

HUMAN RIGHTS ISSUES OF MINORITIES IN CONTEMPORARY INDIA: A CONCISE ANALYSIS

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INTRODUCTION

India is today one of the most powerful developing nations. This newly industrializing state enjoys a prominent status as the largest democratic nation-state in the world. Unlike some emerging polities, it has had several successful elections without military incursions into politics. It is a nuclear power and increasingly becoming a major economic actor in this era of the "New Globalization." In spite of her impressive developments, however, India continues to confront human rights problems with respect to minorities, who in the context of this study are Dalits. They are generally members of the Scheduled castes and "assimilated" Scheduled tribes; they constituted 24.4% of the national population in the 2001 census (out of approximately 1 billion).¹

Caste classification creates amongst its citizens social strata in the country. And, this social schema determines a group's status in the socio-economic configuration of the society. Due to the peculiar features of this system, the institution has attracted many scholars to its study.² Notwithstanding the extensive scholarship on the topic, we do not have a clear explanation of the term in part because of the complexity of its practice.³ This study is not on the caste system per se; it is on the nature of the breaches of the human rights of minorities, generally exacerbated by the character of the caste structure, that this essay seeks to address. Accordingly, we shall proceed with the discourses around the following themes:

1. Situate the study within a brief theoretical framework of human rights, minorities globally and constitution;
2. Briefly discuss the cultural and historical reasons for the discrimination against the Dalits;
3. Examine relevant provisions of the national constitution, international human rights instruments and the human rights

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of minorities in the society;

4. Summarize a case study from a fieldwork conducted in the English Bazar municipalities of Malda district in West Bengal on some human rights issues; and
5. Conclude on ways that might advance the amelioration of the infractions of the human rights of minorities.

CONCISE THEORIES OF HUMAN RIGHTS, MINORITIES AND CONSTITUTION

Commonly, human rights concerns have become global in the 21st century. Condemnations of gross human rights infringements committed in the Sudan, Zimbabwe, Mexico, Pakistan, Nigeria and China, for instance, are vocally rebuked in London, Washington, Paris, Johannesburg and elsewhere by governments and human rights NGOs distressed about its infractions.⁴ Moreover, the UN often denounces human rights violations that happen in all regions of the world.

The dilemma worldwide is that all citizens—particularly minorities without political clout—don't have the benefits of human rights proclamations equally in society. Nevertheless, constitutionally and doctrinally (in religious teachings) individuals are expected to enjoy human rights because they are guaranteed in their national constitutions,⁵ provisions in the Universal Declaration of Human Rights and other international human rights instruments. Additionally, human rights dogmas are sanctioned in most theological texts and their pedagogy. Because of the unsatisfactory implementation of human rights precepts equally in society, the general call for the respect of human rights by activists continues. Also, the common desire, among human rights agents, to fight for the respect of minorities' human rights globally has gained currency. In truth, their rallying cry on behalf of those who suffer from victimization in their political, economic, religious and social milieus reached its crescendo within the last twenty years or so. The criticism of campaigners against human rights infractions is intended to bring pressure to bear on politics to change legally and politically those actions/policies that often marginalized individuals and minority groups in a system. The hope is that an emphasis on the observance of human rights provisions may result in their proper implementation resulting in peaceful coexistence in society. Arguably, the creation of such a condition might further the legitimacy of the state in the eye of individuals and groups, attenuate political instability and encourage social harmony.⁶

Notionally, a fundamental discourse regarding the respect of human rights in all societies might be examined ontologically—that is to say philosophically, what does it entail to be treated as an individual (with identical rights as the privileged in society)? Are all persons—simply because they are human beings—equal and thus must inherently enjoy equivalent rights in a society? In theory, moralists tend to advocate rights for all in a polity insisting that in such a society political stability, equality of opportunity and the “good political life” for everyone could be advanced. Realist scholars often argued that such a vision of society may only be possible on paper and in philosophy. They further contend that any assumption on the practicality of “human equality” articulated in national constitutions, human rights instruments, religious texts and preachments is delusionary. Indeed, realists aver that the pursuit of individual/group and national interests will in most instances trump human rights provisions outlined in these “sacrosanct” documents.

Historically and contextually, this whole doctrine of human equality as avowed in human rights instruments, national constitutions and a number of religious books is not only intricate but also confounding. Take, for example, the classical Greeks maintained that they were inherently superior to non-Greeks, who were not entitled to equal treatment as orthodox or “pure” Greeks.⁷ In traditional and modern Africa, aboriginal groupings such as the Twa and Baka have been treated differently and considered “inferior” to the dominant groups in Rwanda and Congo Brazzaville. It is common knowledge that political and social treatment of human species as either superior or inferior is endemic in many contemporary societies.⁸

The foregoing brief theoretical discourses and argumentations should serve as reminder of the impact of “labeling” a group as either “superior” or “inferior,” “in-group” or “out-group” and the resultant human rights violations of the supposedly “inferior” population by the “superior” in many societies. Furthermore, the minority and majority political dynamics in many communities tend to bring to the fore the problematic issues of human rights infractions particularly as they relate to the politics and marginalization of minority groups in the competition for who gets what, when and how. But what is a minority group?

