

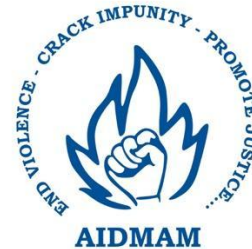
**Joint Civil Society Contribution to the
Committee on the Elimination of Racial Discrimination (CERD)
For the adoption of the List of Issues Prior to Reporting on India**

104th Session

9 - 25 August 2021



Dalit Human Rights
Defenders Network



International Dalit Solidarity Network



Dalit Human Rights Defenders Network
National Council of Women Leaders
National Dalit Movement for Justice (NDMJ)
International Dalit Solidarity Network

AIDMAM
National Campaign on Dalit Human Rights
(NCDHR)
Minority Rights Group International

Introduction

Despite the abolition of untouchability enshrined in the Indian Constitution,¹ and a constitutional formal prohibition of discrimination on the ground base of race or caste, under the Constitution,² Dalits and other communities affected by discrimination based on descent, including Adivasis, still face *de facto discrimination*. In legal and constitutional terms, Dalits are known in India as “scheduled castes”. Adivasis is the collective name used for the many indigenous peoples of India, officially termed ‘scheduled tribes’, though this term varies in application to groups across states and regions and may exclude groups that could be considered indigenous.

Issues and Questions

Article 1 – Definition of Racial Discrimination

Despite the consistent position held by the Committee, by UN Special Procedures and by the OHCHR, India has regularly contended that discrimination based on caste cannot be considered racial discrimination, most recently, in July 2020.³ As a consequence, India often fails to submit information to relevant monitoring bodies on the situation of Dalits.

The lack of disaggregated data on the basis of caste, tribe and language hinders the extent to which the Government can design effective policies to ensure the reach of all the human rights contained in its Constitution. This obscures the extent to which the Committee can satisfy itself of the extent to which racial discrimination remains a structural ground for access to rights within the remit of Art. 2(1), especially for Dalits and Adivasis (besides religious minorities), under groups within the direct purview of the Committee’s review.

During its latest review of the country in 2007, the Committee had regretted “the lack of information in the State party’s report on concrete measures taken to implement existing anti-discrimination and affirmative action legislation, as well as on the *de facto* enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention” and invited India “to include in its next periodic report detailed information on measures taken to implement anti-discrimination and affirmative action legislation, disaggregated by caste, tribe, gender, State/district and rural/urban population”.⁴

¹ The Constitution of India, Article 17.

² The Constitution of India, Article 15(2) & Article 16(2).

³ 44th Session of the UNHCR, ID with the SR on Contemporary forms of Racism, 15 July, 2020, <https://media.un.org/en/asset/k19/k19p7xi7zc> (59'18"), rejected by the Special Rapporteur (2'05'37").

⁴ CERD, Concluding Observations on India, CERD/C/IND/CO/19, 5 May 2007, para. 9.

The Committee should seek assurance that the [revocation of article 370 of the Constitution](#) in September 2020, that effectively removes the special status of Jammu and Kashmir and the privileges enjoyed by its inhabitants in terms of access to property and to employment, is not part of a [wider trend of the elimination of special measures](#) as envisaged in art. 1(4) and 2(2).

The Committee should also be concerned that the [Citizenship Amendment Act](#), passed by the Parliament of India in 2019, may [retrospectively and disproportionately impact minorities](#) (including non-Assamese speakers in the state of Assam) and [Adivasis](#), with the *National Register of Citizens* creating a mechanism that could result in the arbitrary deprivation of nationality and its accompanying rights on the basis of processes that have yet to be determined and that may violate the provisions of the Convention.

Suggested Questions

1. *In line with its request expressed in para. 9 of its 2007 Concluding Observations on India, the Committee should invite India to include detailed information on measures taken to implement anti-discrimination and affirmative action legislation, disaggregated by caste, tribe, gender, State/district and rural/urban population. The State party should provide disaggregated data on the percentages of the Union, State and district budgets allocated for that purpose and on the effects of such measures on the enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention.*
2. *Since the last review, were there any debates or actions aiming at implementing the recommendation under para 8 of the Concluding Observations (2007)?*
3. *Please submit evidence that the revocation of article 370 of the Constitution does not constitute the lifting of a special measure that furthered the objectives of the Convention in Jammu and Kashmir.*
4. *What are the steps taken by the Government to make sure that the implementation of the Citizenship Amendment Act from 2019 will not violate the rights protected under the Convention?*

