to be conceived female. Though Jaswinder Singh Jassi, official spokesman of the Shri Harmandir Sahib (Golden Temple), maintains that Sikhism believes in gender equality.

"The Akal Takht *jathedar* (head priest) had proclaimed that any Sikh indulging in female foeticide would be ostracised

from the community. There is a *hukumnama*, a commandment, against ultrasound tests in Punjab. But newer technologies and better communication facilities are defeating the whole purpose,” Jassi said.

Ironically, educational and technological development does seem to have worsened the situation of the girl-child in Punjab. Chandigarh has one of the most skewed sex ratios — 777 females for 1,000 males — in the country.

Recent district census figures compiled by the Directorate of Census Operations reveal that Chandigarh’s sex ratio could be much worse if the slums, with 926 females per 1,000 males, are excluded. The city’s urban sex ratio would then stand at a dismal 500 females per 1,000 males.

The city also lags behind many states as regards women’s education. There are only 681 literate females against 1,000 males in Chandigarh, says the district census report. This is what prompts sociologist Santosh Kumar Singh, who teaches at the Government College of Girls, in Sector 11, to describe Chandigarh as “a mistaken mascot of modernity in India”.

Anosh Malekar



Grandmother Majit Kaur says she is too poor to look after her grandchild

Anosh Malekar



The baby girl abandoned at the Amritsar Red Cross

Interestingly, the Chandigarh Union Territory (UT) administration has now zeroed in on the priestly class to take the Save the Girl-Child campaign to citizens. “Our intention was simply to prevent some Hindu priests from sending out, through their sermons, soothsaying or astrology, signals that would harm the girl-child. We were pleasantly surprised when they volunteered to join our campaign,” recalled Director (Higher Education) Raji P Shrivastava.

Pandit Omprakash, head priest of the Radhakrishna temple in Sector 23, said: “Killing a female foetus is a *maha paap* (big sin) because the Hindu religion worships Nari Shakti. The campaign for saving the girl-child is in keeping with the shastras and the tradition of worshipping the female as a *devi mata* or Laxmi and Saraswati.”

Pandit Omprakash carries the official campaign materials along with *puja* articles in his *jhola* (bag). Wherever and whatever the occasion, he urges people through his discourses to turn to “true religion, a religion that does not discriminate on the basis of gender”.

It is not uncommon to see men in their traditional saffron or white robes telling temple visitors: “*Kanya bhrun hatya sirf gair-kanooni nahin balki ek samajik, sanskritik, dharmik evam naitik paap hai. Aaiye is apradh pe chuppi toden aur betiyon ka swagat karen.*” (Female infanticide is not only a legal crime but a social, cultural, religious and moral sin. Let us end our silence on this crime and welcome the girl-child.)

Shrivastava explained the intention behind involving temple priests in the campaign: “The UT administration, while looking at different ways to grapple with the problem, felt the State cannot go beyond a point. Gender sensitisation programmes in colleges and schools and getting more and more NGOs involved is all fine. But the campaign had to be taken beyond women’s education and empowerment and issues like dowry and property rights. What about the anxiety over attaining *moksha* (salvation)? The State cannot talk salvation to people.”



The Red Cross cradle where two girls have been abandoned so far

Anosh Malekar

Sociologist Santosh Kumar Singh believes that religious interventions are long overdue. "The kind of educational values imparted so far have failed to tackle social evils and need to be seriously looked into. If religion helps impart the right values, then so be it."

Of course it is going to be a long haul and this was just the beginning in Chandigarh, conceded Shrivastava. For, son-preference and rejection of the girl-child runs deep in the Punjab where female infanticide has been in practice for centuries.

"Among the Sikhs, the practice of female infanticide was most widely practised among the Bedis, the descendants of Sikh gurus... Due to their extraordinarily high status they found it difficult to find *biradaries* of higher status from which to draw husbands for their daughters... Being exogamous, they could not marry among themselves... To solve this problem they borrowed a solution which had been used by the Rajput landed aristocracy in various parts of India: they killed female offspring at birth..." writes Harjot Oberoi in the book titled *The Construction of Religious Boundaries: Culture, Identity and Diversity*.

Santosh Kumar Singh said: "The practice of female infanticide spread with the newfound prosperity among all sections of society following the Green Revolution across Punjab. The advent of affordable and convenient sex determination methods, especially ultrasound imaging in 1991, led to a spurt in female foeticide. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT) was implemented in the year 1994, but hardly put a curb to the crime."

"Until the stringent measures initiated by the government in the last couple of years, it was not uncommon to see signs put up by sex-selection clinics across Punjab and Haryana urging people to make a choice: 'Spend a few hundred rupees now (to abort a female foetus) and save lakhs of rupees later (in dowry)'," Singh added.

According to the 2001 census, the national sex ratio was 933 girls to 1,000 boys, with Punjab (798 girls to 1,000 boys) followed by Delhi (821 girls to 1,000 boys) and Haryana (861 girls to 1,000 boys) faring the worst.

According to a Unicef report released in December last year, 10 million girls may have been killed by their parents in India over the past 20 years, either before they were born or immediately after.

Although the Union government seems to have woken up to "a national crisis", the response, according to some public health experts, almost condones the abandonment of female babies. Union Minister of State for Women and Child Development Renuka Chowdhury reportedly announced plans to launch the cradle baby scheme across the nation by saying: "If you don't want a girl, leave her to us."

Campaigners like Sabu George, a Delhi-based researcher who has done pioneering work on declining sex ratios in

India, said that though the cradle scheme does have a role, the positive approach adopted by religious leaders and organisations like the SGPC, though significant, may have come too late. "Chowdhury should have announced the cradle scheme 10 years ago," he said.

"The SGPC's present stand has more to do with its concern for the dwindling population of Sikhs than any concern for the girl-child," George added. "As far as the involvement of individual religious leaders is concerned, we would not have been dealing with this issue if they were so influential. For leaders of any religion in this country, women are not equal to men."

Amar Jesani, trustee, Anusandhan Trust, Mumbai, is also wary of involving religious leaders in the campaign. "One primary reason for religious leaders joining campaigns on sex-selection is that they see a great opportunity to oppose abortion, which is not pro-women."

Jesani, though, feels the cradle scheme is needed to provide good support, home care and love to abandoned kids. "Such a scheme should not be linked to sex-selective abortion because it should be for all children, not only for female ones. More importantly, it should not be a gimmick as it has become now," he said.

Both George and Jesani appeared more concerned with the State's failure to make medical regulations work in India. "Why only the PNDT Act, is the Medical Council Act effective? That law is also for the regulation of doctors and their practice. How many doctors are disciplined for unethical practices," asked Jesani.

George said: "It is being said that Indian parents are choosing to abort female fetuses in such large numbers that over 900,000 girls are now being lost every year. The reality is doctors are encouraging parents to kill female fetuses. Why? Because they are making money."

According to George, India is not committed to protecting women and strictly regulating the medical profession and healthcare services. "What we are talking about is mass medical crimes and the State is refusing to do anything about it. We have killed more girls than the Nazis killed Jews. Only China is worse than us with a sex ratio of 832:1,000. But we will get worse by 2011, killing more than a million girls every year," he said.

By making timid appeals, by providing mere education, society and the power relations therein cannot be changed, said Jesani. The battle will have to be fought by all those who genuinely believe in non-discrimination and, of course, by women. Jesani added: "Unless they take it up in a big way, the State will show laxity in regulating doctors and healthcare services."

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Sex workers as economic agents

Recognition of the labour and economic contribution of sex workers is one of the first steps in mainstreaming sex workers and according them dignity and rights. The Sangini Women’s Cooperative Bank in Mumbai’s red light area has made a good beginning

MANJIMA
BHATTACHARJYA

IN SEPTEMBER 2006, Kolkata saw thousands of women activists converge at the 7th National Conference of Autonomous Women’s Movement in India. As in the six national conferences before this, there were thousands of women from across the nation who had come to share their experiences of struggle, hundreds of banners with catchy slogans on women’s rights, and scores of intense debates. But unlike the previous conferences, this one included groups never actively included before: women with disability, transgenders and hijras, and, most strikingly, sex workers. Over the four days of the conference, sex workers put forward their arguments forcefully and with clarity; sang songs of freedom, rights and the merits of safe sex; danced with abandon along with women’s activists; and one sex worker from Kerala, Nalini Jamila, even spoke at length about her recently released book *An Autobiography of a Sex Worker*.

Such a presence is particularly remarkable considering that sex workers lack social power in such fundamental ways that they have remained voiceless for hundreds of years and excluded from society, polity and economy in every imaginable way. In the last decade, sex workers’ movements have emerged as strong voices of protest. Their emergence into the public arena, driven by HIV/AIDS-centred activism and their self-organisation into collectives, has enabled them to make their lives visible and work against their age-old legal and social marginalisation.

Demographic studies indicate that sex workers are usually women who are already subsumed by other elements of social marginalisation. They are predominantly illiterate, have limited economic opportunities and lower social status. Women belonging to scheduled castes and scheduled tribes have a higher representation among sex workers (in particular *devdasis* and women from the Nat and Bedia tribe, communities traditionally excluded from mainstream brahminical society) while a significant proportion of women are those who have been deserted, widowed or victims of violence (1).

The minute they enter sex work however, they are further marginalised along three other axes: the informality of their labour, the dubious legal status of prostitution, and notions of women and immorality.

The axes of marginalisation

The history of economics and the development paradigm is full of predictions that never came true. It was an economic anthropologist named Keith Hart who first used the term ‘informal sector’ in the 1970s to describe economic activities he saw during a study in Ghana — ways of transacting, he wrote, that his education so far had not equipped him with a word for. Economists assumed that such unregulated and unorganised economic activities would be a transitory stage in a developing country’s evolution to a developed economy, a temporary phenomenon that would gradually fade away. But as the years rolled by, it became evident that the informal sector was no ‘waiting room’ where migrants or the poor stopped by in between their move to a formal regulated employment structure. Academics struggled to make sense of the diverse ways in which people earned their livelihoods and the fact that this rapidly expanding sector (now grudgingly called ‘economy’) was here to stay. In India, 93% of the population work in the informal sector, of which one-third are women. Sex workers too are part of this world.