According to Francisco Caportati’s explication,

[a] minority group is a [collectivity] numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being citizens of a state—posses ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving

their culture, traditions, religion or language.⁹

Human rights infringements in polities with minority groups who may not share vital characteristics with those of the dominant group/s—and who may have historically suffered from certain social and religious scars such as slavery and negative stereotypes—are rampant. These collectivities are frequently marginalized and their political plights in society are often exacerbated by their relegation to the bottom of society through the doctrine of “social closure.” Theoretically, Max Weber explained social closure as a tactic for group survival whereby social groups establish monopolies [in the control of power] in order to avoid competition with possible rival groups that could be detrimental to the “dominant” group who wishes to monopolize the major benefits in society.¹⁰ This supposition is furthered by the theory of privilege which contends that those who enjoy a position of privilege would do whatever it takes to maintain their position of advantage. The methods that are usually applied for maintaining a privileged position include demonization of prospective rivals in the competition for the position of privilege; destruction and intimidation of real or putative rivals in the struggle to maintain a position of privilege; changing the rules of the game when the dominant group’s position of privilege is being threatened, among others.¹¹ In practice minority groups, with a few exceptions, seldom have political clout in a democratic dispensation particularly in the developing nations. This dilemma for minorities is made more severe if political parties are organized along ethnic lines. Allegiance in the society tends to be centrifugal—i.e. loyalty to the ethnic group, rather than centripetal (i.e. citizens devotion to the nation-state and its policies). In the main, a country’s stability is often threatened when minority groups suffer from political, social and economic ostracism that is brought about in part when their human rights, as citizens, are violated. Be that as it may, the preceding suppositional dialogue is intended to provide a template for the proceeding analysis on the development of human rights infractions of marginalized groups in India—who are often minorities (i.e. Dalits). This analysis will also seek to demonstrate how law makers through the instrumentality of the national constitution of this country have attempted to tackle the question.

CULTURAL AND HISTORICAL REASONS FOR THE DISCRIMINATIONS AGAINST THE DALITS

Culturally, the discrimination against the Dalits has its origin in the caste system mandated by the Hindu religion. What is now called Hindu society is generally made up of four very large units which transcend specific regional associations. This scheme and practice are propagated in a variety of

widely revered Hindu sacred scriptures. It has been most commonly understood as a ranked order of precedence, with castes or idealized human callings appearing in chronological order. The Dalits are a part of the last rung (Shudra) of the order and a group called Chandalas, a group considered inferior to the above mentioned four units of the Hindu society.¹²

India's earliest expressions of caste ideals can be found in the vast body of sacred writings known as the Vedas (compiled in 2000 B.C.). According to Rig Veda, the oldest of the four Vedas, the distinction of the four castes dates back to the origins of the human race, that is to say, at the time of Creation. However, the four castes were actually thought to be established during the middle of the later Vedic era (1000-600 B.C), which marked the formation of the Aryan agrarian society. It was during this time that this myth was created and inserted into the Rig Veda.

The sanctity of caste is extolled too in the Bhagavad Gita (one of the religious scriptures of Hinduism), the great exposition of spiritual teaching which is contained within the ancient Mahabharata epic.¹³ The principles of caste as a universal law are further elaborated in the Manusmriti, an encyclopedic treatise in verse on human conduct, morality and sacred obligations. This work is most commonly known as Laws or Institutes of the mythical sage or lawgiver Manu; it was probably codified in about first century AD.¹⁴ This legal code, which from antiquity has been the most respected guide of Hindu social life, lays in substantive manner provisions about discriminations against the group now called Dalits and its exclusion from Aryan society.

Historically, when the four-fold caste system was first established, most of the people who were given the status of Shudras or Chandalas were indigenous Indians who had been conquered by the Aryans. Chandalas came into existence around the end of the later Vadic era (1000-600 B.C). During this era the Aryans, who had been mainly herders, advanced into the upper and middle reaches of the Ganga basin and formed an agrarian society. There is no doubt that the idea of slaughtering of animals and related occupations practiced by the Dalits being 'impure' and forbidding contact with people engaged in them did not arise from the customs and beliefs of pastoral life. Meat and milk of the pastoral animals are the main food source of a pastoral people. But when these pastoral people transform themselves into agrarian people, these very animals are needed for tilling the agricultural field. Thus, there might be very close relationship between the origin of caste-based discriminations against the Dalits and the formation of agrarian society.

There is another explanation why the ancient Indo-Aryan people considered those people (the present day Dalits) associated with killing animals as social outcasts. Re-birth is a part of Hindu religious belief system. 'Soul' is

immortal. No power can destroy the 'soul'. Death only destroys the body. Re-birth is the transmigration of 'soul' from one body to another one. It seems that the general acceptance of ideas concerning the transmigration of 'soul' resulted in trends towards hatred against killing living things and eating the flesh of animals.

The later Vedic era was also a time when the uppermost caste, Brahmins, secured the top position in society by virtue of their monopoly of priesthood. A rough, 'primitive' ideological distinction between purity and pollution developed to the point of fanaticism among the Brahmins, who used such ideas to legitimize their supreme position by stressing their own purity and sanctity. This emphasis on purity gave rise to people on the opposite end of society who were considered to be impure. The Muslim invasion of India in the Middle Ages followed by the British and other Europeans further contributed to the rigidity of caste system.¹⁵ The caste system still exists in India, hence the discrimination against the Dalits. The age old deprivation of the Dalits is evident in Indian state structure.

Politically, India has been a democracy since the 1950s, but until the 1990s, the ruling elite – whichever the party in office – came from the same dominant classes and the caste.¹⁶ The Indian Civil Service, responsible for policy implementation and lower level decision making, mainly represents the upper castes. Despite 22.5 percent seats being reserved for the Scheduled Castes and Scheduled Tribes (Dalits), only 4.5 percent of the civil servants actually came from them.¹⁷ Ditto this supposition for the law enforcement officials and judges.

