

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports
(CERD/C/IND/19) of India to UN CERD Committee



National Network for Human Rights Treaty Monitoring in India

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Contents

INTRODUCTION AND EXECUTIVE SUMMARY	1
PART 1: GENERAL: DIMENSIONS OF RACIAL DISCRIMINATION IN INDIA	5
RESPONSES TO CONCLUDING OBSERVATIONS OF THE COMMITTEE	5
ELEMENTARY EDUCATION AS FUNDAMENTAL RIGHT (PARAS 20 TO 22)	7
BROAD STRATEGIES (PARAS 23 TO 27):	7
a. Children hardest to reach groups	7
b. Child soldiers	8
c. Affirmative actions	8
LOCAL SELF-GOVERNMENT (PARAS 28 TO 34)	8
RIGHT TO WORK (PARAS 35 TO 42)	9
PART 2: IMPLEMENTATION OF THE ARTICLES 2 TO 7 OF ICERD	9
ARTICLE 2: PARAS 44 TO 52	9
ARTICLE 4: PARAS 57 TO 63	9
ARTICLE 5: PARAS 64 TO 135	9
Article 5 (a): Right to equal treatment before the tribunals (paras 67-68)	9
a. Discrimination of the indigenous/tribal peoples under the Criminal Procedure Code	10
b. Identification of certain tribal groups as “born criminals”	10
c. Denial of access to judicial processes due to the lack of separation of judiciary	10
d. Impunity as hindrance to equal treatment before judiciary	10
e. Administrative biases for non prosecution of upper caste perpetrators	11
Article 5 (b): Right to security of person and protection of the State (Paras 69)	12
a. Violations of the right to life by the security forces	12
i. Garo Hills killings, Meghalaya	12
ii. Kalinga Nagar killings, Orissa	12
b. Increased violations of the right to life due to the Salwa Judum campaign	13
Article 5 (c): Right to participate in election (paras 70-76)	14
a. Denial of voting rights to the Chakmas and Hajongs of Arunachal Pradesh	14
b. Violence against the Dalits for exercising the right to franchise	14
Article 5(d)(i) and (ii): Right to freedom of movement (paras 77-78)	15
Article 5(d)(iii): Right to nationality (Paras 79-80)	15
Article 5(d)(iv): Right to marriage and choice of spouse (paras 81-82)	15
Article 5(d)(v): Right to own property (paras 83)	15
a. State as the broker of properties	15

Article 5(d)(vii): Right to freedom of thought, conscience and religion (paras 85-90)	16
a. Denial of control and management of the Bodh Gaya to the Buddhists	16
b. Adivasis: Targets of conversion	16
Article 5(e)(i): Right to work (paras 95-109)	17
Article 5(e)(iii): Right to housing (paras 112-117)	17
a. Indigenous/tribal peoples as disproportionate victims of industrialisation	17
b. Prosecution of indigenous/tribal peoples for accessing minor forest produce	18
c. Discrimination against conflict induced indigenous/tribal IDPs	19
Article 5(e)(iv): Right to public health (paras 118-120)	20
a. Andhra Pradesh	20
b. Maharashtra	21
c. Jharkhand	21
d. Tripura	22
Article 5(e)(v): Right to education and training (paras 121-125)	22
a. How tribals in mainland India are lagging behind in education	22
b. Segregation in schools	23
Article 5(e)(vi): Right to culture (paras 126-133)	23
a. Statement of Member of Parliament, Dr. Ram Chandra Dome in Lok Sabha, on discrimination against the Santhali language	23
Article 5(f): Right to access to public places, services (paras 134-135)	25
ARTICLE 6: EFFECTIVE PROTECTION AND REMEDIES, THROUGH THE COMPETENT NATIONAL TRIBUNALS AND OTHER STATE INSTITUTIONS (paras 136-157)	25
a. National Commission for Scheduled Tribes	25
b. Special Courts under the Prevention of Atrocities Act.	25
ANNEXURE I: IS THE FLIP SIDE OF BIG BROTHER ROW INDIAN RACISM? THE TIMES OF INDIA, 23 JANUARY 2007	27
ANNEXURE II: OUR MILLION PREJUDICES, THE INDIAN EXPRESS, 18 JANUARY 2007	30
ANNEXURE III: B&W SHADES OF INDIAN RACISM, THE TIMES OF INDIA, 30 JANUARY 2007	33
Endnotes	36

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Introduction and Executive Summary

The “National Network for Human Rights Treaty Monitoring in India” was established to monitor India’s compliance with its obligations as a State party to various international human rights treaties.

This shadow report, *Dimensions of Discrimination in India*, provides para-wise reply to the 15th to 19th periodic reports (CERD/C/IND/19) of India to the UN Committee on International Convention on the Elimination of All Forms of Racial Discrimination (CERD Committee). It also covers some of the List of Issues identified in connection with the consideration of the periodic reports.

General comments:

While examining India’s periodic reports, it is essential to keep in mind that given the federal nature of the country, the States (provinces) have legislative and administrative powers including maintenance of law and order, education, health care etc. Therefore, indigenous/tribal peoples, the Dalits and the minorities also face discrimination because of the action of the State governments.

Article 1:

On the denial of the applicability of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, India at the outset of its reports recognizes “diverse origin” (para 3) of its peoples and India’s “ethnic, religious, linguistic and economic diversity” (para 6). After having recognized the existence of one of the grounds of racial discrimination i.e. discrimination on “ethnic” origin, it denies applicability of Article 1 of the Convention. **The government of India cannot probate and reprobate at the same time.**

The government of India’s denial of the existence of racial discrimination is inconsistent with the directions of constitutional bodies like the Election Commission of India. In its report (para 74), the government of India referred to inclusion of names of 1,500 Chakmas into electoral rolls in Arunachal Pradesh. With regard to the exclusion of the same Chakma and Hajong eligible voters from electoral rolls in Arunachal Pradesh, the Election Commission of India in its order No. 23/ARUN/2003 of 3 March 2004 held that they “have not been included in the electoral rolls mainly for the reason that they belong to the Chakma *tribe/race* (emphasis ours)”.

Article 2:

The government of India released the revised Draft National Tribal Policy on 21 July 2006 with the deadline to submit comments by 10 August 2006. It spoke of the proforma consultation held by the Government of India.

There are no criteria to define Scheduled Tribes. Under Article 342, the President is empowered to declare “the tribes or the tribal communities or parts of or groups with tribes or tribal communities” as Scheduled Tribes. “The Scheduled Areas and Scheduled Tribes Commission” appointed by the President of India on 28 April 1960 under Article 339 of the Constitution of India in its report of 14 October 1961 stated that “As these groups are presumed to form the oldest ethnological sector of the population, the term “Adivasi” (‘Adi’= original and ‘Vasi’= inhabitant) has become current among certain people. The International Labour Organization has classified such people as “indigenous”.¹

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Because of the lack of criteria, many groups are actually excluded from the benefits meant for the Scheduled Tribes. The government of India has special programmes for the so-called “Primitive Tribal Groups” (PTG) who are on the verge of extinction. But many PTGs are excluded. For example, only 23 families comprising of about 100 members of Karbong tribe were reportedly surviving in Tripura state of India. The only primary school in Karbong Para village was set up in 1989 by the Autonomous District Council (ADC), but it started to function only from 1993. Three teachers were appointed and fifteen students enrolled in the first batch. However, most of the students left the school even before they reached the third standard due to financial problems.²

As of today, the government of India failed to make the report of Justice Jeevan Reddy Committee to Review the Armed Forces Special Powers Act of 1958 public. The report was submitted to the government of India in June 2005. In order to further delay the implementation of the recommendations of the Committee, in November 2006 the Central government sent the report of the Review Committee to the concerned State governments for their comments. This is despite the fact that the Committee had already taken the views of the concerned State governments before finalizing its recommendations.

Indigenous/tribal peoples were also victimized under the Prevention of Terrorism Act (POTA) of 2002, especially in Jharkhand. A total of 128 POTA cases were filed by the Jharkhand Police and 281 persons, majority of whom were Adivasis, were arrested under the Act. Both the youngest POTA detainee in the country, Gaya Singh (12 years) and the oldest of them, Rajnath Mahato (81 years) were from Jharkhand. The official numbers of POTA arrests in other states were: 181 in Jammu and Kashmir, 83 in Gujarat, 44 in Delhi, 42 in Maharashtra, 41 in Tamil Nadu, 40 in Andhra Pradesh, 28 in Uttar Pradesh, 6 in Sikkim, and 3 in Himachal Pradesh.³ In 2004, the government repealed the POTA and established Review Committees to examine abuse of the POTA. The Review Committees exonerated a number of persons arrested under the POTA because of the lack of evidence to arrest under POTA but the State governments continued to detain many of them under other laws.

The government of India has not adopted the policy of providing budgetary allocations proportionate to the targeted groups of indigenous/tribal peoples and the Dalits. The government of India failed to ensure financial autonomy of the Autonomous District Councils (ADCs) established under the Sixth Schedule of the Constitution of India. The ADCs, which have been touted as “state” within a State, are not given funds proportionate to their populations and cannot even seek direct funds from the Central government. The State governments continue to create hindrance for effective functioning of the ADCs. The implementation of the Special Component Plan or Tribal Sub-Plan remained dismal mainly because of the diversion of funds meant for the Dalits and the tribals for others, lack of monitoring, lack of transparency and unwillingness to involve the beneficiaries concerned or the civil societies in the implementation of the programmes.

Article 5:

Neither the central government of India or the State governments has no system to collect data on trafficking. The National Crime Records Bureau (NCRB) of the government of India recorded a total of 3,518 cases of kidnapping and abduction of children during 2005. It also recorded 28 cases of buying of girls and 50 cases of selling of girls for prostitution during 2005.⁴ Obviously, the figures of the NCRB are far from the reality. The National Human Rights Commission in a report in July 2004 stated that every year an average of 44,476 children went missing during 1996-2001 and about an average of 11,008 children per year were never traced during the same period.⁵ Between 500 and

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

1,000 children, majority of them girls, have been reported to be missing from different parts of Assam every year and only about one third of them could reportedly be traced.⁶

The government of India also does not have a refugee law. All asylum seekers are treated under the Foreigners Act of 1946 and can be arrested under Section 14 of the Foreigners Act for illegal entry into the country and therefore committing a criminal offence. According to 2005-06 Annual Report of the Ministry of Home Affairs of the government of India, there were 1,08,414 Tibetan refugees and 50,750 Tamil refugees from Sri Lanka. The government of India provides basic assistance to the Tamil and Tibetan refugees.⁷ However, an estimated 82,000 Burmese refugees who have fled to India ever since the military regime cracked down the pro-democracy movement of 1988 do not receive any assistance from the government of India or the State governments. Their conditions are deplorable. In Mizoram, they live under the fear of eviction and deportation.

Article 5 (a): Right to equal treatment before the tribunals

Indigenous/tribal peoples do not have access to equal treatment before the tribunals and all other organs administering justice because of the discriminatory application of the Criminal Procedure Code, identification of certain tribes as “born criminals” under the Habitual Offenders Act of 1952, lack of separation of judiciary in tribal States like Arunachal Pradesh, Mizoram and Nagaland, impunity provided to the security forces under various laws such as the Unlawful Prevention Activities Act (Section 18) of 1967 as amended in 2004 and the Armed Forces Special Powers Act of 1958 (Section 6) applicable in internal conflict situations inhabited by indigenous peoples, and the administrative biases for **NON-PROSECUTION** of the perpetrators belonging to the upper castes.