Cobblers, key-makers, barbers, home-based workers, domestic workers, ragpickers, street vendors, sex workers — all bound by the unique exclusion that the informality of their labour brings. None of them are likely to have a bank account or PAN card, be protected by any specific legislation, have insurance, pension or any security of employment and any formal recognition that their work contributes not only to the local economy of the area they live in but to the national economy as a whole. Despite the fact that our cities and towns thrive on their labour, they are systematically excluded from the financial systems of the neo-liberal economy.

For the estimated 3 million sex workers in India however, besides the travails of informality, they are further marginalised along two other axes. One is the cloud of criminality associated with their occupation (2), which gives the law an unnatural power over them and is used brutally by local police to threaten, harass and routinely extort money and sexual favours. This semi-underground status precludes them from accessing the legal system as recourse against the discriminations they live with every single day.

The other is the underlying strain of morality that keeps them outside mainstream limits, keeps them ghettoed in

'red light areas' and envelops them in a stifling social stigma that justifies public misbehaviour towards them, social ostracism, eviction from prime properties and exclusion from health services or access to education for their children.

'We are part of the economy too'

Stigmatisation continues to be the overwhelming and defining experience of being a sex worker. However, for sex workers all over the world, recognition of their labour and economic contribution is one of the first steps in mainstreaming them and according them dignity and rights.

One of the first documents of the new movement of sex workers, the Sex Worker's Manifesto, released in 1997 in Kolkata, states: "Women take up prostitution for the same reason as they might take up any other livelihood option available to them. Our stories are not fundamentally different from the labourer from Bihar who pulls a rickshaw in Calcutta or the worker from Calcutta who works part-time in a factory in Bombay... Our contribution should be included in the GNP statistics for wage labour. Like the woman in the field, or in the construction site, we work hard (3)."

Increasingly though, globally there is a recognition of the population that sex work directly and indirectly sustains and

prevents from falling into abject poverty, or placing an additional burden on the State. Amongst the new patterns of feminised migration that have emerged in the world with globalisation, one of the more prominent 'global workers' are 'nannies, maids and sex workers' (4), all responsible for crucial economic streams flowing back to their countries. An ILO report on the sex industry in Indonesia, Malaysia and Thailand noted that in Thailand, close to \$ 300 million is transferred annually to rural families by women working in the sex industry in urban areas. The study notes how commercial sex became an important source of survival for thousands after the Asian financial crisis. It also states that several million people earn a living directly and indirectly through the industry, that it indirectly supports many other economies and workers (like hospitality, entertainment, travel and tourism) with an estimate that in these countries, revenue from the sex industry is critically important to people outside the industry as well, amounting to between 2-14% of the national income (5).

New initiatives for financial inclusion

Women enter sex work due to economic reasons, but despite supporting themselves and their families their identity as independent economic agents is often overlooked and in some cases undermined (like the instance of them

Sudharak Olwe



Commercial sex workers in Mumbai's Kamathipura red light area

being categorised as ‘beggars’ in Census 2001). In India, sex workers are excluded from financial security despite being earning individuals in various ways.

Women in prostitution may have an ambiguous relationship with the money they earn, often having to battle the ‘dirty money’ tag that comes with it. They may have to give large portions of their income to third parties like pimps, police or brothel owners, living in a cycle of debt, sometimes even debt bondage (whereby they have to pay back money to the brothel owner who may have ‘bought’ them from traffickers). They rarely have any ways of saving for their future or for their children. Even if they do save, depositing their earnings with brothel owners, local shopkeepers or lovers is not an option, as they are likely to never get it back. How will these women, with no documents and in habitual debt, create a financial base that will enable them to plan for their future, children and old age, say no to clients who are abusive or refuse protection, or even imagine other life opportunities?

Recognising the importance of financial security, last year an international NGO Population Services International supported the setting up of the Sangini Women’s Cooperative Bank in the lanes of Mumbai’s Kamathipura red light area. This special bank targeted at sex workers living and working in the area has had astonishing success very quickly. Its USP is that no residence documents or birth certificates are required to open an account (the only requirement is that the sex worker must belong to the local sex workers collective), minimum deposits can be as low as Rs 10, and collection agents go from house to house not only to collect money but also to counsel, answer queries and deliver account books and photo identity cards once the account is set up. Since it opened last year, the bank has attracted more than 1,700 account holders in Kamathipura with a total of over Rs 2 million in deposits; it recently opened branches in Vashi and Bhiwandi. A few months ago, the bank also started giving loans of up to Rs 15,000.

Other than its clients, the bank staff and collection agents are all drawn from the community. While the bank is an alternative from the mainstream, it is not isolated from mainstream banks. The Sangini bank reportedly invests around Rs 25,000 of the deposits daily in fixed savings schemes with state-run banks at the governing rate of interest.

This is not the only bank of sex workers in the country; the first was set up by sex workers in Kolkata as part of the 1994 Usha Multi-purpose Cooperative Society initiative by Durbar Mahila Samanvyaya Committee (DMSC).

Another milestone has been the country’s biggest insurers, Life Insurance Corporation of India’s (LIC’s) decision early this year to provide insurance to sex workers under a micro-insurance scheme called Jeevan Madhur, created for economically weaker sections. Under this scheme, being a sex worker does not disqualify an applicant (as has been the case so far) although, based on the understanding that the

life risks associated with sex work are higher than in other occupations, the applicant is required to undergo a medical check-up. An initiative partnered again with the DMSC in Kolkata, the scheme has been met with enthusiasm: within a few days, 300 sex worker members of DMSC enrolled for the check-up.

Such initiatives — taken by sex workers themselves — indicate that financial inclusion, or being part of financial systems and having economic security is one of the priorities of women in prostitution, and something that they themselves perceive as having a far-reaching impact on their lives.

Negotiating exclusion every day

Working for financial inclusion is only part of the bigger struggle. Sex workers live and work in an environment full of risks. Violence, coercion, stigma, HIV are all negotiated by women in prostitution every day.

At the personal level, they try to minimise the impact of their social marginalisation and stigma in various ways — by cultivating relationships with clients, putting their children into mainstream private schools, maintaining relationships with political parties or leaders to leverage some power into the area, or by playing up certain gender roles that have greater moral authority, such as prioritising their role as mothers. On the political front too, through strategic partnerships, organisation into collectives, alliances with other movements and with the growing confidence and conviction that nothing can keep them outside society limits anymore, many sex workers in India today are well on their way to changing their own destinies.

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Endnotes

1 Demography and sex work characteristics of female sex workers in India. Rakhi Dandona, Lalit Dandona, G Anil Kumar, Juan Pablo Gutierrez, Sam McPherson, Fiona Samuels, Stefano M Bertozzi and the ASCI FPP study team. BMC Int Health Hum Rights. 2006; 6: 5. Published online April 14, 2006. doi: 10.1186/1472-698X-6-5

2 The law around prostitution is ambiguous. The Immoral Trafficking Prostitution Act of 1986 (ITPA) criminalises trafficking and soliciting in public places, but not prostitution *per se*

3 The statement by the Kolkata-based Durbar Mahila Samanvyaya Committee’s Sex Workers Manifesto, presented at the Sex Workers Conference, October 1997

4 *Global Women: Maids, Nannies and Sex Workers in the New Economy*, edited by Barbara Ehrenreich and Arlie Russell Hochschild, Metropolitan Books, 2003

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Exclusion of Muslims

This article traces the exclusion of Muslims to the conversion of dalits and backward classes to Islam centuries ago. Islam gave them a sense of identity and equality, but made no difference to their socio-economic situation, since Islam was imposed on the caste structure. The gulf widened with 600 years of Muslim rule, and with Muslim rejection of everything Western — including education — after the British came to India

J S BANDUKWALA

THE PROPHET OF ISLAM was aware of India, once remarking that there is a fragrant breeze coming from India. Islam reached India almost immediately after he passed away in 632. The long western coast had trade links with the Arabs much before the arrival of Islam. The Islamic injunction of fair and honest trading impressed the local people. Many Arabs settled down in Kerala, marrying local women. Shia Sufis converted many brahmins and Rajputs in Gujarat. Four hundred years later, invaders came from Central Asia. They were followed by Sufi Syeds from the Arab lands, escaping persecution by the Abbasid Caliphs. The most prominent was Khwaja Moinuddin Chisti (1142-1236), preaching love of God, combined with equality, brotherhood and concern for the poor. Millions, particularly from the lowest strata of society, responded to his teachings and those of other Sufis such as Khwaja Nizamuddin Aulia and Baba Farid in the north. The Guru Granth Sahib extensively refers to Baba Farid. The foundation stone of the Golden Temple was laid by Mia Mir. Sufism had a tremendous influence on the Bhakti movement, producing such spiritual figures as Guru Nanak, Kabir and Mirabai.

Today, the Muslim population in South Asia is around 500 million. That is about one-third of the world Muslim population. Almost all these Muslims have forefathers of local origin who converted to Islam. A minuscule percentage is of non-South Asian origin.

Discrimination against Muslims is rooted primarily in this conversion, mostly from the dalit and backward classes. Six hundred years of Muslim rule widened this gulf. The religious policies of Muslim rulers ranged from the most liberal Akbar to his ultra-orthodox great-grandson Aurangzeb. Frequently, Muslim kings fought Hindu rulers such as Maharana Pratap and Shivaji. In due course these kingly wars came to be viewed as religious wars between Muslims and Hindus, widening the communal divide. (Sadly, we fail to notice that Shivaji's general was a Muslim, while the Mughal general was a Hindu.) But perhaps the most vital factor was the upper caste resentment at the large-scale conversion of lower castes to Islam. This is the genesis of the communal hatred we see today.

As the Mughal Empire weakened, Muslims comprised a small elite of nawabs and zamindars. There was no middle class. Most Muslims were economically and socially backward. Conversion to Islam gave them a sense of equality

and identity within a larger Muslim world. But it had no effect on their living standards. Islam was superimposed on the caste structure. The Hindu dhobi became a Muslim dhobi. But he still remained a dhobi. The caste structure of Hinduism became the *jamaats* of Muslims. Marriage was strictly within the *jamaats*. Often, even burial grounds were along *jamaat* lines. This was against a basic feature of Islam that all Muslims were brothers, as witnessed in the marriage of the Prophet's cousin Zainab with Zayd, a former slave.