NATIONAL CONSTITUTION, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND HUMAN RIGHTS OF MINORITIES

Theoretically, the use of constitutions to delineate how a state is to be governed in order to check on the possible malfeasance of officials of a government, in the hope of advancing a good governance system, is often promoted in most systems. Yet, many political actors seldom show enthusiasm in the enforcement of human rights principles contained in national constitutions especially if such provisions work against their self/group interests.¹⁸ In any case, what exactly is a constitution? Jan-Erik Lane¹⁹, in *Constitutions and Political Theory*, contends that a constitution is "a compact document that comprises a number of articles about the State, laying down rules which State activities are supposed to follow. Whether these rules are obeyed or implemented is another matter." Jack C. Plano and Milton Greenberg defined a constitution as "a fundamental or 'organic' law that establishes the framework of government of a state, specifies the powers and duties of governmental agencies, and establishes the relationship between the

people and their government.”²⁰ Also, it is defined as a document that outlines the manner and nature of interactions between the government and the people...that establishes the institutions and structures with which to govern effectively—in particular, a polity.²¹

The context and content of a constitution can be intricate or straightforward given the socio-cultural specificity of the polity in which the legal document is crafted. Within this circumstance, debatably, it might be difficult to write about an explicit theory of constitutions.²² Accordingly, “what there is, [supposedly], is a set of ideas, concepts and models drawn from various disciplines that refer to constitutions, either the constitutions of the many countries in the world or some ideal constitution”...²³ Even though constitutional theory seldom possesses a core of established doctrines, it remains a subject of major inquiry and discourse especially since some aspects of constitutional theory deal with the difficulties of how countries are actually governed.

Moreover, there is often a contradiction arising from the whole issue of constitutions because although they might be critical for the peaceful governance of a society, hypothetically speaking, they can also be problematic in their application/s. The dilemma one confronts on the constitutional question in India flows in part from the postulation that if constitutional provisions on human rights (of minorities) in the constitution are fully implemented, they might impinge upon the social and political interests of powerful individuals and groups in the polity.

Historically, modern India gained its Independence on August 15, 1947; it was created from British East India. Following India's Independence in 1947, the Constituent Assembly, set up as a result of negotiations between Indian leaders and members of a British Cabinet Mission in 1946,²⁴ deliberated over the precise nature of the constitutional future of India. On January 26, 1950, India became a Republic, and the constitution of India was promulgated.²⁵ It contained provisions that dealt with politico-social features of how the society is to be governed with substantial and adequate provisions aimed at protecting the human rights of all citizens as illustrated in Table 1 on the next page.

Ordinarily, the contents of the preceding provisions of the constitution in Table 1 should be sufficient in tackling the human rights quandary of minorities in society if strictly enforced. Comparatively, the republic's founding principles of secularism ruled out the possibility that India would follow the path of Pakistan that identified Islam as the state's official religion.²⁷ Despite efforts of some contemporary Hindu “powerbrokers” to make India a Hindu state, the Indian National Congress, vanguard of the national freedom movement, held the view that the solution to India's mosaic of acute ethnic,

Table 1
Some Provisions in the Constitution relating to the Dalits and Human Rights

Articles	Provisions
Article 14:	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15:	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16:	(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
Article 17:	“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability rising out of “Untouchability” shall be an offence punishable in accordance with law.
Article 46:	The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes , and shall protect them from social injustice and all forms of exploitation.

Source: *The Constitution of India, 1949*²⁶

religious, cultural and caste divisions lay not in perpetuating these existing distinctions, but in transcending them in favor of secularism, nationalism and equality of opportunity for all. Accordingly, several articles were included in the constitution of 1949 aimed at mollifying centuries of subordination, discrimination and oppression²⁸ of marginalized minority groups in the system. Further, in conformity with Prime Minister Jawaharlal Nehru’s vision of India as a casteless and “egalitarian” nation-state, the 1950 constitution was framed around the concept of Fundamental Rights of the citizens.²⁹ These rights were and are deemed to inhere in the individual, rather than caste or ethno-religious communities. Within the context of the foregoing contemplation the

constitution abhors discrimination against minorities as stated in Article 17. Also, the constitution makes special provisions for uplifting such collectivities—in the case of this study, the Dalits or “Scheduled Castes and Scheduled Tribes.”

The democratic ideal, as affirmed in the governing principle of the preamble of the national constitution, emphasizes equality for all citizens irrespective of their social and caste affiliations. But how does the constitution address the issues of the Dalits within the caste configuration? The central objectives of the Constitution (as amended in 1976) are stated in the preamble, which proclaims in unequivocal terms the ideals of **Sovereignty, Democracy, Republicanism, Secularism and Socialism** as the polity’s cherished goals. It also pledges to secure **Justice, Liberty, Equality and Fraternity** for the country’s citizens. Indeed, justice, liberty, equality and fraternity persistently proclaimed as the inalienable rights of man, are (on paper) guaranteed by the constitution. Nevertheless, an inadequate implementation of the above constitutional provisions constitutes a problem in the governance of the society as they relate to the human rights of minorities.

