



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/SR.1796
2 March 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventieth session*****

SUMMARY RECORD OF THE 1796th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 23 February 2007 at 3 p.m.

Chairperson: Mr. de GOUTTES

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fifteenth to nineteenth periodic reports of India

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fifteenth to nineteenth periodic reports of India (CERD/C/IND/19)

1. At the invitation of the Chairperson, the members of the delegation of India took places at the Committee table.
2. Mr. SINGH (India) said that the Indian Constitution prohibited discrimination on any grounds, including race. Appropriate legislation had been enacted to give effect to that provision, including the Criminal Code, which prohibited the dissemination of ideas that promoted disharmony on any grounds. The Constitution had been the basis for affirmative action programmes for the socially disadvantaged. An administrative and institutional structure was in place to address different forms of discrimination. India's independent judiciary, ever-vigilant media and active civil society had strengthened the Government's efforts to achieve equality.
3. The Committee was familiar with India's position on the caste issue: his Government viewed caste-based discrimination as an issue outside the purview of the definition of racial discrimination under article 1, paragraph 1, of the Convention. That continued to be the Indian delegation's position. The Indian Constitution directly addressed the issue of caste through clearly guaranteed rights and affirmative action, which aimed to ensure that disadvantaged castes were brought into mainstream society. The Constitution drew a distinction between caste, race and descent, considering them as separate concepts. Although the Government was open to advice from those in India and the international community who wished to assist in the process of mainstreaming disadvantaged castes, all discussion on that issue must be within the parameters set out by the Constitution. The Government was therefore not in a position to accept reporting obligations on that issue under the Convention. The delegation would, however, provide caste-related information that might be of interest to the Committee.
4. There was no State-sponsored, institutionalized discrimination against any individual citizen or group of citizens in India. The Government was aware that much remained to be done in order to eliminate discrimination in practice, since legislation alone was insufficient. Efforts were being made to provide universal education and secure the economic advancement of those most in need. The objective was to empower the disadvantaged sectors of society, since only through the full realization of their potential could India's economic and social growth be consolidated. As India's economy modernized and expanded, more resources would be available to promote awareness and provide jobs and training to those most in need. India was one of the countries most affected by terrorism, a fact which underscored the need to protect the lives of the people.
5. Mr. VAHANVATI (India) said that equality of status and opportunity was guaranteed to all Indian citizens under the Constitution. Social justice, equality and dignity of the person were the cornerstones of social democracy, which was a tool for change that would improve the lot of the poor and achieve the greater good of society at large. The Constitution guaranteed all persons equality before the law and the equal protection of the law. The State was prohibited

from denying any person either of those guarantees. In the Indian constitutional structure, the superior courts could exercise the powers of judicial review for the enforcement of any fundamental right, including the right to equality. Articles 14 to 18 of the Constitution formed the Constitutional Code on Equality, which sought to secure equality not only when equals were treated unequally, but also when unequals were treated equally. Under those articles, discrimination on grounds of religion, race, caste, sex and place of birth was prohibited, and equality of opportunity was guaranteed for all citizens in matters relating to employment or appointment to any office under the State. Positive discrimination was extended to socially and educationally backward classes of citizens, or Scheduled Castes and Scheduled Tribes. Positive discrimination and affirmative action in that regard had been pursued by a number of states and the Union Government. Such programmes and policies must not be unreasonable or arbitrary, and must not undermine other vital public interests or the general good.

6. Untouchability had been abolished under the Constitution, and its practice in any form was prohibited. Courts in India had jurisdiction to address the issue of discrimination, and the judiciary had consistently endeavoured to secure social justice, to be sensitive to the objectives of equality of status and opportunity set forth in the Constitution, and to favour redressing the grievances of the poor, downtrodden and underprivileged. The Supreme Court had declared that judicial review, the rule of law and equality were part of the basic structure of the Indian Constitution, and could not be amended or abrogated.

7. Responding to question 1 on the list of issues submitted by the Country Rapporteur (document without a symbol), he said that his Government had no doubt that the ordinary meaning of the term “racial discrimination” did not include caste. It was firmly accepted that the Indian caste system was not racial in origin. Caste was an institution unique to India, and had not entered into the considerations of those who drafted the Convention. The Committee had first raised the issue of caste-based discrimination within the concept of discrimination based on descent over 30 years after its establishment. The term “descent” had a definite meaning in the Indian Constitution and occurred in reference to discrimination in public employment.