The rise of the British saw the Muslim elite losing political power. In their resentment they turned their back on anything Western, particularly the English language and science. They clung to a shadowy world of Persian language

The 1857 mutiny ended Muslim rule. The British, replacing the Mughals, were especially harsh on the Muslims, who reacted by withdrawing further into their shell. Any attempt at an English education was strongly opposed and even declared un-Islamic. Within a few decades there was a marked contrast between widespread Muslim poverty and decay, and a vibrant Hindu middle class

and culture, and to a princely lifestyle they could no longer afford. Their total lack of vision can be gauged by their refusal to accept a British offer to open an English-medium college. They demanded a Persian-medium college. Around this time the British offered the Hindus a Sanskrit college. They declined, asking for an English-medium college. Note the sharp contrast in their responses.

The 1857 mutiny ended Muslim rule. The British, replacing the Mughals, were especially harsh on the Muslims, who reacted by withdrawing further into their shell. Any attempt at an English education was strongly opposed and even declared un-Islamic. The great Sir Syed Ahmed, the founder of Aligarh, was vilified and offered a garland of shoes. On the other hand, Hindus responded most enthusiastically to Western education.

Within a few decades there was a marked contrast between widespread Muslim poverty and decay, and a vibrant Hindu middle class. This Hindu awakening found expression in the founding of the Indian National Congress in 1885. But the Muslims largely kept aloof. Sir Syed Ahmed was wary of antagonising the British. His focus was only on the uplift of the community, and that required building bridges with the foreign rulers.

The religious divide soon became a political divide, with the partition of Bengal in 1905. The Hindus opposed it strongly. The Muslims favoured it, reflecting the nature of East Bengal with its Hindu zamindars and Muslim landless.

After the First World War, Hindu aspirations for self-government were turned down by the British. Resentment led to harsh measures culminating in the Jalianwala Bagh tragedy. This brought Mahatma Gandhi into the national limelight. It coincided with the British deposing the last Turkish Sultan, who as Khalifa was also the nominal head of the Muslim world. Indian Muslims reacted strongly to this loss. The Khilafat movement was born. Gandhiji sensed an emotional issue that would bring Muslims into the national mainstream. He offered Congress support for the Khilafat. The result was the entry of orthodox maulanas into the Congress, and the exit of its principal liberal figure Jinnah. The latter was bitter about his eclipse from national politics. This bitterness contributed years later to the partition of the country. Equally important, Muslim leadership passed into the hands of maulanas, and it has largely remained so ever since. The Khilafat movement died within a few years. But the damage had been done. Religion and politics were mixed in a deadly concoction. The Moplah riots in Kerala followed, leading to the birth of the Hindu Mahasabha and the RSS. In spite of Gandhiji's attempts to project Sarva Dharma Sadbhav, the two communities drifted apart. The end result was Partition, with frightening brutalities and the migration of millions across the borders.

Gandhiji's assassination and Jawaharlal Nehru's stress on science and humanism cooled the communal fires. But this social peace lasted barely 15 years. With Nehru's death, and the constant irritants of Pakistan and Kashmir, the Hindu-

Muslim divide widened once again. Electoral politics, so vital in a democracy, also inflamed communal passions. Caste politics, with the coming of the Mandal controversy, threatened the Bharatiya Janata Party (BJP) hold on its Hindu votebank. In response, the Ayodhya movement was launched. The last 25 years have been most difficult for Indian Muslims who have been under constant physical threat and mental stress.

The situation is particularly grim in a state like Gujarat which has become a laboratory for Hindutva. My own house has been attacked four times. I have been in prison three times. Post-Godhra saw an elected government sponsoring the mass killings of Muslims. This had never happened before in free India. The poison goes beyond Narendra Modi. For years the Gujarati language media would carry provocative articles against Muslims. Repeated requests to the Press Council to stop this yellow journalism had no effect. Gujarati intellectuals would write long articles on the need to civilise barbarian trends in the Muslim community. This author made numerous public appeals to persuade top Gujarati religious figures to express remorse for the horrors of 2002, in particular the rape and killing of Muslim women using trishuls while shouting "Jai Shri Ram". There has been no response. Honestly, I have often wondered what has happened to this society that once produced a Mahatma.

Politically, Muslims have no voice in Gujarat. Although the Muslim population in Gujarat is about 10%, the communal polarisation is so deep that it is impossible for a Muslim to win a significant election. With the rise of Hindutva, Gujarat has not elected any Muslim to the Lok Sabha, nor has there been a Muslim minister in Gujarat. Since the coming to power of Narendra Modi, most Muslim officers have been sidelined. The hatred shown by the Gujarat BJP towards Muslims is frightening. It has poisoned relations between Muslims and the saffron party at the all-India level. Muslims tend to vote strategically, such that the BJP loses. This has been exploited by other parties to avoid doing anything substantial for Muslims, other than talk about protecting them from the BJP. This is best reflected in the socio-economic and educational state of the community. The Islamophobia of the BJP has hurt Muslims tremendously, while giving the BJP a pariah tag in national politics.

The situation could have been rectified substantially if the lower judiciary in Gujarat had been just and fair. Sadly, case after case against those accused in the post-Godhra riots was thrown out due to deliberately sloppy police investigations, combined with public prosecutors appointed from the Vishwa Hindu Parishad (VHP) and a communalised judiciary. Even so notorious a person as Babu Bajrangji, who, in a TV sting operation confessed to having slashed the pregnant Kausarbanu to kill both the unborn foetus and the mother, was granted bail by a high court judge. Later, this same judge was appointed on the Nanavati Commission to examine the causes of the riots. How can we have any faith in such a judge?



On the other hand, the draconian POTA (Prevention of Terrorist Activities Act) was applied to around 270 people in Gujarat. Of these, 269 were Muslims. Those arrested for the Sabarmati train burning have been languishing in jail for the past six years. The government's case is so weak that it deliberately delays bringing it before a court of law. Since the expiry of this law, the Gujarat government has passed another POTA-type Bill, which has not so far been signed by the President. It is called GUJCOC (Gujarat Control of Organised Crime). It allows any confession made before the police as admissible before a court of law. There is a strong anti-Muslim bias within the Gujarat police force. One of its most senior officers is in jail, charged with killing 14 innocent Muslims in fake encounters, using the argument that they wanted to kill Narendra Modi. The current DGP was the Ahmedabad police commissioner during the killings of 2002. In his deposition before the commission of inquiry, he pleaded amnesia for all that happened on those horrible days. No wonder Modi was desperate to appoint him DGP.

One can well imagine the fate of the Muslim community once GUJCOC gets the President's signature. Modi has sensed an electoral issue in the Centre refusing consent to the GUJCOC Bill. He has started a huge public relations exercise branding the Centre soft on terrorism. Strangely, he could not prevent the attacks on Akshardham even when POTA was on the statute books. His real difficulty is the absence of any reliable police intelligence. He has used that branch primarily for political intelligence against his opponents. Further, by sidelining Muslim police officers, intelligence has to depend only on bootleggers and gamblers for Muslim information.

The recent Ahmedabad blasts have been tragic. In Islam, terrorism is strongly condemned in Surahs 5, 6, 17 and 25 of the Quran. Life is given by the Creator and it is sacred and no individual has a right to take it away, except in the course of justice. To kill an innocent is a sin that deserves double punishment from Allah. Tragically, many victims of 2002 are filled with burning revenge, particularly when they see the guilty walk free while innocent Muslims rot in jail for years. I urge these youth to have faith in the Supreme Court. Justice will be done. Most important, they must look for justice in the majesty of Allah. But under no condition must any innocent be hurt. For that displeases Allah.

History tends to divide. Geography forces us to unite. One-hundred-and-fifty million Muslims are spread across every state, district and taluka of this country. There is no alternative but to live in communal harmony with our 800 million Hindu brothers. Muslims must play their part in making a success of the idea of India. After all, which country in the world can claim a Father of the Nation who laid down his life for its minorities? Muslims must realise that all Hindus are not supporters of the RSS. India is secular because of these Hindus. We must do everything possible to win their goodwill. Without diluting our roots in Islam, we must make adjustments in our worldview and our own lifestyles.

One sad aspect is the decline in Sufi beliefs among Muslims. Sufism enabled a reconciliation of different philosophical and religious tenets in India. It brought Muslims closer to Hindus. Under increasing threat from Hindutva, Muslims have sought to re-assert their distinct identity in appearance. They are also moving away from Sufism. In the process they are distancing themselves from those non-RSS Hindus whose friendship is essential for their own welfare. This may damage secularism in the country, and ultimately hurt the Muslims of India.

Muslims must emulate the gentler, warmer and nobler nature of the Holy Prophet: his integrity, his simplicity, his laughter with children, and his concern for women, the old and the sick. A society is judged by how it treats its women. Muslim men have not realised the psychological damage the practice of triple talaq does to women. It is a sword that hangs over every woman. The Quran refers to talaq in (2,226/232) and also (65, 1/7), with the clear stipulation that the process be spread over a period of about four months. This is to prevent any misuse by anger or impulse. There is no mention at all of instant triple talaq. The Quran directs the husband to treat his divorced wife with dignity, honour and kindness. Horribly, women are divorced on the telephone, or in a drunken state, or for not cooking the right type of meal. Tragically it is considered valid by our Muftis.

This is wrong in religion. It is also against all the tenets of human rights. Similarly, polygamy is mentioned in the Quran (4, 3) wherein a man is allowed to marry up to four wives. But it stipulates that they must all be treated justly and fairly. The very next sentence says that even if you try to be just, you will not be able to do so. This implies that monogamy is the rule in Islam. Polygamy is permitted only under extreme conditions. In Islam, a child is conceived when an egg meets the sperm. Allah gives it a soul. Hence Islam treats abortion as murder. But coitus interruptus was sanctioned by the Prophet. This method just stops the egg meeting the sperm. Then why do we oppose family planning, when it does the same work? Tragically, Muslim women resort to abortion as the only way of family planning, without the consent of the husband or the anger of the local maulvi. This results in serious health risks to most Muslim women.