It is striking that the constitution took a bold step in introducing universal adult suffrage, in spite of, or because of, the prevalence of an overwhelming illiterate population among the Dalits in hopes that adequate education could further the spirit of harmony in the community. Indeed, Part III of the constitution deals with Fundamental Rights. And suffice it to say that the proceeding discussions which address the issue of the caste system and minorities are part of the Fundamental Rights guaranteed to all citizens. They augment the provisions outlining the rights of all citizens noted in Table 1. The Fundamental Rights, with certain limitations, are also protected by the High Courts and Supreme Court of India. In fact, the Supreme Court and the High Courts (as a unified judiciary) can issue writs if citizens’ Fundamental Rights are violated. Articles 14-23 of Part III of the national constitution guarantee the non-discriminatory role of the state as Fundamental Rights of the citizen. Under Scheduled Castes and Scheduled Tribes (Articles 243D and 243T), the constitution calls for the provision of seats for these minorities in rural and self-governing areas. Similarly, Articles 330 and 332 respectively provide for preservation of seats for them in the national Parliament and the State Legislative Assemblies in order to assimilate these minorities into the political system.

To expedite the integration into the polity project, as it were, Article 335 states “that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, constantly with the maintenance of the efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

Additionally, the Indian Parliament passed a number of laws to protect minorities. The Anti-Untouchability Act of 1955 (renamed in 1976 as Protection of Civil Rights Act) and Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act of 1989 were designed and proclaimed to protect the human rights of the Dalits.³⁰ As part of affirmative action—sometimes dubbed “positive discrimination”, the national government as well as every state government in India was encouraged to reserve 22.5 percent of their seats in all public employment and state-funded educational institutions for minorities.³¹

Arguably, the above tenets in the constitution suggest that the crafters of this legal document addressed the importance of the respect of the human rights of all Indian citizens. Despite the aims of these articles and acts, however, the infractions of the human rights of minorities still persist. This development implies that it is one thing to promulgate laws forbidding human rights infringements in society and quite another to implement legislation that could curtail such breaches particularly when they run against the interests of powerful groups in a polity.

In a real sense, human rights problems are mondial; thus, India is not an exception to the predicament of inadequate implementation of human rights dogmas. By and large, in many polities human rights problems are mainly of concern to members of the informed public who comprehend the negative effects of such issues on society. Put in another way, an understanding of the rudiments of human rights principles, enshrined in the national constitution are not fully understood by the masses of a minority group. Therefore, minorities are less likely to use such human rights laws to claim their rights. But, in order to promote peaceful coexistence in India may require the respect of the human rights of all citizens³²—particularly those of minorities.

To recap, human rights are literally the rights one has simply because one is a human being.³³ They are thus “moral” rights of the highest order. Like other social practices, human rights arise out of human action. Some academics argue that they are not given to man by God or nature, or the physical facts of life. Human rights represent a social choice of a particular moral vision of human potentiality, which rest on a particular substantive account and observations of the minimum requirements of a life of dignity.³⁴ Theologically, too, if all human beings are created equal by God, *ipso facto* they ought, arguably, to enjoy rights equally. The foregoing suppositions aside, it may be contended that any form of violation of human rights denies one’s humanity; they keep one from satisfying one’s needs within the rule of law. Moreover, individuals desire human rights not only to advance those things “needed” for a life of dignity, for a life worthy of a human being... but also a life likely to enhance political and social stability in society.³⁵

Human rights point beyond actual condition of existence; they are less

about the way people are, in the sense of what has already been realized, than how people might live, a possibility that may be viewed as a deeper moral reality imagined or constructed or both. The Universal Declaration of Human Rights tells us little about what life is like in most countries, but it sets out minimum conditions for the furtherance of a dignified life. Without the creation of a milieu that is conducive for the enjoyment of human rights, one may philosophically be estranged from one's nature—"moral" nature, that is. Thus human rights are regularly held to be inalienable, not in the sense that one cannot be denied the enjoyment of these rights, for every repressive regime daily alienates its people from their human rights; but in the sense that losing these rights may be morally reprehensible, one cannot lose these rights and "live worthy" of a human being at least in human rights viewpoint.³⁶

Internationally, the 1948 Universal Declaration of Human Rights and other international human rights covenants encompass a wide range of personal, legal, civil, political, economic, social and cultural rights. This list is further supplemented in a variety of single issue treaties and declarations on such topics as genocide, political rights for women, racial discrimination and torture to mention a few. And it is generally accepted by many students of human rights and activists that these rights form a web of an interdependent and interactive system of guarantees, rather than a menu from which agents and agencies of a government may freely pick and choose.

The standard practice of states is to speak of, and in a limited sense treat, the norms of the Universal Declaration of Human Rights and other human rights covenants as binding.³⁷ Yet, ironically, states tend to refuse international enforcement—or even monitoring—of their performance in living up to these obligations, basing their reluctance and refusal to do so on the tenet of Article 2, paragraph 7 of the UN charter that forbids interference in the internal affairs of a member nation. Indeed, this principle states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter...³⁸

Many societies have socio-economic hierarchies, (for example, Upper, Middle and Lower class), within which groups tend to perceptually and "strategically separate" themselves from one another in the social structure. Hereditary and occupational stratification are common in some. But the combination of separation, division and hierarchy in the Indian case makes the caste arrangement unique to South Asia. The boundaries between castes are maintained by detailed rules of ritual purity. In this hierarchical system contact

with, in some instances even sight of, lower castes is discouraged; moreover, intimate contact especially in marriage or communal meals is taboo.³⁹ Birth, according to the Hindu theory of incarnation, is a reflection of moral justice or order. Caste hierarchy is, accordingly, the expression of sacred justice. Social status was seen as not accidental, invented and constructed but as part of the natural fabric of the universe.⁴⁰

In this setting, the character and practice of the caste system and human rights precepts are radically incompatible. This view is held onto by many students of human rights and activists who contend that human rights “derive from the inherent dignity of the human person;” and these rights flow from international human rights covenants. It is often averred in these human rights treaties that each person has an inherent dignity and worth that arises simply from being human. Accordingly, each person has the same basic dignity, and human rights should be held equally by all. Furthermore, human beings in their worth and dignity are fully distinguishable from the rest of creation. The caste formation, as it relates to minorities in Indian society, denies the equal worth of all human beings.⁴¹ This circumstance in the society that flouts human rights provisions contained in the national constitution remains a focal point in this disquisition.