8. On the issue of India’s proposal to include the word “descent” among the grounds of prohibited discrimination during the travaux préparatoires of the Convention, he said that there was nothing in that proposal that supported the contention that the word “descent” was intended to include caste as an aspect of racial discrimination. His Government’s primary concern during that time had related to the use of the term “national origin”; the observations and speeches made then should not be taken out of context. The Government’s proposal to include the term “descent” had been based on concerns regarding discriminatory treatment against Indians in their own land while under colonial rule, and to persons of Indian descent in countries where they had settled in large numbers.

9. A number of constitutional provisions made specific reference to Scheduled Castes and Scheduled Tribes. Disenfranchisement on grounds of caste was prohibited, and seats for members of Scheduled Castes and Tribes were reserved in the Union and State legislatures. Under the Constitution, members of the Scheduled Castes and Tribes should be taken into consideration in the making of appointments to services and posts in the affairs of the Union or a state. The National Commission for Scheduled Castes and the National Commission for Scheduled Tribes had been set up in accordance with the Constitution. Constitutional provisions

stated that the Union of India had a special responsibility for the welfare of Scheduled Areas and Tribes. His Government did not intend to change its position that caste should not be discussed under the issue of racial discrimination.

10. Mr. GUPTA (India) outlined the sociological reasons why caste and race could not be equated, one of which was that the two concepts had different provenances. Discrimination based on caste differed in all respects from discrimination based on race. Both caste and race were sociologically constructed - not scientific - concepts. The reason for that was, first, that there was phenotypical resemblance between members of different castes, whereas there was none between members of different races - or so it was presumed. Members of upper and lower castes were hard to distinguish.

11. It was believed that members of castes differed from one another with respect to some mysterious coded substances that could not be seen or tangibly understood, for which reason people from different castes did not mingle together, so as to avoid mixing their substances and causing pollution. All castes observed that principle. However, the principle according to which the Brahmins were unassailable and unchallenged at the top of the hierarchy was wrong. In fact, empirical evidence had shown that the distinctions between caste and race were growing. For instance, it was not the case that one caste exploited all other castes; all castes - whether high or low - thought poorly of the others. There was no caste that would accept that it was made of base substances. It was incorrect to believe that one ideology dominated everybody and that all caste members acquiesced in it, or that members of the lower castes participated in their own subjugation. Members of the caste order believed that if they happened to be in the lower orders at a certain point in time, it was due to some chance, deceit, wars or the mercurial Indian gods.

12. Castes could not be distinguished in terms of blocks: they were local groups, recognized within a radius of 200 miles, highly splintered and obsessed with minor differences. The so-called fourfold scheme of the Brahmin, the warrior, the commoner and the untouchable was a myth and did not exist in reality. What did exist were small caste groups that identified individuals as belonging to it and set for them rules of behaviour and interaction with other people.

13. Caste could not be considered as descent, which signified genealogically demonstrable characteristics. In the same caste, people had multiple descents, and could not intermarry: they had to go outside their own lineage. The richer and more powerful the caste, the farther away its members chose their marriage partners.

14. India had managed to legally abolish caste long before many other independent nation States. Now it remained for it to make caste part of history. Affirmative action in the United States, for instance, was different from policies against caste-based discrimination as it did not include quotas whereas India did. Indeed, the Indian reservation system - whereby a number of seats were reserved in Parliament, government departments and other institutions for the socially and educationally backward classes of citizens and for the underrepresented Scheduled Castes and Tribes - aimed not to ensure representation of different races, colours or communities within public organizations, but to extirpate caste. The Scheduled Castes, also known as Dalits, and the Scheduled Tribes, also known as Adivasis, had been considered "outcasts" and discriminated against.

15. Though India still had to fight against caste prejudice among its citizens, State policy had managed to achieve some impressive results. For instance, poverty, anaemia, or malnourishment were no longer more prevalent among the Scheduled Castes - traditionally the poorest Indians - than among other nationals. Reservation had increased the number of members of the Scheduled Castes in Grade A services of the Indian Administrative Services from less than 1 per cent when India had become independent, to 12.2 per cent in 2002 (compared with 15 per cent for the total population). Their literacy rate had grown by 74 per cent, as opposed to 66 per cent for the rest of the population.