Hindutva has led to the impossibility of Muslims finding residential accommodation in most Hindu areas. This is very true of Gujarat. Strangely, it is also true of cosmopolitan cities like Mumbai. This runs counter to the best way we can generate national consciousness at the grassroots level, by having people of all castes, religions and languages live together. In the early-1980s, I could easily have bought a good house in a Muslim locality in Vadodara. But I deliberately chose a sparsely populated non-Muslim area. Over the years, the locality developed and I was a rare Muslim surrounded by Hindus. My children grew up in an excellent secular environment. But the idyll did not last long. Hindutva zealots began publicly attacking the very idea of a Muslim living among Hindus. One VHP fanatic even called me a snake, at a *havan*. Hindus were advised, even forced,

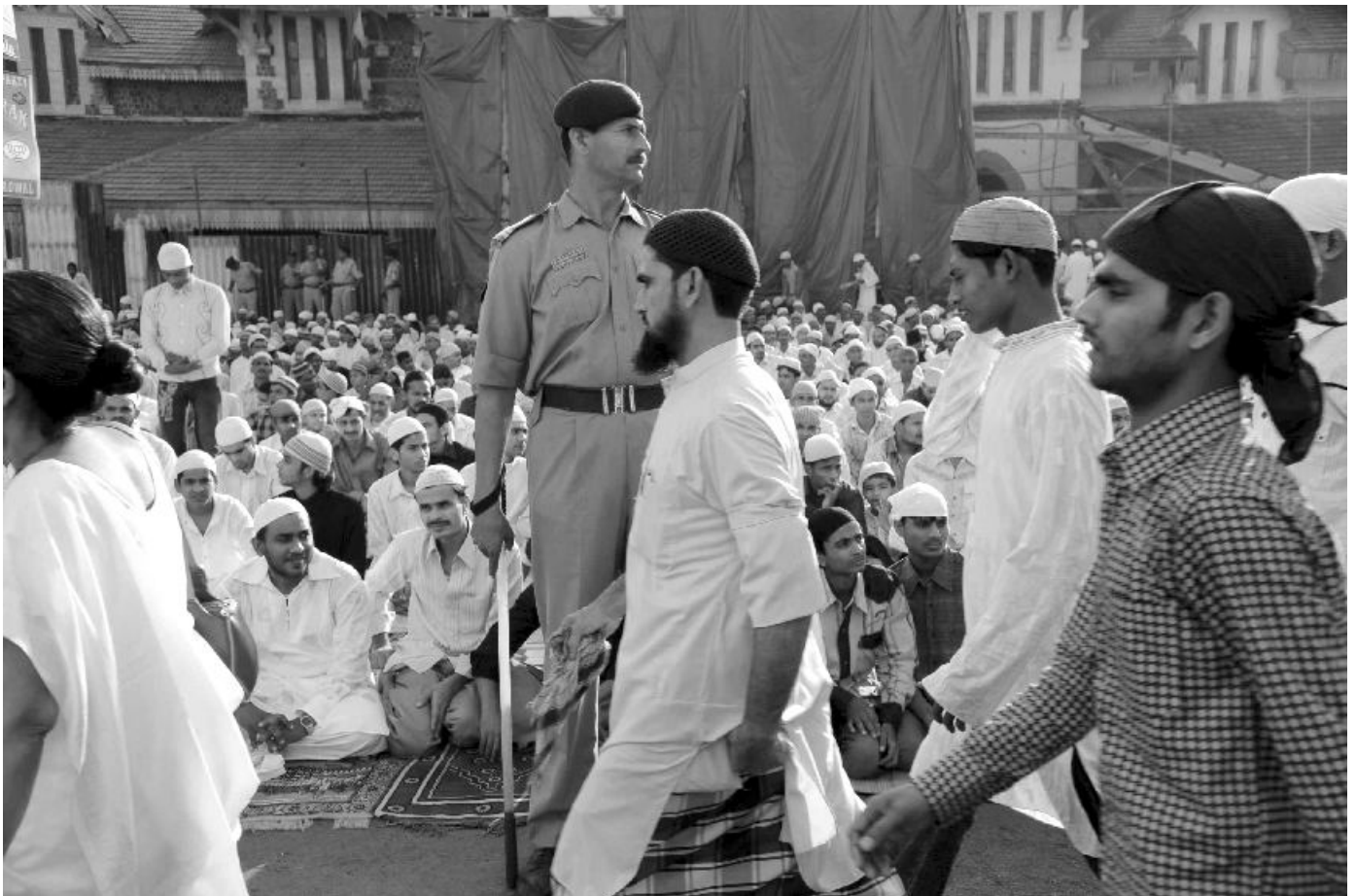
to shun my friendship. Within hours of the Godhra train burning, those who I thought were close to me went for the jugular. I just barely escaped, but the house was totally destroyed. On my request the university allotted me a flat in a block of four apartments. After I moved in, the other three occupants moved out; no one wanted to stay in my block even though there was a shortage of university accommodation at the time. This lasted three years, and it involved highly educated university professors who had known me and my family for years. Frankly, for the first time in my life I felt I was an untouchable. It almost destroyed me mentally. Fortunately, the human spirit ultimately triumphs over hate and prejudice.

Sadly, the price is ghettoisation. In cities like Ahmedabad and Vadodara, Muslims are forced to live in very restricted localities. Municipal authorities treat these areas as untouchable. Water supply is poor, as is drainage. Roads are bad, public transport is generally absent. There are no gardens; even street lighting is poor. In short, these ghettos resemble the apartheid-era black townships of South Africa. The circle is complete. The RSS have taken their revenge on those lower castes who converted to Islam a thousand years ago. Muslims are the new untouchables in the Gujarat of Narendra Modi.

A true Muslim never sinks into despair. Faith in an Almighty Allah shows the way out. These ghettos can be transformed using self-help and the democratic process. Trees can be planted and watered. Cleanliness must be maintained. Encroachments on the roads must be removed. Street lighting and drainage must be adequate, if necessary using Zakat funds (note that in the Prophet's days Zakat was used at times for the larger public good). As an example, Juhapura in Ahmedabad has a population of about 3 lakh Muslims, most of them migrants from riot-affected areas. For years this region had no banks, as a bureaucrat had given it a negative rating. We fought this issue in Parliament and up to the level of the finance minister and prime minister. Finally we succeeded, and there is a rush of banks to open branches in Juhapura, recognising that it is rich in potential deposits.

Absence of quality education is the weakest aspect of the Muslims of India. Ironically Islam starts with the revelation: IQRA, meaning 'read'. Islam is the only religion that strongly forbids a mad rush for wealth. But it urges Muslims repeatedly to seek knowledge, even at grave risk, to quote the Prophet 'by going to China'. Surah 20 says, "*Wa Qur Rabbi Zidni Ilma,*" meaning "Pray Oh Lord, increase my knowledge". Yet the latest figures are heartbreaking. The

Sudharak Olwe



Does it make sense to have 23 Dar-ul-ulooms producing ulemas in the south Gujarat region? They lack local students and end up attracting students from poor Uttar Pradesh and Bihar families, by promising free boarding and lodging facilities. What is achieved by producing thousands of maulvis and maulanas with practically no skills to face modern life? All we need is one excellent Dar-ul-uloom that produces the required number of ulemas, but of a very high standard

dropout rate as measured for children of ages 6 to 13 not attending school is: 28.43% in Bihar, 14.37% in Uttar Pradesh, 13.03% in Delhi and, shockingly, 11.33% in Left-ruled West Bengal. Extreme poverty drives these children from school to the labour market, mostly as domestics. Political factors are such that no one pays attention to these lost generations. The BJP is least interested. All other parties know that the Muslim vote can be won just by promising security against the RSS. Oddly, Gujarat's Muslim education figures are much brighter. This is due to the decades of anti-Muslim violence and the resulting injustice having convinced most Muslims that quality education is the only way they can break this communal cycle. The male literacy rate in Gujarat is 82.9%, female rate 63.5%, both higher than the national average. In 2002 there were about 250 Muslim-run schools. Today there are around 600. The most heartening is the sharp rise in female education, with so many studying engineering and medicine. Among Bohras and Khojas, literacy is almost 100%. It is difficult for a non-graduate boy

or girl to find a marriage partner.

Does it make sense to have 23 Dar-ul-ulooms, the equivalent of a university, producing ulemas, in the south Gujarat region? Most of these institutions receive huge funds. But they lack local students who prefer to study in regular schools. They end up attracting students from poor Uttar Pradesh and Bihar families, by promising free boarding and lodging facilities. What is achieved by producing thousands of maulvis and maulanas with practically no skills to face modern life? All we need is one excellent Dar-ul-uloom that produces the required number of ulemas, but of a very high standard. One hopes these Dar-ul-ulooms also become centres of quality education, teaching both religious as well as worldly education. Incidentally, that was one of the pillars of the Prophet's teachings.

At this stage it is best that Muslims stay away from power politics. The experience of the last 60 years is that a qualified Muslim leader who joins a political party does gain at a personal level. We have had Muslim presidents, vice-presidents, Cabinet ministers and governors. Sadly, they are so scared of being branded communal that they completely avoid the community. Muslims must treat the vote as a sacred power. Their political priorities must be on how to solve the socio-economic and educational challenges ahead. No political party should get away with treating Muslims as a bonded vote. It still hurts that Mayawati promised security to Muslims in 2002. Right after coming to power she endorsed Narendra Modi and supported the POTA Bill in Parliament, to the great suffering of Muslims in Gujarat. She should be asked for a full explanation for the about-turn.

The Congress has benefited the most from Muslim support. Yet the only substantial achievement is the Sachar Report. They have slept on the Srikrishna Commission on the Mumbai riots. Even in Gujarat, our own experience was that the local Congressmen were often hand-in-glove with the BJP during the 2002 madness. Mulayam Singh is equally at fault. He has largely ignored the economic uplift of the community and has got away only because of his stand against the BJP. The most shocking is the role of the Left. In spite of enjoying unparalleled power in West Bengal for three decades, they could do practically nothing for the Muslims there. Their condition is most pitiable.

Finally, it is time to end the maulana control of Muslim politics. Ulemas belong to the mosque. They must take care of the spiritual needs of the people. But they must stay away from power politics. It is not their cup of tea. Muslims need a new leadership that can take them to the future. That requires a grasp of world and national affairs and trends. This is beyond the scope of the present-day ulemas. Our failure on this score may cause irreparable damage to the community.