CASE STUDY FROM A FIELDWORK CONDUCTED IN THE ENGLISH BAZAR MUNICIPALITIES OF MALDA DISTRICT IN WEST BENGAL ON SOME HUMAN RIGHTS ISSUES

There are approximately 160 million Indians, in a population of about 1 billion, regarded as Dalits. They are minorities who put up with bigotry every day in many ways.⁴² In fact, the gravity of this prejudice was serious enough to educe a candid statement on this matter from Prime Minister Monmohan Singh on December 27, 2006. He declared that:

Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups [globally]. The only parallel to the practice of untouchability was apartheid.⁴³

In the following pages, we shall discuss how the human rights of Dalits (which translates to the “oppressed” in English), are often breached; in particular, we shall explain these infractions within the context of a research conducted in August 2008 in West Bengal. More importantly, we shall allude to and explain how the caste structure violates major provisions of Indian constitution as well as some international human rights tenets; the terms minorities and Dalits are applied interchangeably.

In the course of the fieldwork 35 members of the “Dom”⁴⁴ community

were interviewed between 3 and 11 August, 2008. Traditionally the word "Dom" in Bengali lingo is pejorative. In fact, the last names of most Dalits are depreciatory and used unflatteringly in many Indian languages. In 1933 Mahatma Gandhi coined the term 'Harijan' to replace the word untouchable. "Harijan" basically means "People of God."⁴⁵ Many of those interviewed had actually changed their last name from "Dom" to "Harijan," while others have retained their original one. The result of the fieldwork is summarized in Table 2 below.

TABLE 2

		YES	NO	DON'T KNOW
1	Can you rent/buy a house outside your community's locality?	0 (0%)	30 (85.7%)	5 (14.3%)
2	Do you have access to movie theatre?	35 (100%)	0 (0%)	0 (0%)
3	Do you face discriminations in grocery stores?	16 (45.7%)	12 (34.3%)	7 (20%)
4	Do you have access to the homes of upper caste people, except for the purpose of cleaning the restrooms?	9 (25.7%)	24 (68.6%)	2 (5.7%)
5	Can you choose any job you like, other than cleaning toilets/sweeping?	4 (11.4%)	25 (71.4%)	6 (17.2%)
6	Can you get married to someone outside your community or caste?	0 (0%)	32 (91.4%)	3 (8.6%)
7	Do you/your kids face discriminations in school due to your caste?	19 (54.3%)	0 (0%)	16 (45.7%)
8	Are you ever discriminated against by the police/public officials due to your caste?	31 (88.6%)	4 (11.4%)	0 (0%)

Generally, an important aspect of discrimination toward the Dalits in the country is geographical separation. In both urban and rural areas a majority of these minorities are isolated and huddled together.⁴⁶ Although there is no *de jure* policy of segregation, Dalits are subject to *de facto* seclusion in most spheres, including housing, enjoyment of public services and education on the basis of their social status in the polity. Minorities are prohibited from using water fountains and other public resources and facilities used by the upper castes. In a major survey of 11 Indian states on the prevalence of prejudice toward these minorities in the countryside, it was found that they were denied entry into upper-caste homes in more than 50 percent of villages studied.⁴⁷

In relation to spatial and social segregation of this group, the field study confirmed the preceding observations. Almost all the colonies visited at the town of English Bazar were located on the outskirts of the town (with the exception of two); the colonies lack basic amenities of life. Twenty six families, a total of 185 people, lived in a colony at the center of the town with only two public restrooms that were constructed by the municipality.⁴⁸ The drains were overflowing with filth; pigs wallowed in stagnant muddy water and the healthcare condition was, overall, deplorable. Living in such squalor affects the perceptions that society has of these minorities.

There is little wonder, then, that in Table 2 68.6% of Dalits interviewed said they had no access to the homes of the upper caste people other than to their restrooms as maids. More than 85% could not rent a house in the upper caste district. Nageswar Harijan, a 43 year old man and sweeper in the Government Health Department averred: "No, no one in upper caste area will rent us a house. Discrimination still prevails. Even we cannot rent a community hall if we wanted to organize our wedding party there. We are ready to pay the full rent, but on several occasions we have been denied."⁴⁹

They also face discrimination in public markets. They own small grocery shops, sometimes in a small porch in front of their tin roofed shack. Business is conducted within their community. Indeed, 45.7% of the interviewees confirmed that they were actually discriminated against in grocery stores. Rekha Harijan, a 45 years old female sweeper affirmed: "We generally do not go outside to buy our grocery... When we go to the public market, the shop keepers ignore us when they get some "gentle" customers. We can buy only after the "gentle" customers have been served..."⁵⁰ Although 100% of the interviewees said that they have access to cinema halls, some of them faced implicit discrimination in places like cinema hall.

The above concise sketches of bigotry toward minorities violate the basic Fundamental Rights of these citizens of India as guaranteed by the Constitution (Articles 15 and 19).⁵¹ In fact, Article 15(2) guarantees that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with

regard to access to public places. Article 19 (e) guarantees a citizen the right to reside and settle in any part of the territory of India.