Article 5 (b): Right to security of person and protection of the State

According to government of India, 20 out of 28 States of India i.e seven North Eastern States of Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura and 13 Naxalite affected States - Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal are afflicted by low intensity armed conflicts. All the areas afflicted by internal armed conflicts are inhabited by indigenous and tribal peoples, and they have been the worst victims of human rights violations at the hands of the State and non-State actors.

Apart from the lack of security generally associated with any armed conflict situations, indigenous/tribal peoples have also become disproportionate victims of arbitrary use of fire-arms while exercising the right to freedom of association and assembly. On 30 September 2005, nine Garo tribal students were killed –five at Williamnagar in East Garo Hills district and four at Tura in West Garo Hills district of Meghalaya in indiscriminate firing by the Central Reserve Police Force (CRPF) personnel during a protest. Video clippings show that the CRPF personnel were firing by keeping the weapons over their shoulders to cause maximum loss of life. Similarly, in the killing of 12 Adivasis at Kalinga Nagar, Orissa on 2 January 2006, the police not only fired indiscriminately in retaliation against the killing of one of their colleagues but the palms of six victims were also chopped off from their wrists and genital organs were mutilated during post mortem.⁸ In both these cases of killings, judicial inquiries were ordered but have not been completed as of today.

The State also failed to provide security to indigenous/tribal peoples from the non-State actors as reflected from the chilling massacres of civilians by the Maoists in Chhattisgarh in 2006 such as the killing of 27 villagers at Darbaguda under Konta Tehsil of Dantewada district on 28 February 2006⁹

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

and the killing of 31 civilian inmates of *Salwa Judum* camp at Errabore village in Dantewada district on 27 July 2006.¹⁰ Instead of providing security to the tribals from the Maoists, the State government of Chhattisgarh directly involved them in the anti-Naxalite *Salwa Judum* campaign and further increased their risks. Across the armed conflict situations, the non-State actors were responsible for the violations of the right to life of the indigenous/tribal peoples.

Article 5 (c): Right to participate in elections

The government of India in its report highlights enrollment of 1,500 Chakma and Hajong voters in the electoral rolls in Arunachal Pradesh. But it does not mention that over 14,000 eligible Chakma and Hajong voters continued to be denied enrollment in the electoral rolls because of the blatant violations of the directions of the Election Commission of India by the State government of Arunachal Pradesh. The government of India also failed to mention that out of 4,627 Chakmas and Hajongs who had submitted citizenship applications in 1997-1998 pursuant to the Supreme Court of India's judgment in the case of *National Human Rights Commission versus State of Arunachal Pradesh & Another (W.P. (c) No. 720 of 1995)* on 9 January 1996, the Union government of India failed to determine even a single application until today. This is a clear case of discrimination considering that the government of India has been granting citizenship rights to the Hindu refugees who migrated to Rajasthan much later than the Chakmas and Hajongs.

Article 5(d)(v): Right to freedom of thought, conscience and religion

Under the Bodh Gaya Temple Act, 1949, the Buddhists are not allowed to control and manage the Bodh Gaya Temple, including the Mahabodi Mahavira Temple in Bihar. It is run by the Hindu priests and the District collector. In March 2005, the National Commission for Minorities held it illegal but the government has done nothing to handover the administration to the Buddhists.

The religion of the Adivasis, *Sarna*, is not recognized and therefore, not reflected in the census. While minority religious groups are targeted for alleged conversions under various state-level Freedom of Religion Acts, the Hindu fundamentalist groups have been openly reconverting the indigenous/tribal peoples. Apart from selective application of the Freedom of Religion Acts and denial of religious freedom to convert, non-recognition of the religions of the indigenous/tribal peoples and therefore, the denial of their cultural identities make them easy targets of conversion by the formal religions.

Article 5(e)(iii): Right to housing

According to the Ministry of Tribal Affairs of the government of India, the indigenous and tribal peoples who constitute about 8.2% of the total population constituted about 55.16% of the total displaced people in the country between 1950 and 1990. Displacement has further accelerated as India's booming economy requires more resources. This has led to frequent conflict and indiscriminate use of fire-arms as shown in Kalinganagar killings of 2 January 2006.

There are over 6,00,000 conflict induced IDPs in India. Majority of them are indigenous/tribal people including 33,362 displaced persons in Kokrajhar district and 74,123 in Gosaigaon district¹¹ of Assam; 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990;¹² and about 35,000 Brus (also known as Reangs) from Mizoram who were displaced in October 1997 and took shelter in Tripura. As of 31st December 2006, there were 43,740 displaced persons in the *Salwa Judum* camps in Chhattisgarh. While a displaced Kashmiri Pandit

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

received Rs 750 per month, an adult Bru received only Rs. 2.67 paise a day i.e. Rs 80 per month. Even though the conditions of the Kashmiri Pandits have been equally deplorable, discrimination by the government is clear.

Article 5(e)(iv): Right to health

The Child Mortality Evaluation Committee set up by the government of Maharashtra in its report presented to the Maharashtra State Assembly by Health Minister Vimal Mundada on 18 December 2004 stated that 82,000 children died every year in rural Maharashtra, excluding the 23,500 children who died due to starvation in the tribal areas.¹³ Tribal health remains woeful across the country.

Article 5(e)(v): Right to culture

The tribal languages are seldom recognized as official languages under the 8th Schedule. The *Santhali* language is spoken by over 10 million people – more than Manipuri, Konkani and Nepali put together, which have been recognized as official languages. But it took decades to recognise *Santhali* language as an official language of India.

Article 6: Access to the tribunals

On paper, the National Commission for Scheduled Tribes (NCST) is a constitutional body with quasi-judicial powers. To deal with atrocities faced by 84 million indigenous/tribal peoples, as of February 2007, the NCST has only eight officers: one Secretary level officer, two Director level officers, two Assistant Director level officers and three researchers. The National Crime Records Bureau of the government of India recorded 5,713 cases of atrocities against the Scheduled Tribes under the SC/ST (Prevention of Atrocities) Act. Can the NCST discharge its functions effectively with eight staff and limited resources? The government of India has also failed to place NCST's 2005 Annual Report before the parliament.

Part I: General: Dimensions of racial discrimination in India

Responses to Concluding observations of the Committee

Paras 15 to 17:

As stated in the foregoing paragraphs, having recognized existence of one of the grounds of discrimination under Article 1 of the ICERD i.e. “ethnic origin” (para 3 and para 6), the government of India also denies applicability of Article 1 of the Convention at the same time. The government of India cannot probate and reprobate at the same time.

The statement - “As a matter of courtesy to the members of the Committee, if it so desires, the government of India would be happy to provide information relating to Scheduled Castes and Scheduled Tribes to them though not as reporting obligation under CERD” - is parochial and preposterous. Without CERD Committee's Concluding Observations (CERD/C/304/Add13) or General Comment (29 of 2002) on Descent, the applicability of Article 1 of ICERD in a country with “diverse origins” as in India is a settled issue. Any violation of the two cardinal principles of international human rights law i.e. equality and non-discrimination on the grounds of “race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” constitutes racial discrimination as defined under Article 1 of the ICERD. It is another matter that one can continue the academic debate whether “origin” and “descent” are synonymous; whether “caste” can be equated with “race” or covered under “descent”; or whether “race” should be defined in biological terms as citizenship is defined by sanguinity in many countries. The government of India might as well state that there is only “diversity” but no “discrimination”.

The government of India’s lack of coherence is reflected in many of its policies. In one hand, it promotes “where appropriate integrationist multi-racial organisations and movers and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division”; on the other hand, various regiments of Indian Army are named after their ethnic/caste origins as *Rajput Regiment*, *Jat Regiment*, *Sikh Regiment*, *Dogra Regiment*, *Naga Regiment*, *Gorkha Rifles* etc. Such naming of regiments contributes to “race, ethnic, caste and regional consciousness”. The colonial British named such regiments as a part of its “Divide and Rule policy”, and the government of India continues the practice. Having a Regiment of Indian Army means recognising the status/strength of the community. In fact, in May 2004 the present Minister of Chemical, Fertilizers and Steel of the government of India, Mr Ram Vilas Paswan demanded that forming a “Dalit Regiment on the pattern of Sikh Regiment, Jat Regiment or Mahar Regiment” should be included in the Common Minimum Programme of the United Progressive Alliance government.¹⁴

As stated in the foregoing paragraphs, the Election Commission of India in its order No. 23/ARUN/2003 of 3 March 2004 specifically referred to racial discrimination against the Chakmas and Hajongs of Arunachal Pradesh.

In public domain in India, there is more acceptability of existence of racial discrimination. Following alleged racial abuse of Indian actress Shilpa Shetty in a reality television show, *Big Brother* of the British Broadcasting Corporation’s Channel 4 in January 2007, many renowned commentators highlighted racial discrimination in India. Three articles - *Our million prejudices* in *The Indian Express* of 18 January 2007 (Annexure II), *Is the flip side of Big Brother row Indian racism?* in *The Times of India* of 23 January 2007 (Annexure III) and *B&W shades of Indian racism* in *The Times of India* of 30 January 2007 show that there is more openness about the debate on racism than the government of India projects at the United Nations.

Para 18:

The government of India’s response with regard to keeping the armed forces outside the purview of the National Human Rights Commission (NHRC) is misleading. If there are any human rights violations by the police, the NHRC under Section 17(ii) of the Human Rights Protection Act of 1993 can “if it considers necessary, having regard to the nature of the complaint, initiate an inquiry” by its own investigation department. However, under Section 19 of the Human Rights Protection Act, the NHRC can only seek a report from the Ministry of Defence as stated by the government of India in its periodic reports but cannot “initiate an inquiry” by its own investigative agency. Yet, the government of India asserts that that the armed forces have been fully brought under the purview of the NHRC.

The government of India has every right and duty to ban extremist organisations to protect the rights of the citizens but its selectivity and arbitrariness on **NOT BANNING** certain organisations must be questioned. The failure to ban Ranvir Sena, a private army of the upper castes in Bihar,

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

which was responsible for the murder of 1,000 people in 300 incidents since their formation in late 1960s is a case in point.¹⁵ Following the Laxmanpur Bathe massacre on the intervening night of 1 and 2 December 1997 in which Ranvir Senas massacred 59 Dalits, on 6 December 1997, the State government of Bihar appointed Justice Amir Das Commission to “probe the nexus between the Ranvir Sena and political elements”. Justice Das was supposed to submit the report in six months¹⁶ but for nine years, Justice Das only sought extensions. Instead of appointing another judge to complete the inquiry, in April 2006, the government justly wound up the entire commission.

Undoubtedly, India has taken important initiative “in the field of education, employment and local self-governance” but it has not submitted a single report to the UN Committee on Economic, Social and Cultural Rights since 1984.

Elementary education as fundamental right (paras 20 to 22)

The recognition of the right to education as a fundamental right does not address fundamental problems faced by the indigenous/tribal and Dalit children in terms of availability, accessibility, acceptability and adaptability. There has not been any dearth of policies and programmes to uplift the conditions of the indigenous/tribal peoples and the Dalits but the government has often failed to meet its promises.