Dr J S Bandukwala recently retired as professor of physics at Baroda University. He is President of the People's Union for Civil Liberties (PUCL), Gujarat, and President of the Zidni Ilma Charitable Trust which works for the professional education of Muslims

Persons with disability may apply

Until very recently the disabled had severely limited opportunities for employment. That is changing slowly but surely as the public and private sector realise the benefits of inclusion of the disabled not just as a token gesture but as a business imperative. Bangalore's Infosys BPO employs 165 persons with disability, Mphasis employs 140 at its Bangalore office. And 90% of the workforce at Vindhya E-Infomedia is disabled

MONIDEEPA SAHU

- Infosys BPO has introduced a line in its job advertisements that goes: "Persons with disability (PWD) are encouraged to apply". Starting with 28 PWD, the company today employs 165 and plans to double the number in future.
- NIIT has introduced special computer training programmes for the visually impaired. It has also developed a computer-assisted teaching and rehabilitation programme for spastics.
- Quattro BPO Solutions is partnering with Ability Foundation, Chennai, to organise an employability job fair for differently-abled people, in association with the National HRD Network.

These facts and figures are sourced from a study jointly conducted by NASSCOM and Deloitte in April 2008. The study, 'Indian IT/ITES Industry; Impacting Economy and Society 2007-2008', is based on responses received from NASSCOM member companies as well as analysis of facts and information available from secondary sources.

The NASSCOM-Deloitte survey indicates that "64% of IT/ITES companies employ persons with disability. Companies are also making efforts to create a suitable working environment for differently-enabled people by making workplaces more accessible, arranging transportation and sensitising employees".

Not so long ago, the approved list of jobs considered suitable for persons with disability severely limited their opportunities — for example, blind people could only apply for jobs as telephone operators or music teachers. Poverty and lack of accessible disabled-friendly educational facilities prevented many PWD from pursuing higher education.

PWD who manage to secure a basic education despite these hurdles still have to confront many barriers in securing employment appropriate to their talents and capabilities. Many prospective employers are so taken aback by the physical disability of a candidate that they are reluctant to consider the idea of employing them despite their qualifications.

Meenu Bhambhani, Manager, Community Initiative, Mphasis, says: "The problem is as much in a difficult environment as in the disability itself." Meenu, a disabled person herself, helps frame company policies to enable PWD to prove their worth in the futuristic world of information

technology (IT). "Resorting to stereotypes can lead to immense waste of talent," she adds.

"The environment can be modified to bring out the talents of the disabled. Sometimes, the solutions are simple and cost-effective. Shifting a classroom from the top to the ground floor may prove enough to retain a disabled child in a normal school," Meenu says, drawing on her considerable experience as a disability rights activist.

Thankfully, it is now an accepted fact that provided with a supportive environment to learn and grow, PWD have the capacity to work efficiently and earn a living with dignity. Indeed, they can be a valuable addition to the skilled workforce.

Says Hema Ravichandar, Strategic Human Resource Advisor: "With the talent shortage, institutional initiatives to encourage diversity and, more importantly, the inclusive mindset are no longer just a nice thing to do but are actually a business imperative." Hema explains that this helps widen the available talent pool while encouraging merit-worthy yet differently-abled individuals to make a mark and be productive. "Most mature organisations today are sensitive to this talent pool, but only some have initiatives to harness the potential in a structured and planned manner," she explains.

For the purpose of researching this article, we contacted several IT companies such as TCS, Infosys, 24x7, and Lasersoft, which are known to employ the disabled. Mphasis and Vindhya E-Infomedia responded with details of their special initiatives to train and integrate PWD.

Project Communicate, a training programme for persons with disability, was launched in October 2007, jointly by Mphasis, Diversity & Equal Opportunity Centre (DEOC) and the Association of People with Disability (APD). Project Communicate aims to train and develop candidates to be "industry ready" with the skills required for a successful career in ITES.

"Mphasis financially supports the training and designs the curriculum, and is one of the rare companies that walks that extra mile towards proactive hiring. Mphasis has hired 140 disabled persons in Bangalore to date. Plans are on to extend the programme to the company's branches in Madhya Pradesh and Gujarat," says Meenu.

Pavithra Y S, Managing Director, Vindhya E-Infomedia, Bangalore, says: “Vindhya is a company in which 90% of its employees are disabled. Vindhya E-Infomedia was conferred with the Shell Helen Keller Award for our meritorious service to the physically challenged. We want our employees to believe that they can exceed their expectations from themselves and from life.”

Ashok D Giri, Executive Director, Vindhya E-Infomedia, adds: “Having made the policy of employing only PWD, our facility is completely friendly to them. They are very happy as we treat them normally and also provide boarding and lodging for our outstation employees.”

Most of the staff at Vindhya are not only PWD but are also from poor rural backgrounds that lack the higher education and other facilities available to the urban handicapped. Salma is a senior employee at Vindhya E-Infomedia. She underwent a year’s training in computers at an ITI and is now a team leader heading eight BPO workers. Javariah, from Honagahalli village, Malavalli taluka, Karnataka, earned his BCom degree and then trained in basic computer skills at a private institute. He currently works in BPO operations at Vindhya E-Infomedia and trains other employees.

Vindhya already has close to 100 PWD and is in the process of hiring more, with a target of 250 by the end of the year.

Iridium Interactive Limited has a workforce of around 100 people, 5% of whom are PWD. They are recruited for high-end technology jobs from various Tier 2 cities, put into a ‘finishing school’ for the company’s customised hands-on training programme and then given on-the-job training before they are absorbed in the company on an equal platform. Iridium plans to recruit around 25 visually impaired people at its testing centres in Noida, Mumbai and Hyderabad, to test its disabled-friendly products before launch.

The IT and ITES industries are well suited to employing PWD at various levels. Since these are primarily desk jobs, PWD can work in their seats with relatively little discomfort. PWD are employed in IT and ITES companies for various types of work including policymaking, development and testing of complex and advanced software, and BPO and KPO services such as data entry and data processing, medical transcription, call centre jobs, web services, and processing claims and application forms.

Technological innovations such as JAWS software can convert text into speech, thus enabling visually handicapped persons to work at computers without using the monitor. The visually handicapped can also use normal keyboards by memorising the keys. Keyboard shortcuts eliminate the need for a mouse. JAWS helps Milind (name changed on request), who is blind and holds an MPhil in Economics from IIT Mumbai, perform duties on a par with his enabled colleagues at Mphasis. After orientation, aided by a trained person, Milind now independently navigates the Mphasis campus.

Rajesh (name changed on request) has a BE degree and is a qualified software developer with Mphasis. He has cerebral palsy and suffers from a speech impairment. He moves about in a wheelchair. All this has not hampered Rajesh’s performance.

The visually handicapped can also work in jobs involving voice communication, such as call centre activities. Likewise, the hearing impaired can work at computers using visual cues. IT and ITES companies such as Mphasis and Vindhya E-Infomedia create presentations and training materials for their PWD employees in both sound and visual formats.

It was the government and public sector undertakings (PSUs) that took the lead in providing employment and other work opportunities to people with disability some years ago. Several ministries and departments of the Government of India and various state governments provide concessions such as subsidised rail and air travel, special conveyance allowances to disabled employees, and income tax concessions.

The award of dealerships by PSU oil companies and economic assistance by nationalised banks at differential rates of interest (4%) to people with disability empowers them to set up their own income-generating business ventures. PSU banks too offer concessional loans and donations to organisations working for the welfare of the disabled.

Canara Bank and State Bank of Mysore regularly recruit PWD through special recruitment drives, and offer them facilities such as postings at convenient locations and special conveyance allowances. Blind persons have been trained to operate telephone exchanges and reception counters at these banks. Several PWD currently serve in managerial positions at the banks. Even a small bank like State Bank of Mysore has 110 PWD employees out of a total workforce of around 9,000.

Café Coffee Day, to cite another example, employs and trains PWD in skills such as preparing coffee. NGOs like Enable India, Bangalore, train disabled people in resume-building, mock interviews, psychological profiles and other areas to enable them to function more effectively at the workplace.

Corporate India has, in recent years, followed in the public sector’s footsteps and realised that such initiatives come with many advantages. Other companies too are waking up to this concept of corporate social responsibility (CSR).

“Nowadays I find that many corporations perform only 10% of CSR, and hype becomes 90%. This phenomenon is good neither for society nor for the company,” says Professor Y S Rajan (in *corporateline.in*, April 2008 issue). Ideally, CSR has to happen as part of the company’s vision to gain the respect and cooperation of the community, not as a short-term publicity measure.

Monideepa Sahu is a Bangalore-based freelance writer of both fiction and non-fiction, with a variety of interests including social issues and literature

Discrimination is built into our legislation

India passed the Leprosy Act in 1898 to ensure that leprosy patients did not face discrimination. A hundred years on, Indian laws and regulations do just that. Legislation in several states prevents leprosy patients from obtaining a driving licence, travelling in trains, and contesting panchayat elections. And many marriage laws make “contracting leprosy” grounds for divorce

**ALOK PRAKASH
PUTUL**

SIXTY-FIVE-YEAR-OLD KALAWATI lives outside her village of Chichili, situated on the Kharora-Tilda road, around 40 km from Raipur, the capital of Chhattisgarh. Her fellow villagers don't want to know her. She lives alone in her deserted hut and doesn't remember the last time anyone visited her in the 22 years since she was expelled from the village. The world has changed a lot since then. But no one seems to have been able to convince the people of India that leprosy is not an infectious disease.

Kalawati was boycotted and exiled from the village 22 years ago because she had leprosy. She continued receiving treatment at the government hospital and recovered. But the village panchayat did not allow her back into the village, as people were afraid of getting the disease.

Kalawati's is not an isolated case. Hundreds of leprosy patients in Chhattisgarh, Rajasthan, Madhya Pradesh, Orissa and Andhra Pradesh are forced to suffer the same fate due to the stigma and superstition surrounding leprosy.

Although leprosy and tuberculosis are curable, there is so much apprehension about both these diseases that there is even legislation (from panchayat laws to railway laws) to keep tuberculosis and leprosy patients away from the mainstream.