Restricting these minorities to a segregated zone also violates provision of the Universal Declaration of Human Rights (UDHR). Article 13 (1) of UDHR affirms: "Everyone has the right to freedom of movement and residence within the borders of each state."⁵² Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination avows unconditionally that: "State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."⁵³

India is a signatory to the aforementioned documents, but her periodic reports fail to provide adequate information about segregation in its system; in fact, it lobbied against the inclusion of any references to caste discrimination, or discrimination on the basis of "work and descent," in the final conference documents at the 2001 Durban conference against "Racism, Racial Discrimination, Xenophobia and Related Intolerance."⁵⁴ The strong endorsement of the final communiqué issued at the Durban conference was ironic in light of the infractions of the human rights of minorities in India.

Violence committed against the Dalits is another form of discrimination, and its practice is not novel in the society.⁵⁵ It is an established technique adopted by the dominant forces in the country to reinforce their power and assert their culturally constructed superiority. These events of violence have greater significance as they generally occur when the privileged feel threatened by minorities seeking basic human rights and equality.⁵⁶

The fact that the government passed a law named Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 is an acknowledgment that violence is being committed on minorities. The official statistics for the decade 1990-2000, show that a total of 285,871 cases of various crimes were registered countrywide of which 14,030 were reported under Anti Untouchability Act of 1955 and 81,796 under the Prevention of Atrocities Act of 1989. These figures suggest that an average of 28,587 cases of atrocities were registered every year in the 1990s. These crimes include 553 cases of murder, 2990 of grievous hurt, 919 rapes, 184 kidnappings, 127 robberies, 456 arsons, 1403 of caste discrimination and 8179 of atrocities. In other words, every hour more than three cases of violence against Dalits were registered, and every day three cases of rape and at least one murder were reported.⁵⁷

This problematic development might be only the tip of the iceberg because in many instances as reported by different human rights groups, the police seldom report the cases of Dalits' violence against the upper caste citizens⁵⁸ probably because it was and is considered to be inconceivable, if not sacrilegious, for this to occur. Article 3 of the Universal Declaration of Human

Rights affirms that everyone has the right to life, liberty and security of person. Article 6 (1) of the International Covenant on Civil and Political Rights provides that every human being has the inherent right to life, this right shall be protected by law and no one shall be arbitrarily deprived of life.⁵⁹ Article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.⁶⁰ These provisions in the above mentioned conventions are violated when felonies are perpetrated on Dalits. Arguably, it is not the state itself that carries out the atrocities; put in another way, it is agents in the institutions of the state that are culpable for human rights infractions of minorities in the polity. Even so, the state's inability to curb the continued oppression of this group is an example of the lack of real commitment to the cause of respecting the human rights of minorities in the society.⁶¹ Although it was not possible in the English Bazar study to ascertain the types of violence committed against the community, 88.6% of those interviewed expressed a sense of physical insecurity due to their denial of access to the local police station.

The study also showed that most of the Dalits, in reality, didn't have access to the criminal justice system or any government office. Thus, they have absolutely no faith in the police force. Mithun Harijan, 54 years old, noted: "Police never listens to us. We cannot read or write; hence we cannot write the complaint they want. They promise to come, but never come. Even if they come, they will just take a stroll around the colony and go away. They never take any action."⁶² Sometimes the government officials demand bribes from them when they request basic services. For example, when queried about the issue, one 46 years old Ranjit Dom said: "I went to the food department. They did not allow me to enter the officer's room. All the other [higher caste] had access, but I didn't."⁶³

Nationally, it has been recorded by human right agencies that one of the principal ways in which the human rights of minorities to equal treatment before the law is denied is through the poor quality of prosecutions under the Protection of Civil Rights Act and Prevention of Atrocities Act, 1989. The government of India in its 2001-2002 report noted this failure in its annual report on this Act. It stated that in 2002 only 2.31% of cases brought before it by "Untouchables" resulted in convictions.⁶⁴ The low rate of convictions, compared with the high number of crimes reported against Dalits, exemplifies how prosecutors, other organs of the justice system and the judiciary tend to deny minorities equal protection under the law.

Also, Dalit women often marginalized in the society and caste structure are susceptible to violence, and are also vulnerable to the infringements of their rights to equal treatment before the judiciary.⁶⁵ Cases

documented by the National Commission for Women, Human Rights Watch, local and national women's rights organizations, and the press, show a systemic pattern of violation and sexual attacks on them⁶⁶ and these women are less likely to seek redress in the courts.⁶⁷ They are, in a sense, doubly victimized—first at the hands of their attackers, and then at the hands of a judicial system or the law enforcement agency that is ineffective at offering them protection because they lack political clout in the society.

All the women members of the Dalit community interviewed in the study displayed a deep distrust for the criminal justice system. When asked about the attitude of the law enforcement agencies, they almost unanimously confirmed that they were discriminated against because of their caste. Manju Dom, a 42 years old housewife, narrated her experience at the local police station thus: "The police do not let us enter into the station; taking complaint is almost impossible. They kick us from the Police Station."⁶⁸ A 53 years old lady, Mansu Dom, was rather poignant in her narrative: "Policemen drive us away by using slang language. They never allow us to enter the Police station. They say that we drink country liquor and fight. But, sir, everybody does not drink; it depends upon your income. As we are doms (Untouchables), it is a natural conclusion that we are always drunk. So we are not allowed to lodge complaint with the police..."⁶⁹