16. Mr. SICILIANOS, Country Rapporteur, said that the Committee was aware of the fact that people deemed to belong to different castes in India or elsewhere did not constitute groups that could be distinguished from the rest of the population on the basis of racial characteristics. In his view, however, the situation of tribes and castes fell within the scope of application of the Convention. The Convention's scope was in fact better represented by the title of the Durban World Conference: "Racism, Racial Discrimination, Xenophobia and Related Intolerance".

17. In its General Recommendation XXIX, the Committee had said that "descent" in article 1, paragraph 1, of the Convention did not solely refer to "race" and had a meaning and application which complemented the other prohibited grounds of discrimination, and that discrimination based on "descent" included discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullified or impaired their equal enjoyment of human rights.

18. Though the Committee was aware of the fact that the Indian Constitution and legislation had abolished the caste system and related discrimination, and that the Government had taken important affirmative action measures, in practice such descent-based discrimination still existed. The persistence of the following practices against Dalits had been deplored by the National Human Rights Commission and widely documented by NGOs, United Nations treaty bodies and other international institutions: extrajudicial punishment of inter-caste marriages, such as the lynching or rape of couples or their relatives; manual scavenging, with severe repercussions for the health of Dalits (anaemia, diarrhoea, skin and respiratory diseases, trachoma); different forms of dual discrimination against Dalit women, including forced prostitution or the so-called "devadasis" (divine prostitution); the practice of "untouchability", leading to de facto segregation in terms of access to water, housing, education, civil-service employment or property; displacement without compensation; de facto discrimination with regard to the exercise of political rights, despite the reservation policy established by law; police abuse or failure to protect Dalits from acts of looting, sexual assault, rape or other inhuman treatment. The Committee would like to learn more about measures taken to implement the recommendations of the National Police Commission and the Supreme Court's guidelines, with particular attention to the protection of Dalits from torture.

19. According to information from different sources, there seemed to be a clear tendency in India towards impunity of police or other State officials for alleged abuses against Dalits, and Dalit communities continued to experience difficulties in their access to justice and their right to remedies. Dalit communities had also been discriminated against during the emergency, relief and rehabilitation phases following the tsunami disaster, as documented by the report "Making things worse: how 'caste blindness' in Indian post-tsunami disaster recovery has exacerbated vulnerability and exclusion."

20. In order to reduce the discrepancy between the provisions of the Constitution against caste-based discrimination and their implementation in practice, did the State party intend to act on the recommendations of the 2004 report of the National Human Rights Commission on atrocities against Scheduled Castes?

21. On 27 December 2006, at the Dalit-Minority International Conference in New Delhi, the Prime Minister of India had made a historic statement: “Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was apartheid in South Africa. Untouchability is not just social discrimination; it is a blot on humanity.” Given that statement by India’s highest official, the position of the Indian delegation seemed simply untenable.

22. As to the 80 million indigenous and tribal peoples - mainly the Adivasis, it seemed that there were no precise criteria to define Scheduled Tribes, resulting in the exclusion of many groups from the benefits of the various programmes or special measures intended for them. Furthermore, according to information available to the Committee, indigenous or tribal peoples did not have access to equal treatment before the tribunals and other organs administering justice for a number of reasons, including: discriminatory application of the Criminal Procedure Code; labelling of certain tribes as “born criminals” under the Habitual Offenders Act of 1952; lack of separation of the judiciary in some tribal states such as Arunachal Pradesh and Mizoram; impunity granted to the security forces under various laws.

23. The Committee was particularly concerned about the impunity afforded to the security forces under the 1958 Armed Forces (Special Powers) Act, which was applicable in internal conflict situations in areas inhabited by indigenous and tribal peoples. On 1 October 2006, the Committee had received a request for a decision under its early-warning measures and urgent procedures denouncing systematic discrimination and other human rights violations against indigenous peoples in relation to the 1958 Act, and the imminent construction of 168 dams throughout indigenous territories in the north-east of the country. The request highlighted the persistence of widespread and systematic violations of various provisions of the Convention and called for urgent action in response to the escalation of hatred and violence against indigenous peoples. He invited the delegation to comment on those allegations, in order to guide the Committee in its decision on the matter.

24. The Committee was concerned about reports that the Sarna religion of the Adivasi people was not formally recognized, and that certain Hindu fundamentalist groups had been openly reconverting indigenous and tribal peoples. Reports that some 23,000 children died from starvation in tribal areas of Maharashtra each year were also disturbing.

25. While the establishment of the National Commission for Scheduled Tribes was commendable, it was reported to be seriously understaffed. He would welcome additional information on its independence and resource allocations.