Article 2 – obligation to implement a policy to eliminate racial discrimination

Untouchability was abolished under article 17 of the Indian Constitution and under the [Protection of Civil Rights Act \(1955\)](#). Forced labour is prohibited under Article 23 of the Indian Constitution. The [Bonded Labour System \(Abolition\) Act 1976](#) and India Penal Code 1860 abolish forced labour and human trafficking. However, Dalits still face *de facto* untouchability, and contemporary forms of slavery. [Public attitudes in Rajasthan, UP and Delhi](#) show the high proportion of people who still practice untouchability.

The practices also remain widespread, particularly in brick kilns, manual scavenging, and agriculture, given mainly to lack of adequate labor regulations and effective minimum wages for low skilled jobs, The [Devadasi system](#) (temple prostitutes) is just one example of slavery that has been identified by UNHRC in 2014.⁵

Regarding Temporary Special Measures, new legislation was introduced, such as the 2019 Economically Weaker Sections Reservation (EWS), providing 10% quota EWS among General Category candidates in government jobs and educational institutions, through the 103rd Constitution Amendment.

An Anti-Discrimination and Equality Bill (Bill No. 289 of 2016) aiming at filling the constitutional gaps to prohibit a wide scope of forms discrimination has been introduced and is currently pending.

The Committee should seek clarification of the extent to which the State party's failure to [implement the 2006 Forest Rights Act](#), designed to give effect to the Constitutional rights of *Adivasis* by addressing the “historic injustice” that was meted out to the forest dwellers by recognising forest land, resources, and resource management and conservation rights of the forest dwelling communities violates the rights of forest dwelling communities under the Convention.

Suggested Questions:

1. *What further measures, policies, targets has the State party implemented to ensure the end of the practice of Untouchability, de facto discrimination, trafficking and forced labour against Dalits despite the existence of laws against such practices? Do these measures disaggregate data by caste, tribe, gender, State/district and rural/urban population?*
2. *What are the measures taken to ensure that the right of forest dwelling Adivasi communities is upheld, in line with the Forest Rights Act?*
3. *How does the State party guarantee the implementation of these measures, policies, and targets?*
4. *What results does the State party seek to achieve after the successful implementation of these measures, policies, and targets?*
5. *What plans have been put in place to ensure the harmonization between the new EWS TSMs and implementation of the reservation programs for the Dalits, Adivasis and Other Backward Castes in the government jobs and educational institutions?*
6. *What are the plans of the State Party with regard to the adoption of Bill No. 289 of 2016?*

⁵ https://idsn.org/wp-content/uploads/2015/02/SR_Slavery1.pdf

7. *Could the State party provide answers as to the measures it is putting in place to ensure that the licensing of coal plants does not violate the rights of indigenous peoples, including their rights not to be imposed project that affect them or their territories unless they have provided their free, prior and informed consent?*
8. *In terms of its obligation to actively discourage anything which tends to strengthen racial division under art. 2(1)(e) of the Convention, could the State party highlight what steps it is taking to ensure that polarization fuelled by hate speech will not adversely affect racialized minorities?*

Article 2.2 – Obligation to carry out temporary special measures

Constitutional provisions guarantee temporary special measures ("reservations") for Scheduled Castes/Dalits ("SC"). However, they are limited to the public sector and the reservation policy has always been met with obstacles in its implementation. According to official source, out of 28,345 vacant posts for SCs in Union ministries 14,366 were unfilled as of 1st January 2020⁶. The increasing number of public sectors being converted into private sectors as a result of outsourcing practices will ensure lesser job opportunities for Dalits at the entry-level. Scrapping of reservation policy in the promotion in public sector⁷ and introducing the lateral entry scheme will take away the opportunity from Dalits at reaching decision making positions⁸.