The denial of the right to work and free choice of employment, another component of discrimination, lies at the very heart of the caste system.⁷⁰ Manual scavenging, with its attendant dehumanizing tendencies, is a caste-based occupation. They are often denied the right to choose another profession that could enhance their prestige in the polity. Accordingly, Dalits' talents, merits and hard work are of little consequence in a system where occupational status is determined by birth. They are often compelled to work in "polluting" and degrading occupations and are subject to exploitative labor arrangements such as bonded labor, migratory labor, and prostitution. Their children are also vulnerable to child labor and low wages by private employers.⁷¹ Little wonder, then, that 71.4% of those interviewed said that they could not be hired in a more prestigious or profitable profession. Such was the case of a 32 years old man, Nupur Harijan, who said that: "I once worked in a hotel. One day when the owner came to know that I am a harijan (Dalit), he sacked me."⁷²

Article 23(1) of the Universal Declaration of Human Rights states that: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."⁷³ So, the denial to free choice of employment is a violation of this important human rights provision. This policy also violates Article 19 (g) of Indian Constitution that guarantees a citizen's right "to practice any profession, or to carry on any occupation, trade or business."⁷⁴

Article 5 (e) and (i) of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the enjoyment of "the right to work, to free choice of employment, to just and favourable conditions of work, to equal pay for equal work, to just and favourable remuneration."⁷⁵ India is a signatory to this document; yet, it does not enforce these rights for its minorities.

Moreover, the practice of *devadasi*, in which a girl, usually before reaching the age of puberty, is ceremoniously dedicated or married to a deity or to a temple continues in several southern states including Andhra Pradesh and Karnataka. Literally meaning "female servant of god," *devadasis* are usually recruited from members of the Dalit community.⁷⁶ Once dedicated the girl will be unable to marry, forced to become a prostitute, and often auctioned into an urban brothel. This age-old custom continues to legitimize sexual violence against this grouping. According to a Human Right Watch Report in 1992 an estimated 50,000 girls were sold every year to Hindu organizations that are involved in the *devadasi* system.⁷⁷ This practice is in violation of Article 4 of the Universal Declaration of Human Rights that declares: "No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms."⁷⁸ Additionally, Article 23 (1) of the Constitution of India states that: "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."⁷⁹ Article 8 (3) (a) of the International Covenant on Civil and Political Rights states that: "No one shall be required to perform forced or compulsory labour."⁸⁰ The preceding provisions in both international human rights documents and national constitution that aim to advance the human rights of all citizens are not always upheld especially with respect to Dalits.

Rigid norms of "purity and pollution" are socially enforced through strict prohibitions on marriage and other social interaction between castes.⁸¹ In virtually all parts of India strong social barriers remain in place against marriage between lower and higher castes even in such a cosmopolitan city as Mumbai in 2001.⁸² The consequence for violating such an "order" or "tradition" could be severe; it could result in public lynching.⁸³

Article 16 (1) of the Universal Declaration of Human Rights proclaims that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family and they are entitled to equal rights in marriage and its dissolution.⁸⁴ Article 23 (2) of the International Covenant on Civil and Political Rights avers: "The right of men and women of marriageable age to marry and to found a family shall be recognized."⁸⁵ Article 5 (d) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination makes it obligatory to the State Parties to guarantee to everyone, without distinction as to race, color, or

national or ethnic origin, the right to marriage and choice of spouse.⁸⁶ Also, inter-caste marriages were written into law in India by the Special Marriage Act of 1872 and recognized by the Hindu Marriage Act of 1955.⁸⁷ But these legal provisions are no match to the social taboo associated with lower and higher caste marriages.

The Dalits are regularly discriminated against in the area of access to education. High drop-out and lower literacy rates among minorities have been simplistically characterized as the natural consequences of poverty and underdevelopment. Though these high rates of pupils dropping out of school are partly attributable to the need for the children of this group to supplement their family incomes through labor, more insidious and less well-documented is the discriminatory and abusive treatment confronted by these children from their teachers and fellow students.⁸⁸ A majority (54.3%) of the interviewees in the aforementioned case study alleged prejudice in public school. A 21 years old man, Suraj Dom, who was in school up to the 9th grade, narrated such discriminatory behavior of the teachers in the following words:

If I could not answer any question, the teacher would say, "This boy is a dom (untouchable); education is not for them." I had a teacher who would often say to me, "What will you do with education? Job of a sweeper is reserved for you in your municipality."⁸⁹

Despite state assistance in primary education, they continue to suffer from an alarming drop-out rate. According to reports of the National Commission for Scheduled Castes and Scheduled Tribes' 1996-1997 and 1997-1998, the national drop-out rate for Dalit children was 49.35% at the primary level, 67.77% for middle school, and 77.65% for secondary school.⁹⁰

It is now almost six decades since India's constitution promised free and compulsory elementary education for all children up to the age of fourteen—with special care and consideration given to promoting the educational progress of Scheduled Caste (under provisions of Articles 45 & 46).⁹¹ The record so far has been relatively dismal as illiteracy continues to plague this population more than it does the general population.⁹² For instance, the 2001 census showed that the rate of literacy was 50.89% among the Dalits.⁹³

Most of the government schools in which Dalit students are enrolled are deficient in basic infrastructure, classrooms, teachers, and teaching aids. The fact that these children were subjected to inferior quality of education, discriminatory behavior by their upper caste teachers and students has been widely acknowledged by different human rights organizations.⁹⁴ Moreover, that no child in India can be discriminated against in partially or fully state funded

educational institution on the ground of caste, creed, color, religion or sex is guaranteed in the Indian constitution under Cultural and Educational Rights (Articles 29 and 30).