The state of only High School (one room) at Bru IDPs camp

The *Sarva Shiksha Abhiyan* or Education for All is a commendable initiative. Yet, it does not cover those who need it most. The state government of Tripura deprived educational facilities to the children in the Bru internally displaced persons' camps under Kanchanpur sub-division. Effectively, over 5,000 children have been denied the right to education and an entire generation of the Brus has been kept illiterate in the last eight years.

Broad strategies (paras 23 to 27):

a. Children hardest to reach groups

The government of India states in para 23 that it focuses on “children hardest to reach groups” under its programme for universal primary education.

The “hardest to reach groups” are those tribal people who are living in armed conflict situations. During a field visit to Dantewada district of Chhattisgarh on 1- 5 January 2007 by a member organisation of the “National Network for Human Rights Treaty Monitoring in India”, District Collector of Dantewada admitted that about 250 schools and Asrams, tribal residents' hostels, were being occupied and used as camps by the security forces in Dantewada district. Similarly, as many as 38 schools in tribal areas of Tripura State were being used by security forces as camps. Despite several pleas these schools were not vacated till the end of 2005.¹⁷

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

b. Child soldiers

There have been credible reports of recruitment of child soldiers by the armed opposition groups. Children, some as young as 14, are sent as frontline combatants and allegedly used as shields during operations against security personnel. The Naxalites have a front organization named *Bal Mandal*, Children Division, to carry out its activities.



SPOs: Cannon fodder for the Maoists?

However, in the state of Chhattisgarh, the security forces too have recruited children as Special Police Officers (SPOs) to combat the Naxalites. Apart from numerous NGOs, the National Commission for Women, a statutory commission established by the government, after its visit to Dantewada in December 2006 also confirmed the recruitment of children. The National Commission for Women stated that many of the tribal boys and girls who have been recruited as Special Police Officers to fight Naxalites “appear to be minors”.¹⁸ According to the report of the District Collector of Dantewada, Chattisgarh, there were a total of 4,048 persons including 3,749 males and 299 females who have been recruited as Special Police Officers as of 31 December 2006.¹⁹

c. Affirmative actions

Undoubtedly, the affirmative action programmes of the government of India have been instrumental to bridge the social, political and economic disparities. Yet, these programmes could have further bridged the disparities, had the government of India and various State governments were serious about the implementation. On 29 January 2005, the president of the Puthiya Tamizhagam, K. Krishnasamy, stated that there were more than 10 lakh vacancies for the Scheduled Castes (SCs) and the Scheduled Tribes (STs) in various Central and State Government departments.²⁰ As of October 2004, there were backlog of 12,352 vacancies for SC and ST candidates in 38 government departments in Assam.²¹ About 20% of the 9,000 seats reserved for the SC/ST students remain vacant in Delhi University every year while in Jamia University, 360 seats (240 for SCs and 124 for STs) of the total 907 seats in the SC/ST quota were left vacant in 2005.²² As of March 2006, there were about 1.21 lakh vacancies in the police force for SCs/STs across the country. Haryana had more than 8,000 vacancies.²³

Local self-government (paras 28 to 34)

The government of India highlights the success of the Panchayati Raj (73rd and 74th Amendments of the constitution of India) as the bedrock of functioning of democracy. But the government of India failed to recognize and therefore extend benefits including financial grants given to the Panchayati Raj institutions to the traditional tribal institutions. In tribal majority States like Mizoram and Nagaland, the provisions of the 73rd and 74th Amendments on the Panchayati Raj Institutions have not been extended and therefore, tribal village councils in these States are not provided financial assistance at par with financial assistance provided to the Panchayati Raj institutions. In addition, tribal village councils under the Autonomous District Councils under the

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Sixth Schedule of the constitution of India have not been covered under the 73rd and 74th Amendments of the constitution.

Right to work (paras 35 to 42)

The National Rural Employment Guarantee Scheme, another commendable programme, is increasingly being tarnished by discrimination during implementation. In May 2006, *The Indian Express* reported that in villages of Panchmahals, Banaskantha and Sabarkantha districts of Gujarat which were worst hit by the communal violence of 2002, Muslims have been kept out of the scheme “through a strategy mixing disinformation with no information and prejudice”.²⁴ In Eral, Delol, and Vejalpur villages in Panchmahals district, the names of the Muslim villagers were not even included.²⁵ Following the reports of *The Indian Express*, the Central Government and the National Commission for Minorities sought reports from the Gujarat government.²⁶ There have been consistent reports of such discrimination from all over India.

Part 2: Implementation of the Articles 2 to 7 of ICERD

Article 2: Paras 44 to 52

In addition to the discrimination raised in the Executive Summary of this report and following the colonial patterns of naming regiments of Indian army which indirectly raise “race, ethnic, caste and regional consciousness”, the Constitution itself gives preferences to Hindi over other official languages recognized under the Eight Schedule of the Constitution. The government officials get special benefits to learn Hindi. The process of recognising certain languages as official languages under the 8th Schedule often depends on the scripts chosen by those languages. Often, adopting Devanagiri script is the fastest way to have a particular language recognized as official language.

Article 4: Paras 57 to 63

The government of India has no concrete policy to address “hate speech” which are published by private/religious organisations.

In fact, the Draft National Tribal Policy of 2004 of the government of India, the Planning Commission of India etc used of “insensitive” and “derogative” terms such as “Primitive Tribal Groups”. Whether such “derogative terminologies” can be used in the lexicon of the civilised societies in 21st century does not require any debate. The Revised Draft National Tribal Policy of 2006 used the term “Particularly Vulnerable Tribal Groups” after the indigenous and tribal peoples protested against the use of the term “Primitive”. But, in the Hindi text of the Constitution of India, the Scheduled Tribes is translated as *Adimjati*, literally meaning “primitive races”.

Article 5: Paras 64-135

Article 5 (a): Right to equal treatment before the tribunals (paras 67-68)

Contrary to the statements of the government of India, indigenous/tribal peoples and Dalits do not have access to equal treatment before the tribunals and all other organs administering justice.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

a. Discrimination of the indigenous/tribal peoples under the Criminal Procedure Code

In 1974, the State government of Andhra Pradesh issued a notification pertaining to the application of Criminal Procedure Code (CrPC), 1898, instead of the CrPC, 1973 to the Scheduled and tribal areas in Adilabad, Warrangal, Khammam, East Godavari, Vasakhapatnam, Vizianagaram and Srikakulam districts.²⁷ The 1973 Code has a provision for setting off the period served by undertrial prisoners while calculating a sentence of imprisonment. But since the Code was not applicable to tribal areas, prisoners in these areas had to serve the full sentence imposed on conviction, notwithstanding the period served as undertrials. Further, the benefit of anticipatory bail for non-bailable offences provided under the 1973 Code was not available to the tribals.²⁸

After 30 years, in March 2004 the Supreme Court held the non-extension of benefits of amendments of Criminal Procedure Code of 1973 to the Scheduled Areas as illegal and ordered the release of over 3,000 tribals serving in the prison beyond their terms.²⁹ These tribals were not given any compensation for imprisonment beyond their sentence. At state level such discriminatory laws are adopted by the State assemblies.

b. Identification of certain tribal groups as “born criminals”

The colonial British government identified certain tribal groups as “born criminals” under the racist Criminal Tribes Act of 1871. The government of India only amended the nomenclature of the Act in 1952 by rechristening it as ‘Habitual Offenders Act’ and denotified certain tribal groups. However, the basic thrust of the Act – identifying certain tribal groups as “habitual offenders” or “born criminals” – continues even today. The National Human Rights Commission constituted an Advisory Group in August 1998 and the Advisory Group recommended its repeal. But the Habitual Offenders Act is still in the statute book.

c. Denial of access to judicial processes due to the lack of separation of judiciary

Many tribal States like Arunachal Pradesh, Mizoram and Nagaland do not have separation of judiciary. The executive officers continue to exercise judicial powers and therefore, indigenous/tribal peoples living in these States continue to be denied access to judicial processes.

d. Impunity as hindrance to equal treatment before judiciary

There are many national security laws such as the Unlawful Prevention Activities Act (Section 18) and the Armed Forces Special Powers Act of 1958 (Section 6) which provide impunity to the security forces by making it mandatory to seek prior permission from the Central government before initiating any proceeding. For example, on 11 March 2005, the Assam Rifles challenged the legality of instituting the Judge C Upendra panel by the State Government of Manipur to probe the Bungte Chiru firing incident in which LD Rengtuiwan was killed on 16 November 2004 on the ground that the State Government had no jurisdiction to inquire into the conduct of the personnel belonging to the armed forces under the AFSPA of 1958.³⁰

Unless the governments make the findings of the judicial inquiries under the Commission of Inquiries Act public, how could the victims approach the courts in certain cases? The Central government and the State governments often refuse to make the reports public. The Orissa government failed to release the report of Justice P K Misra Commission of Inquiry into the killing of three Adivasis in police firing on 16 December 2000 at Kashipur while protesting against the appropriation of their lands for Utkal Alumina’s bauxite mine and refinery. The report was reportedly submitted to the State government on 17 January 2003.³¹

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

But what is the remedy when the governments openly flout court orders. The State government of Rajasthan did not make public the findings of the Justice K S Lodha Commission which probed the Kumher massacre in Rajasthan in which 17 Dalits were burnt alive in June 1992. The Rajasthan High Court was approached and the Court ordered the State government of Rajasthan to place the report in the State Assembly.³² But until today the State government failed to submit the report!

e. Administrative biases for non prosecution of upper caste perpetrators

Because of the bias of the administration, perpetrators belonging to the upper castes are seldom brought to justice.

Bihar, which has witnessed massacres of the Dalits and upper caste, provides the best analogy.

The Supreme Court delivered its final judgements for the attack on police forces at Bhadasi village in Jehanabad in Bihar in November 1988³³ and killing of 36 upper castes in the Bara massacre case of 12 February 1992 by the Maoists Communist Centre.³⁴ It was possible simply because the state government was serious about prosecution.

However, in the case of the massacres of the Dalits, the laxity of the administration because of the caste biases is omnipresent. The status of the following cases of the massacre of the Dalits is illustrative.