Even if Dalits, and especially Dalit women, reach decision making positions through constitutional guarantees, they face intersecting caste/gender-based discrimination at all levels. Ms. Saravanakumar Rajeswari (37), president of the Therkuthittai reserved village panchayat of Bhuvanagiri Union in Cuddalore district, Tamil Nadu, India was humiliated and forced to sit on the floor at a meeting in the panchayat office (village Council).⁹

Suggested Questions:

1. *How does the State party ensure to accommodate reservation in the private sector when it is unable to overcome obstacles in implementation of reservation policy in the public sector?*
2. *What concrete measures were implemented to ensure Dalit participation in decision-making positions?*
3. *What special measures, policies, targets does the State party has put in place to ensure representation of Dalit women in the reservation programmes without any forms of*

⁶<https://theprint.in/india/governance/over-42000-posts-reserved-for-sc-st-obc-vacant-in-union-ministries-govt-tells-lok-sabha/627611/>

⁷<https://theprint.in/theprint-essential/sc-quota-ruling-is-nothing-new-reservation-in-jobs-was-never-a-fundamental-right/363200/>

⁸<https://theprint.in/india/governance/dalit-ias-irs-officers-say-absence-of-quota-in-modi-govt-lateral-entry-scheme-is-illegal/250227/>

⁹<https://frontline.thehindu.com/social-issues/panchayats-of-bias/article32880393.ece>

gender-based discrimination? Has the State party taken CERD's General Recommendation 35 into consideration in putting its reservation system in line with ICERD's Article 1.4 and 2.2?

Article 3 – Obligation to condemn racial segregation, apartheid and to eradicate relevant practices

Access to food, land, health, and quality education are some of the necessities which Dalits in India are kept away from. Almost 60% Dalit households did not own any farmland in 2013--the latest year for which figures are available--according to the India Land and Livestock Holding Survey. 70% of Dalit farmers are labourers on farms owned by others, according to Census 2011.¹⁰ The dropout rate of Dalit students is staggering 51% at elementary level.¹¹ The life expectancy rate of Dalit women is 39.5 years against dominant caste women life expectancy rate of 54.1¹²

Suggested Questions:

- 1. What measures, policies and targets has the State party forwarded to ensure land ownership to landless Dalits and Adivasis?*
- 2. Considering the intergenerational socio-economic trauma faced by Dalit students, leading to a concerning dropout rate, what are the measures proposed by the State party to ensure equal access to free and quality education?*
- 3. How does the government ensure and implement free quality healthcare and free quality nutrition for Dalits especially Dalit women and for Adivasis?*
- 4. In view of the tragedy of the pandemic, could the State party provide data disaggregated on the basis of ethnicity, religion, language, decent and tribal status to assure the committee that the following measures: (a) information to prevent the spread of the virus; (b) information pertaining to treatment facilities; (c) availability of treatment including oxygen and hospital beds; and (d) vaccination programmes, were disseminated without a racial bias?*

Article 4 – Obligation to condemn racist propaganda

An IDSN [report](#) of 2021 demonstrates the magnitude of caste hate speech. In 2019, when the SMP TikTok became popular in India, videos by dominant caste Tamil youths to annihilate Dalits became

¹⁰https://www.business-standard.com/article/current-affairs/dalits-fight-against-all-odds-for-promised-lands-across-india-119060700157_1.html

¹¹<https://thewire.in/caste/dalit-history-month-education-is-a-distant-dream-for-some-children>

¹²<https://indianexpress.com/article/india/on-average-a-dalit-woman-dies-14-years-younger-than-one-from-upper-caste-un-report/>

very common, with phrases like: "Our time will come. When it arrives, we will kill you," or "Fight us if you are a real man, you Dalit dogs."¹³

When the police investigated and arrested the accused of gang-raping and burning the body of 19-year old Dalit girl., upper caste-based organizations rallied in support of the accused and threatened and harassed not just the victim's family but the whole Dalit community¹⁴.

Suggested Questions:

1. *What laws or policies have been adopted by the State party to ban and/or prohibit the formation of organizations that promote the idea of discrimination based on caste?*
2. *What barriers does the state face while banning/prosecuting caste-based organizations which incite violence and promote or stir caste-hate speech?*
3. *Due to existing failed provisions, what special measures, plans and policies does the State party ensure that law enforcement agencies act without caste bias?*
4. *In view of India's [slide down the ranking of press freedoms](#) could the State party identify the measures it has taken to ensure that [hate speech](#) publicized by the media can be effectively combatted?*
5. *In light of [shrinking of civil space](#) and the prevalence of fear among minorities [through incitement to violence](#), could the State party identify measures it has taken to ensure fair and transparent investigation, and enforcement actions against those guilty of hate speech against racialized minorities?*