26. The State party’s generosity in hosting large numbers of refugees was praiseworthy. However, the delegation should explain why it had neither acceded to the 1951 Convention relating to the Status of Refugees, nor adopted relevant domestic legislation. The 1946 Foreigners Act currently governing the treatment of refugees contained stringent requirements

and made no distinction between refugees and other foreigners. In that connection, he would welcome information about the situation of refugees from Myanmar, who reportedly received no assistance from the Government.

27. Ms. DAH said that India was a country of contrasts, even contradictions, and served as a point of reference for many developing nations. To countries with similar systems of social stratification, it might be disappointing to learn that India considered caste-based discrimination to fall outside the purview of the Convention. However, the acknowledgement in the report that the caste system was a source of discrimination could serve as ground for debate.

28. The programmes and policies mentioned in the report that aimed at closing the gap between members of Scheduled Tribes and Scheduled Castes and other citizens were commendable. However, given that 166.6 million persons belonged to Scheduled Castes and 84.3 million to Scheduled Tribes, she was not certain that the resources allocated were sufficient to ensure the effectiveness of those measures. She enquired whether a person could leave a given caste during his or her lifetime and, if so, by what means.

29. Commending the State party for the establishment of amicable dispute settlement mechanisms for minor disputes, she asked whether it would be feasible to universalize that system or, alternatively, to introduce additional systems of traditional justice in order to both expedite the processing of cases and bring justice closer to the people.

30. It was somewhat surprising that none of the 70,000 complaints examined by the National Human Rights Commission since its establishment in 1993 had concerned racial discrimination, and she asked the delegation to explain that fact.

31. Mr. CALI TZAY requested additional information about the Dalits, and especially their right to land. He expressed concern about the reported self-segregation of Dalit families to avoid discrimination in post-tsunami shelters. Reports that parents from dominant castes had prevented their children from partaking in school meals prepared by Dalit cooks and had pressed for their dismissal were similarly disturbing. Both actions indicated that the discrimination suffered by the Dalits was deeply rooted in society.

32. He asked what measures had been taken by the State party to implement the Committee's earlier recommendation to review the special powers extended to members of the armed forces and to repeal the Armed Forces (Special Powers) Act.

33. Mr. YUTZIS acknowledged that race was a controversial, vague and ideological concept denoting differences between people and might not be applicable to caste. He nevertheless supported the view that the Committee was competent to address caste-related issues as manifestations of discrimination based on descent within the meaning of article 1 of the Convention. Research carried out by the founder of ATD Fourth World had revealed that social exclusion affecting certain families or groups sometimes dated back to mediaeval times and was thus closely related to descent. The same could be said of systems of social stratification, and he appealed to the State party to take a more flexible approach to considering manifestations of discrimination under the Convention.

34. In the absence of disaggregated data, it was difficult to establish the veracity of information provided by the Government, which sometimes stood in stark contrast to reports submitted by NGOs. In its next report, the State party should provide data disaggregated by social sectors on the percentage of GDP allocated to redressing social inequalities in land distribution, health and education, inter alia. It was important to bear in mind that the strong economic growth experienced by the State party was not synonymous with development.

35. Mr. THORNBERRY pointed out that, irrespective of the State party's position on the applicability of the Convention to caste-based discrimination, the Committee's competence with regard to issues pertaining to indigenous and tribal peoples could not be gainsaid. It was therefore unfortunate that the report failed to provide any relevant information. He enquired what steps had been taken towards recognizing the right to collective ownership of traditional lands, as stipulated in ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, to which India was a party. With regard to the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act of 2005, which was currently awaiting presidential approval, he was concerned that the inclusion of other forest dwellers in the text might dilute the protection afforded to tribal peoples. In that connection, he enquired about the criteria used to identify members of tribal groups.

36. The argument that caste could not be equated with race was somewhat immaterial, since racial discrimination within the meaning of article 1 of the Convention included discrimination based on descent. In international law, an evolutionary interpretation of terms was common practice; the Committee had, over time, developed a broad interpretation of the term "descent" and was of the view that the language contained in the Convention was adequate to capture the notion of caste-based discrimination. It was important to bear in mind the main purpose of investigating racial discrimination as practised by institutions, individuals or organizations - namely, to engage in public reflection and dialogue and thereby address deep-rooted social patterns of discrimination.

