

Need for Policy and Legal Framework for Caste Based Atrocities as Violation of International Human Rights in View of Indian Diaspora

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Abstract : The Prima facie caste system is intrinsic to Indian society. It is an ancient system of intense social stratification based upon birth and enjoying religious sanction. The uppermost strata and privileges are ascribed and enjoyed by brahmins (priestly class), while the lowest strata are occupied by Dalits who are not ascribed with any privileges. The caste system is inherently hierarchical, patriarchal, and systematic and thrives solely on exploitation justified through means of the Brahminical system of hegemony based singularly on birth. The caste system has extended its tentacles to other religions like Christianity, Buddhism, Jainism, and Islam in South Asia. Term Dalit is colloquially used to categorize persons belonging to lower strata in the caste hierarchy. However, this category is heterogenous and highly stratified, following practices like untouchability and exclusion amongst themselves. The modern Indian legal system acknowledges the existence of Caste and its perils. Therefore, by virtue of the Indian Constitution, provisions for affirmative action for the protection and development of Dalits are made. Courts in India have liberally interpreted laws to benefit Dalits. However, the modern system of governance is not immune from Caste based biases. These biases are reflected in the implementation of governance, including the dispensation of justice. The economic reforms of the 1990s gave a huge boost to the Indian diaspora. Persons of Indian origin are now seen making great strides in almost every sector and enjoying positions of power globally. As one peels off the layer of ethnic Indian origin, a deep seated layer of Caste and Caste based patriarchy is clearly visible. Indian diaspora enjoying positions of power essentially belongs to upper castes and carry Caste based biases with them. These castes have long enjoyed the benefits of education; therefore, they were the first ones to benefit from LPG (Liberalization, Privatization, Globalization) model adopted in the 1990s. Dalits, however, had little formal education until recently. The western legal system, to the best of our knowledge, does not recognize Caste and, therefore, cannot afford protection for Dalits, wherein discrimination and exploitation take place solely on the basis of Caste. Therefore, Dalits are left with no legal remedy outside domestic jurisdiction. Countries like the UK have made an attempt to include Caste in their Equality Bill 2010. This has met with tough resistance from Upper caste Hindus who shy away from recognizing their caste privileges and, therefore, the existence of Caste. In this paper, an attempt for comparative analysis is made between various legal protections accorded to Dalits in India vis-à-vis international human rights as protected by the United Nations under its declaration of Universal Human rights. An attempt has been made to mark a distinction between race and Caste and to establish a position of women in Caste based hierarchy. The paper also makes an argument for the inclusion of atrocities committed against Dalits as a violation of international human rights, their protection by the United Nations, and the trial of their violations by International Courts. The paper puts into perspective the need for an external agency like the United Nations and International courts to interfere in rights guaranteed by the Indian Constitution, even with the existence of a modern legal system in a sovereign democratic country.

Keywords : atrocity, caste, diaspora, legal framework

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