In the **Laxmanpur Bathe massacre** on the intervening night of 1 and 2 December 1997, Ranvir Sena cadres massacred 59 Dalits of which 26 were women and 19 were children under the age of 10. Pursuant to the First Information Report No. 126/97, the trial court started filing of charge sheets in February 1999. The charges have not been framed against the 24 accused. Except two, the rest have been released on bail. During the framing of charges all the accused must be present physically in the court. For the past 20 hearings, all the accused never appeared. On 10 July 2004, Buxar Jail officials informed the court about a Home Department "administrative decision" not to produce accused Pramod Singh, the main accused, in any court. Earlier there were reports that informant Vinod Paswan was being threatened by Birendra Singh, one of the main accused. Neither Paswan nor Singh could be traced in the village.³⁵

In the **Shanker Bigha massacre** in Jehanabad, 23 Dalits were killed by suspected Ranvir Senas on 25 January 1999. An FIR was lodged at Mehandia police station (case no. 5/99). There are 24 accused and 76 witnesses. Two charge sheets have so far been filed - 37/03 on 15 August 2003 and 67/2000 on 26 February 2000. On 2 November 2003, the case was transferred from the chief judicial magistrate to the sub-divisional judicial magistrate, Jehanabad, for framing of charges. However, charges could not be framed because all the accused must be present in court on the same day for framing of charges. This has not happened. Two accused, Parmeshwar Singh and Kamlesh Bhat, are in jail and the rest have been released on bail.³⁶

In the **Nayaranpur massacre** in Jehanabad on 10 February 1999 in which 12 Dalits were massacred, an FIR No. 17/99 was filed and a case was registered (State vs Sidhan Singh & others 5/2001) against 12 identified persons and 32-35 unnamed accused. The trial commenced on 22 February 2002; but the case has been collapsing as the witnesses have been turning hostile under duress.³⁷

The Court can only deliver justice if the government is serious about prosecution.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Article 5 (b): Right to security of person and protection of the State (Paras 69)

That the government of India describes the right to security of person in one paragraph is disconcerting. It is probably because the government of India has little information to share given large scale and widespread violations of the security of person including the violations of the right to life by the State agencies, the armed opposition groups and the upper castes.

a. Violations of the right to life by the security forces

According to the 2004-2005 Annual Report of the National Human Rights Commission, the Commission received reports of 1,493 cases of custodial deaths, including 136 deaths in police custody and 1,357 deaths in judicial custody.³⁸ The government of India's National Crime Records Bureau in its 2005 Annual Report stated that 355 civilians were killed and 373 civilians were injured in police firing.³⁹

Because of the lack of disaggregated data, it is difficult to state the number of victims belonging to the indigenous/tribal peoples and the Dalits. However, it is essential to note that 20 out of 28 States face internal armed conflict in the areas where indigenous/tribal peoples and the Dalits form majority of the population.

i. Garo Hills killings, Meghalaya

On 30 September 2005, nine tribal students were killed –five students at Williamnagar in East Garo Hills district and 4 students at Tura in West Garo Hills district in indiscriminate firing by the Central Reserve Police (CRPF) personnel while they were protesting against the transfer of the headquarters of the Meghalaya Board of Secondary Education from Tura to Shillong, the capital of Meghalaya.⁴⁰ Video clippings available show that the CRPF personnel were firing by keeping the weapons over their shoulders to cause maximum damage. The security forces fired not to control the mob but to kill the protestors. In December 2005, the government of Meghalaya appointed two retired judges - Justice DN Baruah and Justice DN Chaudhuri - to inquire into the firing incidents. The judges were given 60 days time to submit their reports but no report has been submitted as yet.⁴¹

ii. Kalinga Nagar killings, Orissa

On 2 January 2006, 13 tribals were killed by the police at Kalinga Nagar under Jajpur district of Orissa. According to a report by fact-finding team of Peoples Union for Civil Liberties, on 2 January 2006, the Tata Iron and Steel Co Ltd with the help of the district administration undertook the leveling of the land where their plant was to come up at Daburi village, Kalinga Nagar under Jajpur district of Orissa. About 300-400 Adivasis including women and children assembled to protest.



The victims of Kalinganagar massacre being cremated

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

The State government reportedly deployed about 10 platoons comprising around 300 policemen.

When the leveling machine started its work, the Adivasi protestors wanted to enter the rope cordon. The police tried to stop them and used 'stun shells' along with tear gas shells and rubber bullets. Later, in the melee, one of the policemen identified as Gopabandhu Mohanty slipped and fell in the hands of the protesting tribals and killed by the angry crowd.

In order to avenge the killing of Mr Mohanty, other policemen ran amok and fired indiscriminately⁴² in the presence of the District Collector Saswat Mishra and Superintendent of Police Binoytosh Mishra.⁴³ Twelve Adivasis were killed on the spot while Shyam Gagrai, 35, succumbed to bullet injuries on 11 March 2006 at All India Institute of Medical Sciences in New Delhi. Two of the victims were shot in the back, apparently while trying to flee. Two others were shot in the forehead from point-blank range.⁴⁴

In a further act of barbarism, the five bodies handed over to the Adivasis after post mortem had their palms chopped off from their wrists without the consent of the relatives of the deceased on the pretext of taking fingerprints.⁴⁵ In addition, the genital organs of all six, including a woman, were mutilated during post mortem.⁴⁶

The State government only ordered suspension of three senior doctors, Head of the department of anesthesia Dr Bibekananda Swain, Head of the department of surgery Dr Shantanu Kumar Sahu and Head of the department of orthopedics Dr Anup Kumar Nathsharma, who had done the post mortem.⁴⁷ But no action was taken against the police officials.

On 23 February 2006, the state government of Orissa issued a notification constituting the judicial commission to probe into the police firing in Kalinga Nagar headed by Justice A S Naidu.⁴⁸ In August 2006, the Justice Naidu Commission sought extension of its tenure. As of today, the report has not been made public.

b. Increased violations of the right to life due to the Salwa Judum campaign

In June 2005, the State government of Chhattisgarh extended its support to the anti-Naxalite Salwa Judum campaign and directly involved the civilians in the combat against the Maoists. The security forces and the Salwa Judum activists violated human rights including burning down the villages and killings to bring more villagers under the Salwa Judum fold and move them to government manned counter insurgency camps.

The involvement of the Adivasi civilians has exponentially increased the risk of the civilians. According to the estimate of Asian Centre for Human Rights, a total of 749 persons were killed in the Naxalite conflict in India during 2006. The highest number of killing was reported from Chhattisgarh (363), accounting for 48.5% of the total killings as a direct consequence of the anti-Naxalite Salwa Judum campaign.



Victims of kidnapping by the Maoists from Dornapal camps. 13 victims were slaughtered in front them.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Article 5 (c): Right to participate in election (paras 70-76)

a. Denial of voting rights to the Chakmas and Hajongs of Arunachal Pradesh



Chakmas voting: The success story highlighted by India; thousands of others continue to be denied the right to vote

The “National Network for Human Rights Treaty Monitoring in India” has taken note of the statement of Indian government that “names of about 1,500 Chakmas, who were found to be eligible for inclusion in the respective electoral rolls”. This is only highlighting the success and hiding the continued discrimination against the Chakmas and Hajongs of Arunachal Pradesh.

About 14,000 eligible Chakma and Hajong voters continued to be denied the enrollment in the electoral rolls. On 23 March 2005, the Election Commission of India passed specific

guidelines (No 23/ARUN/2004-PLN-II of 23 March 2005) for enrollment of the eligible Chakma and Hajong voters during Intensive Revision. Instead of complying with those guidelines, the Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers who are also employees of the State Government summarily rejected the applications of the Chakma and Hajong citizens for inclusion of their names. The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh complained to the Election Commission of India against gross non-compliance of ECI’s guidelines. Taking cognizance of CCRCAP’s complaints, the Election Commission of India suspended publication of electoral rolls of all four Chakma and Hajong inhabited State Assembly constituencies. Until today, the Election Commission of India failed to give its final order.

About 10,000 Chakmas and Hajongs who migrated in 1964 also continued to be denied citizenship and the right to vote. On 9 January 1996, the Supreme Court of India in its judgment in the case of *National Human Rights Commission versus State of Arunachal Pradesh & Another (W.P. (c) No. 720 of 1995)* directed the government of India and the State government of Arunachal Pradesh to process the citizenship applications. A total of 4,627 Chakmas and Hajongs have submitted citizenship applications under Section 5 of the Citizenship Act of 1955. As of 6 February 2007, the government of India failed to determine even a single application. The failure to implement the Supreme Court judgement with regard to the Chakmas and Hajongs of Arunachal Pradesh is a clear case of discrimination. Since January 2005, the Pakistani Hindu refugees residing in Rajasthan were being provided citizenship following approval from the Centre. On 4 January 2005, more than 30 refugees were granted Indian citizenship in Barmer district.⁴⁹ These Hindu refugees had come to India much later than the Chakmas and Hajongs at various stages after the 1965.⁵⁰

b. Violence against the Dalits for exercising the right to franchise

The Dalits continue to face discrimination while exercising their political freedom – from casting of votes to denial of privileges, if elected. For the sake of brevity, only one case is cited.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

On the night of 21 October 2005, a Dalit woman identified as Prabhavati Devi, contesting local elections on a Bahujan Samaj Party ticket was reportedly set ablaze by her rivals for refusing to pull out from the fray in Mujehra Khurd village in Mirzapur district of Uttar Pradesh.⁵¹ She succumbed to over 90 per cent burn injuries on 5 November 2005 in the district hospital. Despite the victim naming three persons in the First Information Report, the police have failed to arrest the accused.⁵²

Article 5(d)(i) and (ii): Right to freedom of movement (paras 77-78)

The Dalits do not enjoy freedom of movement. In particular, they are prevented from moving through the road passing through the houses of upper castes. For the sake of brevity, only one incident is cited.

On 19 November 2004, a Dalit bridegroom identified as Nand Kishore, son of police constable Lalita Prasad Tamta, was allegedly ill-treated in his own village Hanera in Pitthoragarh district of Uttaranchal while returning after his wedding in Bagheshwar, along with the procession. The ‘*sawarnas*’ (upper caste) people allegedly blocked the Dalit “*baraat*”, marriage party, procession and refused to let the party pass through the road outside their houses. Some allegedly threw dirty water at the ‘*baraat*’, and they not only made derogatory casteist remarks against the ‘*baraat*’ but also pushed the bride’s palanquin. The police arrested seven persons in this connection, and charges have been framed against them under the SC/ST (Prevention of Atrocities) Act.⁵³

Article 5(d)(iii): Right to nationality (Paras 79-80)

Please refer to the foregoing paragraphs on the right to participate in elections with regard to the Chakmas and Hajongs of Arunachal Pradesh.⁵⁴

In addition to the Chakmas and Hajongs, about one million persons, mainly Sikhs, who came to Jammu and Kashmir from Pakistan during the partition of India in 1947⁵⁵ continued to be denied the right to citizenship as they have not been recognized as citizens of Jammu and Kashmir under the Jammu and Kashmir constitution. Although they have been living in these bastis since 1947, they lacked developed roads, drinking water facilities, medical facilities and schools.⁵⁶ They are being discriminated because they are Sikhs, and the government of India failed to ensure their rights under the constitution of Jammu and Kashmir in the last 60 years.

Article 5(d)(iv): Right to marriage and choice of spouse (paras 81-82)

The government of India’s assertion on the right to marriage and choice of spouse has been noted. Some State governments have been promoting inter caste marriage. However, matrimonial columns of the news papers or websites on marriages openly promote caste preferences. If discrimination in any form is to be combated, the government must encourage the newspapers or portals to at least provide disclaimers that they do not support the caste preferences.

Article 5(d)(v): Right to own property (paras 83)

a. State as the broker of properties

Indigenous/tribal peoples have little or no right to properties including land as the government can virtually take away any land under the Land Acquisition Act of 1894 for so-called “public purposes”. Since the liberalization of Indian economy in 1990s, “public purposes” have come to mean to government exercising its sovereign power to acquire lands of the people for development of

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

projects of private companies/corporations which are either own privately or by the shareholders. Public purposes no longer refer to government taking away lands for the construction of roads, railway lines or government offices etc but the government making profit by exercising its sovereign power.