There are in fact many Acts in the country clearly advocating discrimination against tuberculosis and leprosy patients. A leprosy patient cannot stand for local body or panchayat elections in states like Chhattisgarh, Rajasthan, Madhya Pradesh, Andhra Pradesh and Orissa. This prohibition extends to tuberculosis patients in Orissa's Panchayati Raj Act. Further, if a member of local office contracts tuberculosis or leprosy during his/her tenure he/she may be declared ineligible for the job. In Andhra Pradesh and Karnataka, the hearing-impaired and mute also cannot stand for panchayat elections.

India's first leprosy case was detected way back in 600 BC; the disease is mentioned in the Sushruta Samhita and other literary works of the Vedic period. Leprosy then was considered an infectious disease and leprosy patients faced social boycott. In some cases they were even murdered for fear of the disease spreading to other people in the locality.

When India passed the Leprosy Act in 1898 it was to ensure that leprosy patients did not face discrimination. A hundred

years on, Indian laws and regulations do just that.

The prevalence of leprosy in Chhattisgarh is 2.4 patients per 10,000 people — the highest in India. But despite all the government's claims of eradicating leprosy and spreading awareness about it not being an infectious disease, separate colonies of leprosy patients continue to exist in every small and big city in the state, while thousands are forced to live along roadsides.

Srinivas, a leprosy patient living on the road near Raipur's railway station, says: “We've only got ignorance from family, society and the government. Millions and billions of rupees have been spent in our name, but we are still on the roads.”

If you are a leprosy patient you aren't allowed to drive a vehicle because the Motor Vehicle Act 1939 considers leprosy patients ineligible for a driving licence. Likewise, Section 56 (1) and (2) of the Indian Rail Act 1990 declares a leprosy patient ineligible for rail travel.

Almost all the marriage and divorce laws of the country

“Even today, leprosy patients are prohibited from contesting local body and panchayat elections in Chhattisgarh, Karnataka, Madhya Pradesh, Orissa, Rajasthan and Andhra Pradesh, which is completely unconstitutional”

make leprosy grounds for divorce. Even today, the Special Marriage Act of 1954 declares leprosy “incurable”. Section 27 (g) of the Special Marriage Act of 1954 states: “Subject to the provisions of this Act, and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent has for a period of not less than three years immediately preceding the presentation of the petition been suffering from leprosy, the disease not having been contracted from the petitioner.”

Similarly, Section 2 (VI) of the Dissolution of Muslim Marriages Act 1939, states: “A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage if the husband is suffering from leprosy.”

Section 13 (1) (IV) of the Hindu Marriage Act 1955 states: “Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy.”

According to Section 36 (1) (H) of the Chhattisgarh and Madhya Pradesh Panchayati Raj Act, any leprosy patient who spreads infection cannot become a member of the panchayat.

Section 16 (A) (5) of Orissa’s Municipal Act 1950 has similar provisions. Section 16 (1) (IV) of the Orissa Municipal Act 1950 states: “No person shall be qualified for election as a councillor of a municipality if such person has been adjudged by a competent court to be of unsound mind or is a leprosy or a tuberculosis patient.” Further, Section 17 (1) (b) of the said Act says: “Subject to the provisions of the section, a councillor shall cease to hold his office if he becomes of unsound mind, a leprosy or a tuberculosis patient.”

Section 25 (1) (e) of the Orissa Gram Panchayat Act states: “A person shall be disqualified for being elected or nominated as a sarpanch or any other member of the gram panchayat constituted under this Act if he is a deaf-mute or is suffering from tuberculosis or, in the opinion of the district leprosy officer, is suffering from an infectious type of leprosy.”

Section 26 (9) of the Rajasthan Municipality Act 1959 and Section 19 (F) of the Rajasthan Panchayati Raj Act 1994 declare leprosy patients ineligible to contest elections.

Section 19 (2) (B) of the Andhra Pradesh Panchayati Raj Act 1994 prohibits dumb and deaf people, along with leprosy patients, from becoming candidates in panchayat elections. The Act states: “A person shall be disqualified for being chosen as a member if on the date fixed for scrutiny of nominations for election, or on the date of nomination under sub-section (2) of Section 16 he is a deaf-mute or

suffering from leprosy.” The Andhra Pradesh Municipalities Act says that a deaf-mute or a person suffering from leprosy shall be disqualified from the post of councillor.

Section 26 (1) (F) of the Karnataka Municipality Act 1976 also declares deaf and dumb people ineligible for municipal elections.

Saurabh Dangi, an advocate of the Chhattisgarh High Court, says: “Even today, leprosy patients are prohibited from contesting local body and panchayat elections in Chhattisgarh, Karnataka, Madhya Pradesh, Orissa, Rajasthan and Andhra Pradesh, which is completely unconstitutional. In a way it is a violation of fundamental rights. I am surprised as to why no changes have been made in such laws.”

The problem is that those entrusted with the job of bringing about these changes do not have the necessary information.

When questioned, Dr Trivikram Bhoi, a secretary associated with the Chhattisgarh panchayat and rural development department, tried to save face and provided this clarification: “If this is the case then I will bring this matter to the notice of the chief minister and we’ll see that the government makes a positive move in this matter.”

Subash Mohapatra, director of the Forum for Fact Finding Documentation and Advocacy, an NGO, says: “The kind of discrimination that’s taking place with leprosy patients all over the country clearly shows us that our society is still merciless regarding issues related to leprosy.”

Mohapatra adds that huge changes have taken place in laws relating to panchayat and local bodies in almost every state. But thanks to apprehensions about the disease and people’s disdain for leprosy patients, no changes have been made in the rule regarding keeping leprosy patients away from panchayat elections.

Mohapatra is preparing to take the matter of discrimination against leprosy patients in panchayat and local elections to the Supreme Court and the United Nations.

Habib Tanvir, a famous theatre personality from Chhattisgarh, staged a global play called *Sunbahari*, about leprosy. He says: “Cases of burying leprosy patients alive have come to light in Chhattisgarh. People still have lots of superstitions pertaining to the disease which are far from being removed, even today.”

Alok Prakash Putul is a journalist based in Bilaspur, Chhattisgarh

Battling the triple burden of poverty, religion and gender

Barely 40 km from Gurgaon in Mewat district lives the impoverished Muslim community, the Meos. The Islamic way of life is strictly followed here, and women's education frowned upon, resulting in a dismal 2.13% literacy status for Meo women. But the exclusion of Meo women is slowly being remedied by Vinodkumar Kanathia, who has opened 97 girls' education centres here

ANOSH MALEKAR

THE GIRLS-ONLY CLASSROOM COMES ALIVE as one by one the students narrate anecdotes from Abraham Lincoln's childhood. With a little prompting from the teacher, the girls recall the difficulties faced by a young Lincoln — "the son of a poor farmer" — in educating himself, his extraordinary love for books and the ultimate triumph over poverty. "It was only due to his pursuit of education that he could become the president of America," they conclude, as if echoing the collective aspiration of the classroom.

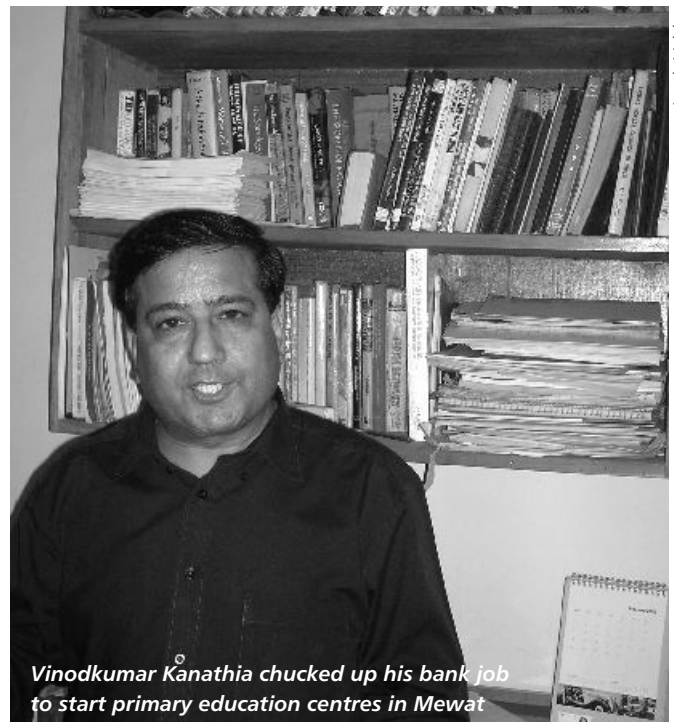
"We want to study hard and become somebody big like Abraham Lincoln. But our parents say, what good is education for girls," they gripe after the class. The teacher, Bimla Devi, chips in: "The dropout rate among girls is very high because they are required to work at home, fetch water and firewood, and toil in the fields from a very young age, while the men just sit around smoking and playing cards."

The 20-odd girls in her classroom belong to the Meo tribe that inhabits Mewat, a territorial region falling between Delhi, Agra and Jaipur, and administratively divided between the states of Haryana, Uttar Pradesh and Rajasthan. The Meos are about a million-strong Muslim community of peasants-pastoralists that traces its origin to the Rajputs and still follow traditional Hindu marriage rituals and kinship patterns.

The Meo men appear a hardy lot dressed in flowing robes and bulky turbans that enhance their tall, dark personalities. They do not strictly follow the Islamic tradition of secluding their women, but formal education is a strict 'No'. The Meos concede that only one in 10 amongst them is able to read and write. Officially, the literacy rate in Mewat is 33%, way below the national average. Literacy among Meo women is 2.13%, the lowest in the country.

Meo girls in the 6-14 age-group are getting to see the insides of a classroom in recent years thanks to Vinodkumar Kanathia, who chucked up his job as a bank manager in 2001 and started primary education centres in the area. This is something he wanted to do ever since he first accompanied his academician wife, Abha Chauhan, on one of her research trips to study kinship among the Meos, in the early-1990s.

"I was shocked by the vast disparities between Gurgaon and Mewat, located barely 40 km from each other. If the yuppie



Vinodkumar Kanathia chucked up his bank job to start primary education centres in Mewat

Anosh Malekar

crowd inside the plush malls of Gurgaon symbolise the new India, the toiling daughters of the impoverished Meos in Mewat are rude reminders of the uneven growth policies of a booming Indian economy," says Kanathia.