Article 5 – Equal Enjoyment of Civil, Political , Economic, Social and Cultural Rights

There have been circa 10 cases of rape against Dalit women every day in the year 2019.¹⁵ The corresponding experience of [Adivasi women shows that the problem is deeply entrenched](#). The overall conviction rate at Special Courts for Scheduled Castes and Scheduled Tribes POA Act for the period 2014-19 is recorded at 29.2%, acquittal rate at 68.3% and pendency rate at 88.5% whereas in rape cases against Dalit women is abysmally low at 32.7%¹⁶. In Hathras, the brutal rape and death of a Dalit woman was systematically silenced by state authorities with the body of the victim cremated before a case was initiated, thereby destroying crucial evidence in a case of caste-based violence.¹⁷

¹³ IDSN: Caste-hate speech: Addressing hate speech based on work and descent, p. 16.

¹⁴<https://thewire.in/caste/hathras-case-bjp-leader-rajveer-pahalwan-rally-support-accused-thakurs>

¹⁵<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%202.pdf>

¹⁶<http://www.ncdhr.org.in/wp-content/uploads/2021/04/Dalit-Women-Rise-For-Justice-Status-Report-2021.pdf>

¹⁷<https://livewire.thewire.in/gender-and-sexuality/there-is-caste-in-the-hathras-gangrape-you-just-refuse-to-see-it/>

Inter-caste marriage violence goes largely unpunished. From 2014 to 2019, at least 500 incidents of honour killings have been recorded, most of the victims being women, the majority of these cases involve an upper caste woman married to a Dalit man.¹⁸ Despite right for two persons from different castes to register a marriage, under the [Special Marriage Act 1954](#) no law exists till date which provides protection to the individuals marrying inter-caste.

In March 2018, the Supreme Court gave preventive measures to combat honour crimes in India. The guidelines are to be followed till a proper law is legislated.

Segregation also takes place online. A Tamil Brahmin (Tambram) group on Facebook, requires validation of prospective members' caste authenticity, consisting of an exclusive space to interact and communicate with members from fellow caste groups.¹⁹

Established social hierarchies and endemic discrimination has resulted in a further marginalization and exploitation in the context of the COVID-19, which has left these communities in a vulnerable situation. More than 60% of Dalit communities were unable to avail social emergency services promised/provided by the State party.²⁰

In 2019, 3486 cases of rape against Dalit women and girls; and 1110 cases of rape against Tribal women and girls were registered in 2019. This is an exponential rise in cases (around 158%) as compared to 2007 (1349 cases registered), when the Committee expressed concern about the number of incidents of sexual violence against Dalit women and girls.

Suggested Questions:

1. *Could the State party present any policies, benchmarks, targets or measures implemented to tackle sexual and gender-based violence against Dalit women?*
2. *What measures, plans, policies, or benchmarks has the State party carried out, in order to combat the societal stigma of inter-caste marriage and to deter violence against those who chose to marry outside their caste?*
3. *Could the State party present the measures planned and taken thus far to alleviate the impact of COVID-19 on Dalit communities and Adivasis, including disaggregated data to better allocate the public resources?*

¹⁸[In Tamil Nadu, anatomy of a caste crime: Families devastated by honour killings speak of the scourge](#)

¹⁹ IDSN: Caste-hate speech: Addressing hate speech based on work and descent, p. 16.

²⁰http://www.theinclusivityproject.org/assets/publications/doc/Impact_and_Resilienc_1tf8w.pdf

Article 6 – Obligation to ensure the right to remedies before domestic tribunals or other State institutions

Access to justice remains elusive to Dalit communities in India. A study of 2020 analysed 40 cases of sexual violence against Dalit women through the justice system. Only 10% of cases examined reached convictions, while 90% of the acquittals originated from a dominant caste member. The police often failed to record or investigate crimes when initially reported and were sometimes abusive or put pressure on survivors to drop the case. Survivors were not given adequate advice about their legal rights, or not receive compensation. Survivors, family members, and witnesses also faced threats, coercion, and bribery to stop prosecutions. In almost 60% of cases, the survivor or her family was pressured into withdrawing from pursuing a legal case and had to accept an extrajudicial 'compromise'.²¹ At the end of 2019, 7 of 10 prisoners are undertrials in India, where a majority from marginalised castes - nearly two-thirds (64%) from the scheduled castes (21.7%), scheduled tribes (12.3%), and other backward classes (30%).²²

Despite provisions of the Prevention of Atrocities Act, violence continues to surge annually against Dalits & Adivasis. The intersectional dimension of discrimination (CERD General Recommendation 25) is particularly alarming in the context of widespread rape and brutal assault of Dalit & Adivasi women.