In the Kalinganar dispute, in 2004, the state government of Orissa paid only Rs 76,000 an acre to the original landowners of 2,000 acres of land and sold the same land to the Tatas for Rs 3.35 lakh per acre. Besides, the Rs 76,000 was meant only for titleholders, who account for 20 per cent of the tribals in the area. Those who had been in possession of the land but did not have documents were denied compensation. The promise of a job for each displaced family, a home allowance of Rs 50,000 and Rs 5,000 as aid for a temporary shelter were not adequately fulfilled.⁵⁷

Article 5(d)(vii): Right to freedom of thought, conscience and religion (paras 85-90)

India is a secular country but policies and practices indicate preference for Hinduism.

a. Denial of control and management of the Bodh Gaya to the Buddhists

In a resolution adopted on 30 March 2005, the National Commission for Minorities (NCM) stated, "The provisions of the Bodh Gaya Temple Act, 1949, are not in harmony with the Fundamental Right enshrined in Article 26 of the Constitution, guaranteeing the right of freedom to every religious denomination to manage their respective religious affairs. Appropriate legal measures should be taken to ensure that all members of the committee entrusted with the management and control of the Bodh Gaya Temple, including the Mahabodi Mahavira in Bihar are Buddhists".⁵⁸ Under the Bodh Gaya Temple Act, 1949, the Hindus run the management of the Bodhgaya complex in Bihar. But the recommendation of the NCM remains unimplemented.

b. Adivasis: Targets of conversion

Many of the indigenous peoples have their own religions. For example, the Adivasis of Jharkhand practice *Sarna* religion. However, while conducting census, the religions of the Adivasis are not recognized and therefore not reflected in the census.

Various State governments - Orissa (1967), Madhya Pradesh (1968), Arunachal Pradesh (1978), Chhattisgarh (2006); and Gujarat Freedom of Religion Bill (2003) and Himachal Pradesh Freedom of Religion Bill (2006) etc have been adopted to restrict religious freedom in the name of preventing conversion.

Yet, many Adivasis have been openly reconverted into "Hinduism" under *Ghar Vapsi* (Home Coming) programme of the Vishwa Hindu Parishad, Rushikul Seva Trust, Bharat Vikash Parishad, Vanavasi Kalyan Ashram and Adivasi Suraksha Samiti etc.

On 4 March 2004, 212 tribals who had embraced Christianity from two western Orissa districts of Jharsuguda and Sundergarh were reportedly re-converted to Hinduism at a specially arranged function in Jharsuguda town.⁵⁹

On 19 September 2004, Orissa units of the Vishwa Hindu Parishad and Bajrang Dal reconverted 75 Christian tribals into Hinduism at a Ghara Bahuda (home coming) ceremony at Sarad under Udala sub-division of Mayurbhanj district.⁶⁰

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

On 17 October 2004, about 85 Christian tribal families comprising 336 members were reconverted to Hinduism at a function organized by the VHP at Birda village in Sundergarh district of Orissa.⁶¹

On 1 May 2005, about 567 Christian tribals were reportedly reconverted to Hinduism in a re-conversion ceremony organized by VHP at Bijepur block in western Orissa's Bargarh district.⁶²

It is clear that the Freedom of Religion Acts only apply to non-Hindus.

Article 5(e)(i): Right to work (paras 95-109)

The government allows continuation of caste based traditional professions. Dalits and other lower category people still have to work according to their birth.

The Dalit women have been prevented from getting the jobs of cook in schools under Mid Day Meal scheme because of their caste. In Kendrapara district of Orissa, Dalit women applying for the job of cooks in schools under the mid-day meal scheme were allegedly turned away by the school authorities for the fear that upper caste students might not take the food cooked by Dalits. This is contrary to the government directive for recruitment of women preferably from Scheduled Castes and Scheduled Tribes for the scheme⁶³ in about 1,420 primary schools in the district.⁶⁴ The National Human Rights Commission in December 2005 issued a notice to the district administration for not appointing dalit women as cooks in schools.⁶⁵

Bias and discrimination are also present in the judicial system. In Rajasthan, there have been instances of Dalits lawyers practicing in the district and sub-divisional courts being subjected to ridicule by their colleagues and judges for being Dalits. Dalit litigants could not expect a level-playing field if the adversary belonged to the so called higher caste.⁶⁶

Article 5(e)(iii): Right to housing (paras 112-117)

The right to housing is not only what the government of India speaks of in terms of providing houses. In India, the right to housing is more about forcible evictions from ones own land and indigenous/tribal peoples have been disproportionate victims.

a. Indigenous/tribal peoples as disproportionate victims of industrialisation

Two statements issued by different bodies of the government of India are adequate to understand as to how the indigenous/tribal peoples have been disproportionate victims of industrial projects.

The Tenth Plan of the government of India succinctly summarises forced evictions of indigenous and tribal peoples in five States of India - Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa:

“Displacement or forced/voluntary eviction of tribals from their land and their natural habitats and subsequent rehabilitation has been a serious problem that remains to be addressed by the Government. As per the information readily available, a population of 21.3 million, have been displaced between 1951 and 1990 in the states of Andhra Pradesh, Bihar, Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Orissa. Of whom, 8.54 million (40 per cent) are tribals and of those only 2.12 million (24.8 per cent) tribals could be resettled, so far. Displacement took place mainly on account of development projects, which include – large irrigation dams, hydro-electric projects, opencast and underground coal mines, super-thermal power plants and mineral-based industrial units.⁶⁷

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

The Draft National Tribal Policy of the government of India of 2004 stated the following:

“Displacement of people from traditional habitations causes much trauma to the affected people. Compulsory acquisition of land for construction of dams and roads, quarrying and mining operations, location of industries and reservation of forests for National Parks and environmental reasons forces tribal people to leave their traditional abodes and land – their chief means of livelihood.

Nearly 85.39 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55.16 percent of the total displaced people in the country.”

That the tribals who constituted 8.2% of the total population of India according to the 2001 census also constituted 55.1% of the total displaced persons as a result of so-called developmental projects like dams, mining, industries and conservation of nature shows as to how the tribals have been victimized.

Displacement of the indigenous/tribal peoples has intensified to meet the demands of India's booming economy.

The Jharkhand Government reportedly signed over 42 MoUs with investors including Mittal Steel, Tata Steel, Jindal Steel and Power Company Limited worth about Rs 1,69,198.26 crores since Jharkhand became a state in 2000. Approximately 47,445 acres of land would be required for the projects in mineral-rich Kolhan Region, which was likely to affect about 10,000 families.⁶⁸

The Orissa government also signed equal number of MoUs. About 80,000 to 1,00,000 tribals from 50 villages in Subdega and Balisankra blocks in Jharsuguda district of Orissa have been facing imminent displacement due to the proposed dam on the Ib river.⁶⁹

In October 2005, the Central government reportedly granted “forest and environmental clearance” to the multi-purpose Polavaram project being built across the Godavari river at Polavaram in West Godavari district of Andhra Pradesh.⁷⁰ The proposed 46-metre high Polavaram multi-purpose dam is likely to displace nearly 2,00,000 people, of which about 1,50,000 are tribals. The Union Ministry of Environment and Forests also admitted that about 1,93,350 persons would be displaced in three states - Andhra Pradesh (1,75,275), Orissa (6,316) and Chhattisgarh (1,766).⁷¹

b. Prosecution of indigenous/tribal peoples for accessing minor forest produce

The Ministry of Tribal Affairs of the government of India also stated that “64.23% are yet to be rehabilitated.... Those displaced have been forced to migrate to new areas and most often have encroached on to forestlands and are, on record, considered illegal. It is a known fact that displacement has led to far reaching negative social and economic consequences, not to be mentioned the simmering disturbances and extremism in most of the tribal pockets. Economic planning cannot turn a blind eye to these consequences in the light of displacement..... All projects in tribal areas were considered ‘public purpose’ even for private mining industries. This is biggest fallacy of our development paradigms in tribal areas.”⁷²

A study by People's Union for Civil Liberties showed that over 7.4 million tribals were displaced in Jharkhand by different projects between 1950 and 1990. Out of them, only 18.45 lakhs displaced tribals were rehabilitated.⁷³

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

The tribals faced prosecution for accessing the means of their traditional livelihood – the minor forest produce. The British brought the Forest Act of 1927 and notified certain areas as reserved forests. Until the colonial Forest Act was revised and rechristened as Forest Conservation Act of 1980, the disputes or the right to access to forest produce were not addressed.

When the Forest Conservation Act was brought into legislation in 1980, it made distinction between the pre-1980 and post-1980 encroachments. The National Commission on Scheduled Castes and Scheduled Tribes noted that as a result of the Forest Conservation Act, 1,48,000 persons, mainly tribals, occupying 1,81,000 hectares of lands in forest areas in Madhya Pradesh suddenly became encroachers on 24 October 1980, and thus liable for eviction.⁷⁴

The indigenous/tribal peoples continued to face prosecution for accessing minor forest produce that they have been traditionally enjoying. On 8 November 2005, the Forest Department of Chhattisgarh reportedly decided to close 2,57,226 forest cases registered against 1,62,692 tribals between 1953 to 30 June 2004 under Sections 26, 33, 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts.⁷⁵ Similarly, on 11 October 2004, the State government of Orissa reportedly directed the Forest Department to withdraw all 11,424 minor cases involving forest produce of less than Rs 100.⁷⁶

While the parliament of India adopted the Forest Rights Bill in December 2006 but no measures have been taken to address the unjust prosecution of the tribals for accessing minor forest produce, which is rightfully theirs.

c. Discrimination against conflict induced indigenous/tribal IDPs

There are over 6,00,000 conflict induced Internally Displaced Persons in India at present. With the exception of 55,476 Kashmir Pandit families who were displaced due to the conflicts in Jammu and Kashmir since 1990 and about 45,000 border migrants living along the Line of Actual Control with Pakistan, the rest are indigenous peoples - 33,362 displaced persons in Kokrajhar district and 74,123 in Gosaigaon district of Assam; about 35,000 Brus (also known as Reangs) from Mizoram who were ousted from their homes in October 1997 and took shelter in Tripura and 43,740 displaced persons in the Salwa Judum camps in Dantewada district of Chhattisgarh. Thousands of others have been displaced and not provided any help.

Majority of the IDPs could not return until now simply because of the failure of the State. While the Kashmiri Pandits genuinely fear attacks by the armed opposition groups, the State government of Assam took no visible steps to rehabilitate the IDPs in Bodoland areas. The state government of Mizoram simply refuses to take back the Brus on frivolous grounds to pursue its policy of establishing monolithic Mizoram consisting of only the majority ethnic Mizos.

Even for those relatively fortunate ones i.e. those who were housed in government managed camps different groups of IDPs received different treatment depending on their proximity to the authorities in New Delhi.

While a displaced Kashmiri Pandit received Rs 750 per month, an adult Bru received only Rs. 2.67 paise a day i.e. Rs 80 per month. Even though the conditions of the Kashmiri Pandits have been equally deplorable, discrimination by the government is clear.