Mewat is a smooth one-and-a-half-hour drive from New Delhi, passing through Gurgaon, but the economic disparity is evident as soon as one enters Mewat, the newly constituted district at Haryana's southernmost tip, comprising 532 villages dominated by the Meos. Kanathia runs 97 girls' education centres in Mewat. He began in 2001 with 25 girls and five teachers. "I did not tell the community leaders or the women that I was here to educate them. But as the teachers slowly introduced lessons in Urdu, Hindi, English and math, the Meo elders started expressing apprehensions, one of which was 'are you converting us to Hindi and Hinduism?'" says Kanathia.

The Meos speak Mewati, a distinct dialect; education for them means 'Deen ki Talim', learning the Islamic way of life.

In 1997, a local social activist started a girls' school under the aegis of the Wakf Board but he was forced to shut it down because nobody was ready to pay to educate their daughters.

Maulana Muhammad Shahid Ahmed, a maulvi of the mosque at Hawan Nagar in Firozpur Jhirka sub-division, says: "Education should be according to the Deen. Women should study Urdu and Arabic, and the teachers should be strictly women. Men should not be allowed inside a classroom of girls."

Kanathia started by building a rapport with the locals, especially the maulvis of several mosques that dot the rugged terrain, trying to understand their concerns. "Religious and cultural resistance apart, there were practical issues like parents wanting the girls to work at home or in the fields and look after younger children. One of the major decisions I took was to allow younger siblings to accompany their sisters inside our classrooms."

It was not easy, as many friends and acquaintances of Kanathia tried to dissuade him. "The majority of those who knew the ground situation in Mewat felt trying to educate the Meos was a waste of time and energy. But I was careful and sensitive in what I did — introducing Urdu ahead of Hindi, having only women as teachers; even the school bags we distributed were green instead of the usual khaki,"

he recalls.

His efforts have paid off, with as many as 2,350 Meo girls now studying at education centres run by Kanathia's Adi Gram Samiti. Around 300 girls have cleared the 5th standard examination conducted by the Haryana Board of School Education, since the first centre began in 2001.

Arshida Khan, 21, who studied up to the 6th standard and recently got married, continues to seek guidance from her former teacher Bimla Devi at the Maroda centre in Nagina sub-division. "I want to continue my education and better my life. Maybe become a teacher myself," she says, adding that her husband, who has studied up to the 12th standard, is supportive of her aspirations.

Sanjida Khan, 13, has cleared the 5th standard examination and is pestering her teacher Pushpa Shimla to continue teaching her so she can appear for the 8th standard board examination. "There are at least half-a-dozen Meo girls at the Hawan Nagar centre who are eager to continue studying," says Shimla.

Mewat has around 600 primary schools, 100-odd middle schools, 70 or so high schools and 30-odd senior secondary schools. But the Meos shun them because they are all co-educational institutions. "Islam does not permit co-education. Hence it is best to send girls to madrassas.

In recent years, Meo girls have been getting to see the insides of a classroom



Anosh Malekar

However, education centres exclusively for girls are welcome and parents are free to send them there till they become 15 years of age," says Maulana Syed Ahmed of the Jama Masjid in Nuh.

The clerics here believe that the land of Mewat was blessed by the presence of Maulana Muhammad Ilyas, who first tried his experiment with the Tablighi Jamaat in Mewat before replicating it all over the globe. "It was Maulana Ilyas who brought the Meos back to the fold of true Islam. Hence it is said that even Mewat's soil will find a place in *jannat* (heaven)," says Maulana Syed Ahmed.

The Meos who have lived here for centuries were once proud of their Hindu ancestry and maintained very close inter-community relationships with other peasant-pastoral castes such as the Jats, the Ahirs and the Gujjars. But things changed post-Partition, recall the local Hindus.

"None of the girls attending our centre have gone to a regular school before. Nor have their parents ever seen the inside of a classroom. It is very difficult to pursue them to keep sending the girls to our centre," says Alka Sharma who runs an education centre at Pinangwan village in Punhana sub-division.

Project Coordinator Nargis Jahan says it's a tightrope walk as the Meos can be very rigid at times. "For example, we do not talk about family planning at all, though it is a major concern across Mewat."

Kanathia adds: "We need to make the Meos understand that the world around them is changing, without hurting their sentiments. If we tell them that their land can be saved from land sharks if the next generation is educated, they understand." The former bank manager dreams that his efforts will one day see the Meos, especially the women, truly empowered.

Having started with personal savings of Rs 50,000, Kanathia has come a long way. His centres are now part of the Sarva Shiksha Abhiyan. But Kanathia feels the mere spread of literacy will not serve any purpose. What bothers him is that women are still rated second-grade citizens. "Meo women are kept out of schools and made to toil like animals. Then, they are referred to as *ganwar* (uncivilised) and even subjected to domestic violence, which is justified in the name of religion and patriarchy. That has to change more than anything else," he says.

It has barely been six years, but the changes are there to see. Of all people, Maulana Syed Ahmed of the Jama Masjid wants an education centre to be opened for little girls in his native Mahu in Ferozpur Jhirka sub-division.

Liyaqat Khan wants to know if there is any way his daughter Tamanna, 13, can continue her studies beyond the 5th class. Tamanna herself wants to know if the Adi Gram Samiti can start a library where she can read storybooks.

Signs that things are changing for the Meos in Mewat.

The fallacy of equality

Does the Constitution guarantee only a 'formal equality' while maintaining 'substantive inequality' in the lives of disadvantageously-situated citizens?

OISHIK SIRCAR

THE CHECKERED HISTORY of Indian constitutionalism has given us reason enough to repose our faith in the fundamental rights enshrined in Articles 14 (equality) and 15 (non-discrimination). Constitutional guarantees have been effectively used to expand their reach to protect many forms of human rights, and also to strike down laws that go against the tenets of equality and non-discrimination. Yet when it comes to dealing with historical and structural disadvantage, even these pillars of the rule of law seem to falter.

There are three reasons for this: first, the premise of equality and non-discrimination in the judicial interpretation of constitutional guarantees is based on a 'formal equality' approach, as opposed to a 'substantive equality' one; second, the Constitution has been ineffective in responding to intersectional forms of discrimination, where the incidence of disadvantage is most acute; and third, these 'basic' constitutional guarantees lay claim to a 'universal truth' about the operation of rule of law — where "the law is understood to be insulated from all kinds of influences, and to be above all 'worldly' considerations — and thus ignores the fact that such a claim resides in the ideal rather than the actual practice of law" (1).

Although the law often fails to deliver its idealised promise of protecting the rights of citizens, it continues to declare its authority, which is claimed to be derived, in part, "through scientific legal method and rigour, and its projection as a unified discipline with an internally coherent logic that is transcendent and divorced from the world" (2). It is because of this illusionary reason that the law, in spite of its in-built biases, continues to be used to claim rights by the very people who are at the receiving end of the violence of law. This does not mean that these standards should be ignored — merely that a more strategic politics is required for engaging with the law.

In this essay I will attempt to illustrate what I call the 'fallacy of equality', where in spite of the constitutional guarantee of equal protection of the law, judicial interpretation reinforces 'formal equality', in effect maintaining the *status quo* of 'substantive inequality' in the lives of disadvantageously-situated citizens. Any claim for substantive equality demands that the claimant 'becomes same', like those whose behaviour and identity conform to the notions of the 'good' or 'ideal' citizen. Thus, in the process of guaranteeing equality, the system seeks to negate plurality of experiences.

Elusive equality

The equality clause of the Constitution, Article 14, reads:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

What constitutes the right to equality under the Indian Constitution is equal treatment only in respect of the law — the meaning of law extends also to administrative rule and procedures that flow from legislations formulated by agents of the State. Unequal treatment meted out because of the existence of any other form of structural disadvantage is outside the scope of this provision; so are acts of unequal treatment carried out by non-State (private) actors. Any law found to be *ultra vires* Article 14 can be declared *void ab initio*, as per Article 13 (3).

The Preamble to the Constitution speaks of equality of status and of opportunity and this Article guarantees the realisation of that principle. A plain reading of this Article tells us that the Constitution imposes restrictions on State action to ensure that it refrains from doing anything that can deny the ‘citizen’ two primary guarantees — that of right to equality before the law, and equal protection of the law.

The first expression ‘equality before the law’ is a declaration of equality of all persons within the territory of India, implying thereby the absence of any ‘special privilege’ in favour of any individual. Every person, whatever his/her position, is subject to the jurisdiction of the ordinary courts. The second expression, ‘the equal protection of laws’, which is a corollary to the first, secures equal protection in the enjoyment of their rights and privileges, without favouritism or discrimination, within the territorial jurisdiction of India (4).

The juridical application of Article 14 operates on the basis of ‘intelligible differentia’. This refers to two principles in law regarding classification of groups for different treatment. First, that differently-placed citizens can be treated differently under the same law as long as the classification is based on an intelligible differentia which distinguishes persons that are grouped together from others excluded from the group; and two, the differential treatment must have a reasonable and rational connection with the objective that the law in question is supposed to reach. In other words, the equality guarantee actually does not require that the law treat all individuals equally. It has been interpreted by the courts as a prohibition against unreasonable classification. As was held in the case of *Chiranjit Lal Chowdhury v Union of India* (1951), the guiding principle of the Article is that all persons ‘similarly circumstanced’ shall be treated alike, both in privileges conferred and liabilities imposed. The rule is that ‘like should be treated alike’ and that ‘un-like should be treated differently’.

This understanding of equality clearly follows the formal equality approach where equality is understood as sameness. In effect, only if you can become same will you be

treated equally. To decide whether one qualifies to be ‘same’, the court has to first classify the groups in question claiming equality so that they can be compared to find out whether they are same or different. If it is established that the classified groups are differently placed, then such difference will be the justification for differential treatment. Thus, judicial interpretation suggests that when classified groups don’t qualify to be the same, or similarly situated, they don’t qualify to be equal either, even if their differences are an outcome of historic or systemic discrimination. As Ratna Kapur and Brenda Cossman note: “The first step in determining whether Article 14 has been violated is a consideration of whether the persons between whom discrimination is alleged fall within the same class. If the persons are not deemed to be similarly circumstanced, then no further consideration is required” (5).