In spite of the foregoing human rights breaches and constitutional provisions guaranteeing rights to education, this group continues to put up with discriminatory practices. In view of the contradictions in the application of human rights as they relate to minorities in the caste arrangement and application, the basic question is: what is to be done to ameliorate and possibly eliminate these violations? Concise answers to this query will form the basis of our concluding analysis.

CONCLUSION: WAYS TO AMELIORATE THE HUMAN RIGHTS INFRACTIONS OF MINORITIES

Discussion on solutions to the human rights dilemma of this grouping in society may be visualized from two fronts. The first is religious and the second political. Let it suffice to say that it is a *fait accompli* that the issue of untouchability as a way of life in the overall caste formation⁹⁵ is furthered by the theory of privilege—i.e. those in a position of privilege, and enjoy its fruits, will not give it up without a resistance. Thus, as long as the caste structure is rooted in the culture and religious beliefs of the dominant class who stand to benefit from it, this system that marginalizes the Dalits is likely to remain intact for some time to come⁹⁶ and may be eradicated gradually through education and moral persuasion.

At the socio-religious level, the entrenchment of the caste configuration in the republic issues from the fact that the practice has been in vogue for several centuries nurtured by Hindu religious beliefs and teaching.⁹⁷ That this discriminatory practice is arguably archaic is a given in modern deliberation. The question today is on how to carefully change a philosophy that states that some groups are “theologically” superior and others are inferior. By way of comparison, India is not unique in the application of this religious precept. For a long time, the Dutch Reform Church (DRC) in South Africa preached that blacks were “inferior” to whites in order to advance their interests and survival as a privileged class. But that same DRC has since renounced this doctrine in favor of an all-inclusive and non-racial society. In the Indian case, however, the discourse rests on ways to convince the religious (and other) purveyors of the philosophy to change the practice of rigid class differentiation. This argument is important not only because the practice infringes on the constitutional and human rights of fellow citizens, but arguably anachronistic in the 21st century.

To resolve this issue, then, we argue for the formation of a powerful political and religious movement to tackle the predicament. In particular, the

strategy should center upon ways to advance the human rights of disadvantaged minority groupings. It is possible that what India needs today is a charismatic socio-political reformer of the Mahatma Gandhi's hue with a strong political support base and the will to fight for the abolition of the caste system. Such a movement for reformation should have its taproot within the Hindu religion because of its power in Indian society.

A second flank in the struggle toward implementing the human rights of Dalits in the society may be pursued within the framework of state power and its constitution. In short, the state can "simply" enforce human rights laws in this legal document. For example, under Article 17 untouchability is prohibited; and to give effect to this Article, Parliament enacted the Untouchability (Offences) Act of 1955. Further to strengthen the provisions of this Act, it was amended in 1976 and renamed the Protection of Civil Rights Act, 1955 [PCR Act] and under this Act, the government of India also enacted the PCR Rules of 1977.⁹⁸ These rules were meant to add more power to attempts at eradicating discriminatory policies toward marginalized minorities. Most of these constitutional provisions and laws have been in force since 1950s, but they lack proper implementation. The reason is that, as mentioned earlier, the Indian political elite and civil servants represented the upper classes/castes till 1990s and lacked the political will to redress the problems of the disadvantaged. Even today, the Indian political class is a unique cadre of policymakers determined to promote their insular interests. As Tharoor has rightly pointed out, "In having to operate the levers of Indian democracy, he [the Indian politician] had lost sight of where he had intended the engine to go."⁹⁹ As more Dalit politicians become part of the Indian ruling elite, it can be hoped that these laws and constitutional provisions would be implemented.

In addition to empowering law enforcement contraptions already on the books for assailing human right abuses, the state needs to undertake a number of welfare schemes to ameliorate the poor condition of these minorities and bring them into the mainstream of economic development. Dalits are subject to crimes mostly in rural India where a sort of feudal land system still prevails.¹⁰⁰ In some states of India such as Bihar and Tamil Nadu human rights atrocities are committed on Dalits who are often landless and work as agricultural laborers with inadequate compensation for their labor.

The government can, to a large extent, be successful in dealing with this problem if a program of land reforms is initiated. Land reforms may involve fixing a ceiling on land holding and distributing the surplus land among the landless. Such a plan may work to lessen the distressed condition of the Dalits. States like West Bengal in India has successfully implemented such land reform schemes that have led to poverty alleviation.¹⁰¹

Additionally, the government of the day needs to undertake several poverty reduction projects that could economically benefit the disadvantaged

minorities so that the contemporary fruits of India's economic growth can trickle down to the poorest of the poor. In this way, the Dalits might be able to send their children to school, and they could add to the poll of a skilled labor force imperative in the country's contemporary astounding development projects.

The State and its lawmakers should strive to broaden scientific education that inculcates the values of equality among the youth through the public school system; government should educate the polity on Indian constitutional provisions on human rights and international human right instruments because they are critical to advancing peaceful coexistence among the socio-ethnic montage in the polity. Indian federal government could use its massive apparatus, known as Information and Broadcasting Department, to disseminate information that can be put to use in educating the masses on the values of the respect for human rights—particularly the human rights of marginalized citizens. Finally, the power of non-governmental organizations and India Human Rights Watch should be strengthened. They should be given adequate authority with which to monitor and enforce human rights legislation and provisions contained in the national constitution and international human rights texts. In this way, India might be able to lessen this itchy problem and continue with her inspiring development agenda. But these possible developments would depend on the political will of the governing elite with the active participation of Dalits in the democratic process. Such a collaborative and mutual enterprise might work in the direction of redressing the problems of the disadvantaged minority community and promotion of peaceful coexistence critical to catapulting this industrializing society to its zenith in the 21st century.

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