Prime Minister Dr Manmohan Singh during his visit to the migrants' camp at Muthi in Jammu on 18 November 2004 announced that the central government agreed in principle to release Rs 150

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

crore to set up the two room set houses for the Kashmiri migrant pandits living in different camps in Jammu.⁷⁷ However about 12,000 persons, including women and children, who have been living in penury and misery at camps at the Devipur in the Akhnoor sector along the Line of Actual Control Line⁷⁸ were not provided any assistance. Chairman of Border Migrant Action Committee (BMAC), Chajju Ram of Nikkian village in Khour block of tehsil Akhnoor in Jammu district succumbed to the injuries on 2 March 2004 at Kot Ghari after he was beaten by the police during a lathi-charge on the protestors demanding rehabilitation.⁷⁹



Right to housing: IDPs in Chhattisgarh have been living in these camps

Article 5(e)(iv): Right to public health (paras 118-120)

The condition of health care facilities in the tribal areas has been deplorable. The same has been recognized by the Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes on numerous occasions but no remedial steps were taken by the concerned governments.

In its Eight Report, the Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes of the 13th Lok Sabha stated in November 2000 that the actual requirement of doctors in tribal areas/scheduled areas of Madhya Pradesh was 1,434 and these posts of doctors were sanctioned by the government. However, out of 1,434 only 985 doctors were posted in tribal areas as on 1 July 1997. The reasons given by the State Government of Madhya Pradesh for not posting the sanctioned doctors were remoteness of areas, non-availability of basic facilities and tendency of the doctors to get posted in urban areas. There was no incentive for those who were posted in tribal areas.

The Joint Parliamentary Committee on the Welfare of the Scheduled Castes and Scheduled Tribes of the 13th Lok Sabha in its 23rd Report of February 2003 on the Working of Integrated Tribal Development Projects in Rajasthan stated that hundreds of posts of medical staff in Tribal Sub-Plan (TSP) areas had been lying vacant. The State government of Rajasthan could not give any answer as to the reasons for not filling up the vacancies in all the categories. No additional benefits were given to the medical staff working in TSP areas.

The following brief case studies show as to how the tribals have been disproportionate victims of denial of access to public health.

a. Andhra Pradesh

The National Family Health Survey-II of 2004 reported about the lack of doctors, shortage of medicines and the sheer difficulty faced by the tribals of Andhra Pradesh in reaching a primary health centre from their dwelling places. The womenfolk suffered the most. More than 60% of the 24,57,809 tribal women reportedly got married before the age of 18 but pregnant tribal women rarely

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

got access to a qualified doctor. The survey reported that 43.1 per cent of pregnant tribal women did not get antenatal check ups. About 80 per cent of them gave birth to their babies at their homes.⁸⁰

Following a complaint to the National Human Rights Commission by the opposition Telugu Desam Party on 26 July 2005 against alleged “neglect” by the state government over the deaths of tribals due to malaria in Visakhapatnam district in Andhra Pradesh,⁸¹ the NHRC sent its Special Rapporteur for the Southern States, K R Venugopal to investigate. In his report to the NHRC, Special Rapporteur K R Venugopal confirmed the deaths of 2,227 persons due to malaria and other communicable diseases in the tribal areas of Visakhapatnam district from January to July 2005.⁸² He blamed the government for the miserable economic and health status of the tribals. He found that out of the total 1,26,013 households in Paderu in Visakhapatnam district, 1,17,834 households i.e 94 % were living below the poverty line.⁸³ This was despite the fact that Paderu was covered under the much-hyped Integrated Tribal Development Agency programme of the state government. However, as expected, the authorities rejected K R Venugopal’s figures on the malaria deaths.⁸⁴

b. Maharashtra

Five tribal dominated districts of Maharashtra i.e. Thane, Nandurbar, Nashik, Amravati and Gadchiroli have been severely afflicted by malnutrition deaths. Tribal children have been worst victims of poverty. On 25 August 2005, the government of Maharashtra admitted before the Bombay High Court that a total of 2,675 children died due to malnutrition in the tribal dominated districts of Thane, Nandurbar, Nashik, Amravati and Gadchiroli between April and July 2005. These included 1,085 infants below one year and 1,590 children in the age group of 1-6 years.⁸⁵

The Child Mortality Evaluation Committee set up by the government of Maharashtra to study the problem of infant mortality in the state in its first report to the state legislature on 18 December 2004, presented by state health minister Vimal Mundada, stated that 82,000 children died every year in rural Maharashtra, excluding the 23,500 kids who died in the tribal areas.⁸⁶

According to the final report presented in April 2005, 1,75,000 malnutrition death took place a year while the state health department’s official figure was 80,000. The committee found that around eight lakh children in various parts of the state were in critical grade IV of malnutrition, and that the percentage of children in critical grade IV came down by just 0.6 percent in the last 15 years.⁸⁷

The denial by the authorities only compounded the problem. On 24 December 2005, it was reported that eight children identified as Balya Balkrishna Kanekar of Gardenpur, Pratiksha Sanju Sahare of Kadoli, Baby Vijay Belsare of Kumbitola, Sumeet Rajkumar Puram of Eitkheda, Bali Deenbandhu Lade of Kadoli, Deepa Suresh Loni of Morgaon, Balu Rajesh Gote of Eitkheda and Pinku Baban Karade of Peethatola in Arjuni Morgaon tehsil of Gondia district died of malnutrition in the last two months. But the district authorities including the District Health Officer and Block Development Officer offered such reasons as pneumonia, premature birth, jaundice, ‘being mentally retarded’, hiccups etc for their deaths. In one case, the authorities even claimed that the baby died due to “excessive crying”.⁸⁸

c. Jharkhand

Villages like Chukru and Bhakhari in Daltongunj, a tribal belt in Palamau district of Jharkhand have been seriously affected by fluorosis because of the absence of proper drinking water facilities. In 1986, the National Drinking Water Commission had set up a committee to provide safe drinking

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

water to all fluorosis-affected villages by 1990. A project to provide potable water to the villages from a tank in Daltongunj was conceived at a cost of Rs 1.75 crore. Pipes were laid and a tank was constructed. But before the tank could even be used to store water, it started showing cracks in 1999. None of the district officials cared to complete the project. A survey conducted by Society for Environment and Social Awareness found that 17-20 per cent of the villagers were suffering from the disease.⁸⁹

In Jharkhand, the Pahariya tribe of Santhal Parganas district is an endangered tribe. In the absence of proper medicines and healthcare facilities, deaths due to diseases like malaria and *kala-azar* (black fever) occur in epidemic proportions. Every year during the summer months the deadly black fever claims hundreds of lives. 12 Pahariyas died in July and August 2004 due to *kalaazar* at Phitkoriya village under Rajbandh Panchayat.⁹⁰ Records also revealed that the disease directly affected more than 2,800 Pahariya people with 679 deaths in 2003 in Santhal Parganas.⁹¹

d. Tripura

Each year during the monsoon, hundreds of indigenous/tribal peoples die in Tripura because of enteric malaria and other water borne diseases. In the first two weeks of March 2005, 50 tribals died of these diseases. As many as 1062 health sub-centres and 72 primary health centres were reportedly not functioning as on 1 April 2005. In many areas the health centres do not function properly due to insurgency and shortage of adequate doctors and para-medical staff. There were 227 vacancies for the posts of doctors.⁹²

Article 5(e)(v): Right to education and training (paras 121-125)

The recognition of the right to education as a fundamental right does not address fundamental problems – proper access to education – faced by the indigenous/tribal and Dalit children. According to the “India Education Report” of the National Institute of Educational Planning and Administration of the government of India of 2003, discrimination continues to obstruct the access of Dalit and tribal children to schooling. They also do not have access to quality education.

a. How tribals in mainland India are lagging behind in education

The gap in education between the tribals and the general does not properly explain how much the tribals in mainland India are lagging behind in education. According to the census figures, the gap between the general population (including the Scheduled Tribes) and the Scheduled Tribes was 18.15 in 1971, 19.88 in 1981 and 22.61 in 1991. Since the Scheduled Tribes, who constituted about 8.1% of the total populations according to 1991 census, were also included in the general population, in actual terms, the gap in the literacy rate between the general population and STs was much higher. Although amongst the indigenous and tribal peoples, female literacy rate had increased substantially from 4.85 per cent in 1971 to 18.9 per cent in 1991, the gap between indigenous and tribal females and the general population had been widening with 13.84% in 1971, 21.81% in 1981 and 21.10% in 1991.

The increase in literacy rate of the indigenous and tribal peoples, in particular female literacy rate, at all India level can be attributed to the high rate of literacy in North East India. The literacy rate of the tribal populations in Madhya Pradesh according to 1991 census was 21.54% with female literacy rate of 10.73%. However, female literacy rate according to 1991 census was 29.69% in Arunachal Pradesh, 43.03% in Assam, 47.60% in Manipur, 44.85 in Nagaland, 78.60% in Mizoram, 54.75% in Nagaland and 49.65% in Tripura.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

b. Segregation in schools

The segregation of the Dalits from the upper caste continues even in public places such as schools. In a Government Primary school at Kontur in Medak district of Andhra Pradesh, 38 of the 46 students who were supposed to stay for mid day meal reportedly leave the school without touching the food as it was cooked by two Dalit women. Only 14 Dalit students eat at the school.⁹³

On 10 September 2004, *The Pioneer* reported that the upper caste parents refused to allow their wards from sharing utensils with the Harijan kids during mid-day meal in a government primary school in Poorankhedi village in Shivpuri district of Madhya Pradesh. The school authority had to start maintaining a separate kitchen for the schoolchildren belonging to the Dalits and the indigenous peoples.⁹⁴

Article 5(e)(vi): Right to culture (paras 126-133)

The information provided by the government of India pertains to the culture of the majority communities but not of the indigenous/tribal peoples.

Culture is intrinsically linked with the right to language. Often indigenous/tribal peoples are not allowed to learn in their mother tongue own scripts. Wherever the mother tongue has been introduced, there has been not adequate planning. Nor adequate resources have been allocated. In Tripura, the government introduced *Kokborok* but qualification of the teachers has been kept so low that even non-matric candidates are appointed as teachers for *Kokborok* language, thereby seriously affecting quality of education in mother tongue.

The tribal languages are seldom recognized as official languages under the 8th Schedule. The following statement of Dr. Ram Chandra Dome in Lok Sabha, Lower House of Indian parliament on the non-inclusion of the Santhali language is self explanatory.

a. Statement of Member of Parliament, Dr. Ram Chandra Dome in Lok Sabha, on discrimination against the Santhali language

The following excerpts from the statement of then Member of Parliament, Dr. Ram Chandra Dome while moving “*Resolution regarding inclusion of “Santhali” Language in the Eighth Schedule*” on 21 April 2003 at Lok Sabha, lower house of Indian parliament speaks of the arbitrariness in recognizing national languages:

“Many languages of various ethnic groups have been recognised by our Constitution like Manipuri, Nepali, Sindhi, Konkani, Kashmiri etc., but Santhali language, which has been spoken by a vast majority of our tribal Santhal population has not been recognised so far. They are demanding for recognition of their language for a long time now, but till today their demand has not been fulfilled.

A minority language maybe the language of minority population in more than one State. For example, our Santhali language, which is spoken in Orissa, Assam, West Bengal and Jharkhand and many other States like Madhya Pradesh, Chhattisgarh, Maharashtra, etc. may be a minority language.