Cases of atrocities against Dalits and Adivasis recorded have increased by 281.75% and 575.33%, respectively between 2009 and 2018,²³ while the average conviction rate for cases of atrocities against Dalits and Adivasis remained at 25.2% and 22.8% respectively. Due to the legislative loopholes, the Prohibition of Employment as Manual Scavengers & their Rehabilitation Act 2013, was passed, which reinforced the ban on manual scavenging. Yet the official data shows that one manual scavenger dies every five days²⁴.

Suggested Questions:

1. *What concrete measures are being taken towards the full-fledged and effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) (PoA), 1989 Act?*

²¹https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/3484/attachments/original/1606251015/EN-Haryana_Report-ENG-PDF.pdf?1606251015

²²<https://www.google.com/url?q=https://www.indiaspend.com/indias-jail-stats-7-in-10-undertrials-1-in-3-dalit-adviasi/&sa=D&source=editors&ust=1625664730473000&usg=AOvVaw23JVvsNQpo7OCwWlJKM5Ea>

²³https://www.google.com/url?q=https://www.indiaspend.com/wp-content/uploads/2020/09/NCDHR_REPORT-NEW2.pdf&sa=D&source=editors&ust=1625664584682000&usg=AOvVaw2SswC2TwUDvj14Cza9pVE

²⁴ [One manual scavenging death every five days: Official data | India News, The Indian Express](#)

2. *How does the State party plan to enhance its legal system to provide effective legal representation to marginalized communities?*
3. *How does the State party explain the increase in atrocity cases against Dalits and Adivasis and lower conviction rate under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) ?*
4. *Could the State party provide evidence about the steps taken towards effective implementation of laws to protect and promote the rights of racialized minorities?*

Article 7 – obligation to implement education, cultural, informational, and teaching measures to combat racial discrimination.

While the 2020 National Education Plan discusses “Equitable and Inclusive Education”, there is no specific strategy provided for the implementation and upliftment of education for Dalits, Adivasis and other marginalised communities in India. In addition, prejudice and stigmatization based on caste must be stamped out with proper education and understanding of casteism and the resultant discrimination. Without addressing the issue of casteism through dialogue and proper information, Indian society is prone to continuing this cycle of social hierarchy and violence. For example, according to an officer trainee of Indian Administrative Services 2018, batch in some schools, the students were made to wear colour-coded wristbands, in shades of red, yellow, green, and saffron indicating whether the student belongs to lower class or upper class. In addition to this, forehead “tilaka (a mark) also served as caste makers.²⁵

Social media and the internet are used at a very large scale to disseminate misinformation and propaganda which includes casteist propaganda, while online caste-based violence and online harassment and hate continues to go largely unchecked.²⁶

The Committee should also be gravely concerned by attempts to rewrite India’s history by erasing [certain communities from its educational materials](#).

Suggested Questions:

1. *What specific measures the State party takes or plans to take in order to tackle casteist prejudice and stigmatization against Dalits through education and awareness drives?*
2. *Could the state party provide concrete information about what remedies have been put into place to ensure non-discrimination and equal representation of students from Dalit and Adivasi communities through the Right to Education Act, 2005?*
3. *Does the State party have any policy, measures or laws in place to curb casteist propaganda and caste-hate speech online and offline?*

²⁵ Caste-Based Wrist Bands in Tamil Nadu Schools: A Matter of Concern (thewire.in)

²⁶<https://www.indiatoday.in/india/story/uttar-pradesh-journalists-booked-reporting-discrimination-dalits-bijnor-1597388-2019-09-09>

<https://www.orfonline.org/research/in-times-of-fake-news-and-manufactured-outrage-how-do-we-reclaim-empathy-61149/>.

4. *Could the State party explain how measures that erase certain communities from educational materials do not defeat the object and purpose of the Convention, namely the obligation to implement education, cultural, informational and teaching measures to combat racial discrimination?*