37. Mr. VALENCIA RODRÍGUEZ urged the Government to consider further the Committee's reflections on the scope of the term "caste", based on article 1 of the Convention, and elucidated in its General Recommendation XXIX. He wished to know to what extent the Government implemented the recommendations made by the National Human Rights Commission. While significant steps had been taken to improve education and health in the State party, it would be useful to know what additional measures the Government planned to take in furtherance of its poverty reduction policy. The Committee would welcome updated information on the progress of the National Slum Development Programme. He requested statistics on the representation of minority groups in the major national and regional government bodies. He would welcome additional information on any limitations on the right of members of ethnic groups to contract mixed marriages, either with partners from different ethnic groups or with foreigners. He asked whether the children of an Indian citizen who married a foreigner had an automatic right to Indian nationality.

38. Mr. PROSPER asked whether the Dalits might eventually become an ethnic group. Given that ethnicity was a subjective determination, they could either identify themselves as such, or be seen by others as such because of their common culture or traits. He would welcome the delegation's thoughts on that question.

39. The Committee had received many reports on sexual violence against Dalit women, which were disturbing in terms of both the manner and magnitude of the offences concerned. He asked what the Government was doing either in law or beyond legislation to protect that vulnerable group. He wished to know whether any campaigns had been launched to raise public awareness of the extent of the wrong involved in the systematic rape of those women, to teach the victims and the vulnerable about their rights and recourses to protect themselves and to be protected, or to help the victims deal with the resulting trauma and medical issues. It would also be useful to learn of any campaigns that informed the population, particularly the perpetrators or potential perpetrators of such crimes, about the consequences of their actions. He wondered whether the Government planned to establish a task force to stop those crimes. Had there been any visible, even symbolic, prosecutions to send a clear message that the rule of law would be applied and was meaningful? It would be interesting to know whether the Government planned to introduce victim-sensitive rules of evidence in order to facilitate such prosecutions, or establish a special chamber to focus on that issue.

40. Mr. LINDGREN ALVES said that, given India's insistence in 1965 on including the word "descent" in the list of the causes of discrimination in article 1 of the Convention, it was difficult to understand why the Government was now so adamant in its refusal to entertain any reference to caste as a synonym of race. He wished to know when and why the Government had changed its position on the issue of caste.

41. The meaning of the terms "harmony" and "disharmony" in the periodic report was unclear. He wondered whether the message was that the Dalits were not entitled to fight to improve their position.

42. The fact that apartheid was an act punishable by death should be clarified.

43. Mr. AVTONOMOV noted that the Government was taking many measures to eliminate discrimination arising from the caste system, and so it was difficult to understand why India refused to discuss the elimination of discrimination arising from that system as a whole. The Convention was not exclusively connected with the concept of race, which had changed greatly over the previous 200 years. While descent and caste were not one and the same, children were born into the caste of their parents, so the issues were clearly linked.

44. He requested additional information on the Government's planned project on tribal and indigenous peoples. It would be useful to learn how such groups were defined in India. The delegation should indicate whether the Government planned to ratify the amendment to article 8 of the Convention and whether it would enter a declaration under article 14.

45. Mr. TANG Chengyuan said that the issue of caste and race was not a conceptual problem; it raised a real question of discrimination, particularly against the Dalits. While some problems could be resolved through educational measures, others required legislative amendments.

46. Mr. EWOMSAN said that the concept of caste was a sociological phenomenon, but it was not a neutral one; even racism could be explained with scientific arguments. The notion of caste was tantamount to discrimination. He supported the arguments put forward by Mr. Sicilianos.

47. Ms. JANUARY-BARDILL associated herself with Ms. Dah's characterization of India as a dynamic country that could not be ignored. As a South African, she was interested in developing stronger links with India, and also Brazil, in order to further the interests of the South. In that context, she welcomed the delegation's emphasis on fraternity in the observance of human rights.

48. She failed to understand why, if India was truly committed to social cohesion and eliminating bigotry and prejudice, it regarded the Convention as a threat rather than an opportunity to challenge the caste system. She asked whether the Government could not use the Convention as a tool to assist in the fraternity project aimed at building substantive citizenship.

49. She requested that the Government take into consideration the Committee's General Recommendation XXV on gender-related dimensions of racial discrimination in its analysis of the issues facing Dalit women in its following report.

50. The statement in the current report that there was no discrimination in India was not credible; while discrimination was not embedded in the law, social practice had discriminatory effects. She urged the Government to review that question in order to facilitate a more constructive dialogue with the Committee in future.

The meeting rose at 6.05 p.m.