Santhali, when compared to Sindhi and Kashmiri, is linguistically more stable and democratic, much more numerous, but did not get due protection by virtue of its being not

Dimensions of Discrimination in India

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included in the Eighth Schedule of our Constitution. Therefore, lakhs of Santhali speaking people are struggling for their linguistic identification in our country. So many political parties are organising democratic movements for recognition of these languages. I must say that the language plays an important role in all their movements, either overtly or covertly, for language alone can provide the single most important solidarity bond. All the borrowing tendencies, which flow from rank consciousness plus external pressure and encroachment hurts the population, which is geographically non contiguous, and it tends to diminish the solidarity of this ancestral society.

The question, however, remains that how long the Santhali, in the greatest of solidarity bonds, can withstand the indiscriminate borrowing from the dominant groups to the lesser ones without destroying the mutual intelligibility. In the process the major bond languages like Santhali are being simultaneously exposed not to one dominant language but to more than four languages, that is, Assamese, Bengali, Hindi and Oriya. The failure of the rebellion of the 1855, demanding relief from rapacious money lenders, freedom from personal and hereditary debt bondage, did not mean the end of Santhal reaction but only the beginning of a new consciousness, which has been manifested in various subsequent movements, which were developed in the 19th century, in a period of great economic suffering.

I must say that the movement of Santhali is a cultural movement, an economical movement and a political movement, which is called Khairwar Movement, which is also important in the modern age. It was Pandit Raghunath Murmu, who himself invented the original Santhali script, Orichiki.

Formerly, all Santhali writings were in Devanagari, Bengali, Oriya or Roman script as developed mainly by the missionaries. Sir, in this respect, I must refer the great authors Rev. P.O. Boddington, Cambel etc. They have contributed a lot by writing the dictionary of Santhali. Thousand of words have been collected and included by them.

The distinguished Santhal, Pandit Raghunath Murmu invented the script "Ol Chiki" which has been recognised by the only State Government, West Bengal State Government. West Bengal State Government has already implemented that script to teach our students in the primary level for some time past.

In Ol Chiki script, which is a very rich script, so many Santhali literatures have been written by so many authors of Santhal community..... In Calcutta, in the National Library or in the Asiatic Society there are hundreds of collections of Santhali literature...

Sir, when compared to those who speak Santhali language, the Nepali language is spoken by a less number of people. Even Konkani and Manipuri languages are spoken by a less number of people when compared to those who speak the Santhali language. Therefore, my question is, when Santhali language is spoken by about one crore (10 million) more people than those who speak Manipuri, Konkani and Nepali languages put together, why Santhali language has not been recognised. Is it because it is the language of one of the tribal communities of our country?"⁹⁵

There are no objective criteria for inclusion of a language in the Eighth Schedule. The Government set up a Committee under the Chairmanship of the Secretary, Official Language to examine into all the aspects. The Committee had submitted its report in 1998 and inter alia recommended setting up of a high-powered body of experts from literary, academic, social and legal

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

fields to go in greater details to evolve objective criteria for the inclusion of languages in the Eighth Schedule. No criteria have been made public as yet.

Article 5(f): Right to access to public places, services (paras 134-135)

Since time immemorial, the Dalits have been denied access to public places such as places of worship, water wells etc. The Dalits faced physical attack when they tried to have access to public places and services.

On 2 May 2004, a 35-year-old Dalit named Bhagwan Mahadeo Lad was beaten up by a group of upper caste Hindus when he demanded equal distribution of water among all villagers at Shirur village in Pune district of Maharashtra. A case was registered against six persons of Nimone village under SC/ST (Prevention of Atrocities) Act and Protection of Civil Rights Act.⁹⁶

In India, it is not unusual that the Dalits are denied entry into Hindu temples. The Dalit villagers of Badhram village in Pulwal district of Haryana were ostracized by the landlords after they had offered prayers at the village temple on 20 July 2005. They were prevented from buying essential commodities from the village shops. On 11 August 2005, the National Commission for Scheduled Castes asked the Inspector-General of Police (Gurgaon range) to provide security to the Dalit villagers and submit an action-taken report within 10 days.⁹⁷

Article 6: Effective protection and remedies, through the competent national tribunals and other State institutions (paras 136-157)

a. National Commission for the Scheduled Tribes:

On paper, the National Commission for Scheduled Tribes (NCST) is a constitutional body with quasi-judicial powers. According to the NCST, among others, one of its tasks is the enforcement of various laws such as (i) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; (ii) Bonded Labour System (Abolition) Act, 1976 (in respect of Scheduled Tribes); (iii) The Child Labour (Prohibition and Regulation) Act, 1986 (in respect of Scheduled Tribes); (iv) State Acts and Regulations concerning alienation and restoration of land belonging to Scheduled Tribes; (v) Forest Conservation Act, 1980 (in respect of Scheduled Tribes); (vi) The Panchayat (Extension to the Scheduled Areas) Act, 1996 and (vii) Minimum Wages Act, 1948 (in respect of Scheduled Tribes).

To deal with atrocities faced by 84 million indigenous/tribal peoples, as of February 2007, the NCST has only eight officers: one Secretary level officer, two Director level officers, two Assistant Director level officers and three researchers. The National Crime Records Bureau of the government of India recorded 5,713 cases of atrocities against the Scheduled Tribes under the SC/ST (Prevention of Atrocities) Act. Can the NCST discharge its functions with limited staff and limited resources?

Even the NCST's 2005 Annual Report has not been placed before the parliament as yet!

b. Special Courts under the Prevention of Atrocities Act:

The government of India enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to combat discrimination and violence. The Act provided for establishment of special courts. Replying to an unstarred question no 3615 to be answered on 18.08.2005, Minister of State for Social Welfare stated that "Exclusive Special Courts have been set up in the States of Andhra Pradesh (08 courts), Bihar (11 courts), Chhatisgarh (07 courts), Gujarat (10 courts), Karnataka (07

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

courts), Madhya Pradesh (29 courts), Rajasthan (17 courts), Tamil Nadu (04 courts) and Uttar Pradesh (40 courts)".⁹⁸ The other States notified the existing courts as special courts.

As of 31st December 2005, there were 34,481 cases pending with the Supreme Court, 35,21,283 cases with the High Courts, and 2,56,54,251 cases with the subordinate courts.⁹⁹ With the lower courts facing inundation of cases, notifying the same courts as the Special Courts under the Prevention of Atrocities Act does not help in any way, not to mention about failure of the police to register cases under the Prevention of Atrocities Act, biases against the Dalits and the tribals and the lack of political will of the government.

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VIEW FROM LONDON

RASHMEE ROSHAN LALL

Is the flip side of Big Brother row Indian racism?

Hold the indignation but here's the flip side of the racially-charged row that has consumed India, Britain, much of the world and now looks likely to sink forever the reality TV show 'Big Brother' as well as the lucrative career of Shilpa Shetty's chief tormentor Jade Goody.

On Thursday, Jasvinder Sanghera publishes 'Shame'. Like 'Big Brother', many might argue it "holds up a mirror to our society", our Indian society so gloriously exported around the world via the 23-million strong diaspora. Sanghera's account challenges the foundations of our uniquely Indian sense of propriety, the cultural constraints and bullying we endorse and suffer for reasons of tradition. It exposes the depths of Indian racism, which is both distinct and damnably similar to that of the white man.

Sanghera made history in a minor key by setting up Britain's first support group for Asian women. She is the daughter of uneducated Punjabi villagers, who made the journey to Derby in England's East Midlands region but put no distance between themselves and the traditional Punjabi Big Brother- Big Boss chauvinism towards daughters and wives.

Disowned by her bullying father and mother for refusing to marry an old and ugly Punjabi villager at the age of 16, Sanghera's story is all about the "shame" that attaches to being a victim with in your own family.

After Sanghera's sister killed herself at 24 rather than expose her family to the

"shame" of publicity leaving a violent relationship, she set up Karma Nirvana, a South Asian women's project from her front room. Sixteen years later, Sanghera can look back with satisfaction on the Asian women's refuges she has been instrumental in setting up in Derby, Stoke and Burton.

But hers is a haunting, harrowing, truly horrible ac-



BIG DRAMA: Celebrity Big Brother contestants Jade Goody and Shilpa Shetty in the diary room of the Big Brother house

count that must give pause for thought to any one who has an opinion on the racially-charged bullying directed at Shetty on Celebrity Big Brother. Here are three extracts from Sanghera's book:

• "The worst thing you can say to an Asian girl is that she is behaving like a white person. We weren't allowed to mix with white people because Mum said they didn't have any morals or self-respect. She said whites were dirty people with dirty ways. That's what all the women I called Auntie thought too, and everyone else in our community..."

• "An Asian boy might have a bit of fun with white girls — 'white meat', they'd say —

while he was growing up, but when it came to settling down, his family would find him a good Asian bride. If an Asian girl went out with a white boy that was different. Her brothers or her uncles would find him and beat him up and then they would beat her, too, for bringing shame on the family. Then she would be ruined; no decent Asian

bride, uneducated, prone to almost exactly the same cultural prejudice and ignorance that allowed Goody to rant at Shetty and mock her Indian accent and behaviour. And yet, consider our fascination with skin-whitening creams. Think of every Indian mother's deep desire to find a "fair-skinned" bride for her son. Cringe at small-town India and rural Bharat's complete incomprehension should a black visitor drop by. We call black people Habshis, remember, even though they are hardly the African and Abyssinian slaves the word originally meant in pre-British India.

So, never mind Britain; just how racist are we as a society? What would happen if 'Big Boss', our own version of Celebrity Big Brother, mischievously put together a racially-varied cast of characters, including an ignorant English ladette such as Goody and an independently wealthy and successful black person who lacks a public profile in India? Would Indian 'Big Boss' contestants not behave towards the white housemate with the instinctive fawning obsequiousness that still characterizes our attitude towards white people? Would we be equally deferential to a Beyonce or an Alicia Keys? We know the answer and don't need 'Big Boss' to spell it out for us. If there are any lessons to be learnt from the controversy over Shetty's sojourn in the Big Brother house, it is this — let us hold the indignation and look deep inside ourselves.

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View From London

Rashmee Roshan Lall

Is the flip side of Big Brother row Indian racism?, The Times of India, 23 January 2007

Hold the indignation but here's the flip side of the racially charged row that has consumed India, Britain, much of the world and now looks likely to sink forever the reality TV show 'Big Brother' as well as the lucrative career of Shilpa Shetty's chief tormentor Jade Goody.

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"The worst thing you can say to an Asian girl is that she is behaving like a white person. We weren't allowed to mix with white people because Mum said they didn't have any morals or self-respect. She said whites were dirty people with dirty ways. That's what all the women I called Auntie thought too, and everyone else in our community..."

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"She (Mum) never learnt English. Dad learnt enough to get by outside, but at home we always spoke Punjabi. We ate Punjabi food, we had Punjabi mends and, although we wore our uniforms to school, we were expected to put on our Indian suits as soon as we came home. It was like you came home and shut the door on Derby and all the white people with their dirty white ways."