For instance, let us consider the case of Section 66 of the Factories Act, 1948 where women are prohibited from working in factories during the night, on grounds that they are vulnerable to violations during nocturnal hours of work. If one were to challenge this section as violative of Article 14, because it treats men and women unequally, such a challenge would fail because, according to the doctrine of ‘intelligible differentia’, the classification between male factory workers and female factory workers is reasonable, and thus, differential treatment between them is justified in law. The same situation arises when we consider Section 377 of the Indian Penal Code that criminalises ‘unnatural sex’: challenge to this law on the ground that it violates the guarantee of equality would fall flat, since differentiation between ‘homosexuals’ and ‘heterosexuals’ would be valid, thus justifying the differential treatment; in other words, a perpetuation of substantive inequality.

Similarly, in the 2000 case of *Almitra Patel v Union of India*, the Supreme Court did not consider the guarantee of the right to housing and livelihood applying without prejudice to slum-dwellers in Delhi. Instead, it labelled them “encroachers”, legitimising their forced eviction. Again, the judgment was informed by an understanding of formal equality where classifying slum-dwellers as different from non-slum-dwellers justified their eviction. The means for these ‘differently placed’ groups then, to make use of this Article to claim their right to equality, would be to ‘become same’ as the classified group in comparison to which they are being treated unequally. What such interpretations of formal equality also imply is that equality is predicated on certain normative standards: you can only become ‘equal to’ that standard.

Exclusive discrimination

Article 15 extends the equality guarantee of Article 14 by providing for the right against discrimination on the basis of religion, race, caste, sex and place of birth. Forms of discrimination that fall within the purview of Article 15 are based on disability, liability, restriction or condition imposed on the basis of the above prohibited grounds.

Article 15 reads as follows:

“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds *only* of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this Article shall prevent the State from making any *special provision* for women and children [...]

(4) Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes (6).

(5) Nothing in this Article or in sub-Clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30. (7)” (emphasis added)

Inferences towards the possibilities of exclusionist interpretations of Article 15 appear even from a plain reading of the provision. In Clause 1, beyond the five grounds mentioned, no other grounds qualify as discrimination. For instance, sexuality and disability do not find mention as grounds for discrimination. Thus all the manifestations of discrimination as enshrined in Clause 2 (a) will also not apply in case of sexually marginalised or disabled persons. The imposition of any “disability, liability, restriction or condition” on these groups does not qualify as discrimination at all within the scheme of the Constitution. Their access to public places, if circumscribed by law, or executive/non-State action, or structural/spatial factors will not automatically draw the protection of the non-discrimination guarantee of the Constitution.

The contested perceptions of equality and non-discrimination within the context of the Constitution get further complicated when we try to understand if the Constitutional mandate in Article 15 captures the intersectional nature of discrimination and disadvantage. It is necessary to note that the grounds stated in Article 15 (1) are preceded by the word ‘only’. In the interpretation of this word by the Supreme Court in *Anjali Roy v State of West Bengal* (1952), it was noted that if discrimination is found to

exist on grounds other than those enumerated, then there is no violation of Article 15 (1). Even discrimination on the basis of sex, coupled with discrimination on other non-enumerated grounds, would not constitute a violation (8). Thus, the courts are not even permitted to progressively interpret the grounds under Article 15 (1) to include sexuality or disability — neither can judicial interpretation capture the reality of disadvantage that many might face from being at the receiving end of multiple and intersectional forms of discrimination.

However, a reading of Clause (3) (9) seems to suggest a move from the otherwise formal approach to equality to that of substantive equality. The substantive equality approach moves beyond looking at equality merely as a guarantee lettered in law, to one that looks at the actual impact of the law, to do away with substantive inequality. The primary aim of a substantive equality approach is not to harp on the guarantee of equality as being predicated on an understanding of sameness and differences, but one that “takes into account inequalities of social, economic and educational background of the people and seeks the elimination of existing inequalities by positive measures” (10). In other words, the substantive equality approach attempts to correct the historical and structural reasons that result in disadvantaging a particular group.

On the face of it, Article 15 (3) mandates the State to make special laws for ‘women’ — in effect, discriminating in their favour. A stipulation of this kind suggests that the provision does take into account the historical and systemic processes through which discrimination against women has been effected, and thus makes the State accountable for doing away with it through ‘protective’ and proactive laws. However, in the absence of a substantive equality approach in the judicial interpretation of Article 15 (3), there is scant consideration of whether the laws actually ‘protect’ women, or they create ‘protectionist’ measures to safeguard the honour and chastity of ‘good’ women.

Such an understanding of ‘progressive discrimination’ on the grounds of sex can actually serve as a justification for the constitutional validity of the Immoral Traffic Prevention Act — purported to be a legislation that is meant to rescue and rehabilitate passive and agency-less women from the scourges of prostitution — completely undermining the fact that it is the existence of the law that perpetuates the ‘violence of stigma’ against women in prostitution, and gives the police a free hand in apprehending and incarcerating them as criminals. All this in the name of ‘protecting’ women. Similarly, if one were to challenge the Maharashtra government ordinance that banned dance bars on grounds that it violated Article 14 and 15 (1), such a challenge could have been struck down by the courts on the basis that ‘bar dancers’ are a reasonable classification in comparison to ‘other more respectable women’, and that in connection with Article 15 (3), the ordinance would actually protect the ‘helpless’ bar girls.

In a 2001 petition filed in the Delhi High Court demanding

that Section 377 be read down to de-criminalise adult, consensual and private sex, the State used the logic of Article 15 (3) to argue that since Section 377 protects women and children from sexual assault, it actually serves the responsibility put on the State under Article 15 (3). While the argument follows the letter of the law perfectly well, never did the State even mention that what is required to effectively curb child sexual abuse is a separate law on the issue, given the fact that Section 377 is highly inadequate in doing so.

Again, a plain reading of Clauses 4 and 5 in Article 15 points towards the constitutional culture of progressive discrimination of caste-based disadvantaged groups. Clearly, the State’s mandate for extending ‘reservations’ derives strength from these clauses. But what might “special provisions” mean in a context where the Constitution is increasingly being interpreted through a formal equality approach? A possible peril can be the justification of segregation (within institutes, for instance) between non-SC/ST/OBC students and SC/ST/OBCs, ostensibly on the ground that it will prevent harassment and discrimination. A move towards exclusive institutes for SC/ST/OBCs can be yet another consequence of furthering the mandate in Clauses 4 and 5. Both segregation and exclusivity might temporarily make the State’s initiative look progressive, but in actuality it wouldn’t have changed any of the structural and systemic inequalities that cause caste-based discrimination. Interestingly, anti-quota advocates use the same letter of the Constitution to point out that it is self-contradictory: while on the one hand it guarantees non-discrimination, at the same time it makes an exception for special groups. This argument is also predicated on a formal equality approach which believes that as long as the Constitution guarantees non-discrimination all become equal automatically. This is why quotas alone as representative of “progressive discrimination” only perpetuate a politics of patronage, in effect maintaining a state of substantive inequality for disadvantaged groups like dalits.

If we consider the recent Supreme Court judgment in *Ashoka Kumar Thakur v Union of India* (2008) it becomes apparent that the inclusion of Clause 5 to Article 15 through the 93rd Amendment Act, 2005 and the subsequent debates around the constitutional validity of the Central Educational Institutions (Reservation in Admission) Act, 2006 (Act 5 of 2007) follow the formal equality approach. While it is celebratory that the judgment upheld the constitutional validity of both Article 15 (5) and Act 5 of 2007, it did so by ‘reasonably classifying’ certain specific institutions, minority institutions and private un-aided institutions, and exempted them from the ambit of the implementation of quotas. As Kalpana Kannabiran observes: “(This) goes against the spirit of (substantive) equality and considerably shrinks the space for entitlements of persons from vulnerable groups. It is not

so much a question of the measure of equality between institutions *inter se* that is critical in access to education, as of the measure of equality between citizens differently placed because it is citizens who bear the brunt of discrimination and exclusion. After all, reservation is an inseparable part of the principle of equality, and where equality is concerned no institution can be outside its ambit (11).”

What emerge from the above discussion are glimpses into the fractured armour of constitutional justice in India. Does that suggest we abandon the Constitution? Of course not, because the Constitution is more than a mere document listing rights and guarantees of the citizens of India; it is a charter that defines the ways in which India as a country should work towards a shared future that is not detrimental to any of its citizens. Yet, there’s a peril in romanticising the Constitution in an age where even the ideals of equality and freedom have faced a neo-liberal appropriation: economically and culturally. The activist role played by the Supreme Court of India in the 1990s that redefined the right to life (Article 21) by expanding it to include a whole range of situations where rights are absent, to the present period where the judiciary has been complicit with the market in shrinking the spaces for allowing access to justice and meting out distributive justice, requires an acknowledgement that the law’s letter derives meaning from the socio-political contexts in which it is used and applied. While we cannot afford to abandon the constitutional guarantees of equality and non-discrimination, it is important that we ask critical questions about whether the pursuit of equality has itself become a discriminatory enterprise.

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Endnotes

- 1 Ratna Kapur, ‘Travel Plans: Border Crossings and the Rights of Transnational Migrants’. 18 *Harvard Human Rights Journal* at 109
- 2 *Ibid*
- 3 Article 13 lays down that all laws contrary to the fundamental rights guaranteed under the Constitution shall be deemed to be void
- 4 V N Shukla, *Constitution of India* (9th Edition). Lucknow: Eastern Book Company. 2001 at 37
- 5 Ratna Kapur and Brenda Cossman, ‘On Women, Equality and the Constitution: Through the Looking Glass of Feminism’. 1 *National Law School Journal*. 1993, at 2-3 (Kapur and Cossman)
- 6 Inserted by the 1st Amendment, 1951
- 7 Inserted by the 93rd Amendment, 2006
- 8 Kapur and Cossman, *supra* note 5 at 11-12
- 9 Also, Clauses 4 and 5
- 10 Kapur and Cossman, *supra* note 5 at 3
- 11 Kalpana Kannabiran, ‘Road Map for Reservation in Higher Education’. *The Hindu*, April 18, 2008

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