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It is easy to dismiss the Sanghera family's apparent belief that "whites were dirty people...with dirty white ways". This was, after all, a labourer's family, unsophisticated, uneducated, prone to almost exactly the same cultural prejudice and ignorance that allowed Goody to rant at Shetty and mock her Indian accent and behaviour. And yet, consider our fascination with skin-whitening creams. Think of every Indian mother's deep desire to find a "fair-skinned" bride for her son. Cringe at small-town India and rural Bharat's complete incomprehension should a black visitor drop by. We call black people Habshis, remember, even though they are hardly the African and Abyssinian slaves the word originally meant in pre-British India.

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Our million prejudices

Before we react to the barbs against Shilpa Shetty on *Celebrity Big Brother*, we should ask ourselves how different we are with those who live and work in our homes



FARAH BARIA

OH dear, oh dear. Hell hath no fury as an Indian scorned. No matter if the said icon has been paid Rs 3.5 crore to earn her brownie points (oops, sorry!) in a Reality TV Show.

Which, as its genre very plainly implies, seeks to expose the uncomfortable, unvarnished truths of human nature.

Well, the racial assault meted out to Shilpa Shetty on *Celebrity Big Brother* is shocking, even by Bollywood, idiot-box standards. But before we react like pained participants, let's take a closer look at those poisoned barbs.

Over the past week, Shetty has allegedly been the butt of domestic bullying by four of her white housemates — all her-bones, minor celebrities, who, apparently, can't hold a candle to her radiance. Nevertheless, they have crudely mocked her Indian accent, mispronounced her name, called her a "dog", referred to her as a "Ling Pakt", complained about her cooking, asked if she lived in a shack, and accused her of "wanting to be white."

Uncontrollable.

And yet, how different are we with the millions of men and women who live and work in our own homes? Admit it, not much. Even the most enlightened of us would hardly dream of letting our cooks join us at our dining tables. Or allow our sweepers to sit on our sofas. Or, for that matter, provide our maids with a decent bed. Now, call me insensitive if you like, but compared to this quotidian coldness, Shetty's treatment seems almost civil.

I gather mine is not a politically correct conclusion: "That's absurd!" squeaks my scandalised blood, gagging over her gaspacho. "After all, can you possibly compare a Bollywood diva to a common housemaid?" Ironically, her question is part of our problem. My answer: Pray, why not? Well, because, you see, we don't need Reality TV to prove that India is guilty of the worst apartheid the world has ever seen.

Come, now, why the worry?

■ Firstly because we see less permeability about our prejudices than most. While global racism is

largely limited to colour and nationality, here the scope for bigotry is boundless; any caste, religion, geographic boundary or ethnicity serves as a worthy target, from "Asian" and "Indians" to "Muslim" and "Malis".

■ Secondly, because our deepest injustice is reserved for our own countrymen. Think about it. If employers in the UK treated their domestic help as we do, they would probably be booked to jail by human rights groups. That's why all NRIs are so solicitous with their servants abroad. And why our own maids prefer to work with foreign expats who treat them with far more dignity.

■ Thirdly because in this country, bigotry is so woven into our social fabric that we are barely even aware of it. While the British House of Commons was quick to denounce Farah Shetty and Channel 4 promised to take the slight seriously, here petty prejudice is seldom scrutinised, much less denounced, unless of course, it spins out of control, and a riot or pogrom forces us to take notice.

■ And lastly because our bigots are rarely, if ever, brought to book. That's why Narendra Modi can put an entire genocide into a forgotten

file and continue to "work tirelessly" for the "Glory of Gujarat." That's why not a single arrest has been made fifteen years after the Bombay riot. And that's why only one politician has been convicted for inciting the 1984 Sikh pogrom.

Are Indians unique? Not really. Racism has always exemplified the dark side of human nature, as old, perhaps, as Man himself. In fact the history of the world is nothing but the history of prejudice: wars have been fought, empires built and nations forged by this very human need for superiority and ethnic supremacy.

Yet how we acknowledge and deal with our shadow side is what sets us apart as civilised beings. But, here, unfortunately, our country's record has been far from exemplary.

Don't misunderstand me. India censors, on any account, condone the racist attack on Shilpa Shetty. But at the same time, we simply cannot expect the world to respect our countrymen (and women), unless we learn to respect them ourselves.

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Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

Our million prejudices, The Indian Express, 18 January 2007

Farah Baria

Before we react to the barbs against Shilpa Shetty on Celebrity Big Brother, we should ask ourselves how different we are with those who live and work in our homes

Oh dear, oh dear. Hell hath no fury as an icon scorned. No matter if the said icon has been paid Rs 3.5 crore to earn her brownie points (oops, sorry!) on a Reality TV Show. Which, as its genre very plainly implies, seeks to expose the uncomfortable, unvarnished truths of human nature.

Still, the racial assault meted out to Shilpa Shetty on Celebrity Big Brother is shocking, even by boorish, idiot-box standards. But before we react like peeved porcupines, let's take a closer look at those poisoned barbs.

Over the past week, Shetty has allegedly been the butt of domestic bullying by four of her white housemates - all has-been, minor celebrities, who, apparently, can't hold a candle to her radiance. Nevertheless, they have crassly mocked her Indian accent, mispronounced her name, called her a "dog", referred to her as a "f...ing Paki", complained about her cooking, asked if she lived in a shack, and accused her of "wanting to be white."

Unconscionable.

And yet, how different are we with the millions of men and women who live and work in our own homes? Admit it, not much. Even the most enlightened of us would hardly dream of letting our cooks join us at our dining tables. Or allow our sweepers to sit on our sofas. Or, for that matter, provide our maids with a decent bed. Now, call me insensitive if you like, but compared to this quotidian callousness, Shetty's treatment seems almost civil.

I gather mine is not a politically correct conclusion. "That's absurd!" squeaks my scandalised friend, gagging over her gazpacho. "After all, can you possibly compare a Bollywood diva to a common housemaid?" Ironically, her question is part of our problem. My answer: Pray, why not? Well, because, you see, we don't need Reality TV to prove that India is guilty of the worst apartheid the world has ever seen.

Come, now, why the worst?

o Firstly because we are less pernickety about our prejudices than most. While global racism is largely limited to colour and nationality, here the scope for bigotry is boundless: any caste, religion, geographic boundary or ethnicity serves as a worthy target, from "mian" and "madrasi" to "mathadi" and "mallu".

o Secondly, because our deepest injustice is reserved for our own countrymen. Think about it. If employers in the UK treated their domestic help as we do, they would probably be hauled to jail by human rights groups. That's why all NRIs are so solicitous with their servants abroad. Also why our own maids prefer to work with foreign expats who treat them with far more dignity.

o Thirdly because in this country, bigotry is so woven into our social fabric that we are barely even aware of it. While the British House of Commons was quick to denounce l'affaire Shetty and

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TIMES NATION THE TIMES OF INDIA, NEW DELHI
TUESDAY, JANUARY 30, 2007

B&W shades of Indian racism

In The Indian Colour Scheme Of Things, Black Is Far From Beautiful

Jag Surtya | 705

The Big Brother controversy has launched Shilpa Shetty as an international anti-racism icon from India. This is entirely appropriate as Indians are arguably the biggest targets of racism in the world. And they are targeted not just by unlettered British yobs or boorish Australian cricketers but, first and foremost, by their own compatriots.

It's because we are so racist ourselves that we are so quick to react to a racist slur: it takes a racist to catch a racist.

And our racism is colour-coded: in black and white terms: white is intrinsically superior and desirable; black is inferior and undesirable. (The Indian media is already gleaming over the rumour that the racist and inappropriately named Jane Goody's father is supposedly black.)

In the Indian colour scheme of things, black is far from beautiful.

The colloquial word for a black person of African ori-



gin is 'babhi', an epithet as offensive as the American 'nigger', both terms derived from the days of the slave trade.

For all India's official championing of the anti-apartheid crusade in South Africa's erstwhile white regime, north India at least is steeped in colour prejudice — ask any African student who's had a taste of Delhi's campus life.

For the north Indian, fair is lovely, as those alarmingly tasteless TV commercials keep proclaiming: Don't get sunburnt, use skin whitening creams, or you'll end up dark and no one will marry you. (When did you last see a matrimonial advertisement seeking an 'attractive, dark complexioned life partner?')

Why is dark literally beyond the pale for so many of us? Is it an atavistic throwback to the supposed superiority of 'white' Aryans vis-a-vis the 'non-white' original inhabitants of the subcontinent?

Is it the result of 200 years of white rule under the British? Is a pale skin, as against a deep tan, a testimonial to social rank, aggregating those who don't have to toil under the sun from those who do? Is it an amalgam of all these?

Whatever the reason, 'chitti chatti' (fair skin) is a passport to favouring social acceptance — which might partly explain why an increasing number of Caucasians look for assignments in India, be it as MNC executives or bartenders in 5-star hotels.

Our racism is largely but not exclusively based on colour.

Caste is India's unique contribution to the lexicon of racial bigotry. Whether 'caste' — a result of cultural and social segmentation — can legitimately be correlated with 'race' — with its genetic and physiological underpinnings — is a matter of academic debate. However, as only too many horror stories testify, the average rural Dalit fares worse on the human-rights scale than her 'kafir' counterpart in the worst days of South African apartheid.

Caste apart, real or imagined ethnic traits compound our racism. People from the north-east are said to have 'chinky' (Chinese) eyes and are routinely asked if they eat dogs.

Even in so-called 'mainstream' India we sub-divide ourselves with pettiness: Panjabis, whose only culture is agriculture; stingy 'Marwatis', mercenary 'Gujjis' who eat 'bobby snakes' for tea; lazy, shiftless 'Bengalis', 'Madhasis', who all live south of the Vindhyas and speak a father 'Dhe-ye' language. In our ingrained provincialism is our much-vaunted and illusory unity.

No wonder we can't stand racism. It reminds us disquietingly of the face we see in our own mirror.

Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

B&W shades of Indian racism, The Times of India, 30 January 2007

- Jug Suraiya

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In the Indian colour scheme of things, black is far from beautiful. The colloquial word for a black person of African origin is 'habshi', an epithet as offensive as the American 'nigger', both terms derived from the days of the slave trade.

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Why is dark literally beyond the pale for so many of us? Is it an atavistic throwback to the supposed superiority of 'white' Aryans vis-a-vis the 'non-white' original inhabitants of the subcontinent?

Is it the result of 250 years of white rule under the British? Is a pale skin, as against a deep tan, a testimonial to social rank, segregating those who don't have to toil under the sun from those who do? Is it an amalgam of all these?

Whatever the reason, 'chitti chamri' (fair skin) is a passport to fawning social acceptance which might partly explain why an increasing number of Caucasians look for assignments in India, be it as MNC executives or bartenders in 5-star hotels.

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Dimensions of Discrimination in India

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Dimensions of Discrimination in India

A shadow report to 15th to 19th periodic reports (CERD/C/IND/19) of India to UN CERD Committee

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- lobby for the ratification of key international human rights instruments by the government of India;
- lobby for the withdrawal of the reservations expressed by the government of India to various treaties;
- monitor implementation of the treaties through necessary administrative, legislative and judicial measures by the government of India;
- encourage the government of India to submit its periodic reports; and
- assist effective examination of the periodic reports submitted by the government of India to improve human rights situation at national level in India

For any further details, please write to:

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