Chapter-VI

Towards Internationalisation: Seeking Human Rights
You are going to ask: and where are the lilacs?
And the poppy-petalled metaphysics?
And the rain repeatedly spattering in words and drilling them full
of apertures and birds?
And you will ask: why doesn't his poetry
speak of dreams and leaves
and the great volcanoes of his native land?
"Come and see the blood in the streets.
Come and see
the blood in the streets.
Come and see the blood
In the streets!"

It should not be that those who heard a message of hope emanate from Durban
should,
one day, have occasion to repeat after Pablo Neruda:

and from every dead child a rifle with eyes,
and from every crime bullets are born
which will one day find
the bull's eyes of your hearts."

I wish you each a safe journey home and success in the common struggle to rid the
world
of the demon of racism.558

The issue of 'internationalisation' is not a new phenomenon as many would
believe. In fact, it is as old as Phule's dedication of his Gulamgiri to the 'good
people' of the United States who fought against inhuman slavery for years
culminating in a civil war in the 1860s. In 1927, while preparing for his historic
'Mahad-Satyagraha', Ambedkar had warned the government that if it prevented the
Depressed Classes from exercising their legitimate rights, the issue would be
referred to the 'League of Nations'.559 On 15 August 1978, when a morcha of about

558 This is the final part of the text read out by Thabo Mbeki, President of the Republic of South
Africa, during the closing ceremony of the Durban Conference, 2001. This poem used by Mbeki in
his speech is written by Chilean poet Pablo Neruda. (Report of the World Conference against
Racism, Racial Conference, Xenophobia and Related Intolerance, Durban, 31 August-8 September
559 Dhananjay Keer, Dr. Babasaheb Ambedkar: Life and Mission (Bombay,: Popular Prakashan,
4,000 Dalit Panthers led by Arun Kamble was taken to the Raj Bhavan in Bombay to submit a memorandum demanding renaming of Marathwada University. Kamble threatened that the Dalits would demand a separate Dalitsthan and take this issue to the UN.560

This chapter focuses on the debate generated by the Durban Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance. The conference created considerable controversy in India. Academics and Dalit activists discussed the validity of the inclusion of caste as the discussion agenda in an UN-sponsored international conference. Had it been merely the issue of discussion of caste at an international conference, it perhaps would not have generated so much heat. The real contention was discussing 'caste' in an international conference on 'racism'.

The seriousness of the matter was reflected in by the fact that it was a United Nations conference where government representatives from member nations participated. Any attempt by Dalit activists to push caste as part of the agenda for the conference would have clearly meant an acceptance of the fact that casteism could be considered a form of racism, or even more precisely, caste is race. The Indian state quite predictably backed out from any such inclusion although many scholarly contributors to the debate showed surprise at the adamant refusal of the Indian state to represent caste as race. However, on a closer look, this was only to be expected of a government which has consistently claimed inbuilt Constitutional provisions and several other legislations against all such evils, at least on paper. Once the issue of caste and race was raised, academics entered the debate and the whole issue got sucked into a highly technical debate over whether caste was the same as race. The attempt of this chapter is to present in a short and concise way the contours of the debate and to weed out its peripherals so that we can look at the various perspectives on the question of parallels between caste and race. The

questions assume great significance for this thesis as we are trying to compare two movements which, though based in America and India and addressing the questions of race and caste respectively, showed great parallels and overlaps.

Let us first try to comprehend the deeper reasons behind the Indian government's resistance to the demand to include caste in the UN conference on racism. The government's opposition was not formulated around any technical objection on the question of definition of caste; the opposition had its origins in the apprehension within the highest bureaucratic circles that this would result in negative publicity for the Indian state which was trying very hard to present itself as a modern, progressive, liberal, and technologically-sophisticated entity. Also, if caste was included within the debate, the question that would most certainly arise would be the failure of the Indian state to abolish caste repression despite nearly six decades of independent governance. This would, of course, not gel completely with India's general tendency to take the moral high ground at international forums while discussing the issues of 'race' or 'apartheid', the history of which goes back to the Gandhi-led national movement and Nehru's experiments with the Non-Aligned Movement. To counter this possible fallout, the government took a leaf out of the academicians' book and reacted by raising the question of 'whether caste was the same as race'. It was, at one level, a deliberate strategy at obfuscation; it also served to pull academicians into the debate, leading to a shift in the central object of the discussion.

Dalit activists' point of view was not to focus on whether equating caste and race would make 'good' or 'bad' sociology. Their goal was much more pragmatic and practical, and the object was to raise once more the question of caste oppression, which had been relegated to the margins of the Indian state's concerns. However, the question that finally won the day was whether caste and race were synonymous: the Indian bureaucracy and state had succeeded once more in side-stepping the tortuous terrain of caste-oppression. Once this question had been raised, it would have been difficult to 'settle' the debate once and for all. The larger question
though, as Macwan puts it, was: ‘Do we as a nation wish to tolerate caste based
discrimination?’ According to Martin Macwan, ‘the essential question [was]
whether discrimination based on race differs in terms of its intent and end results
from the discrimination based on caste?’ It is important to keep this activists’
probing and critical outlook in mind while discussing the entire debate, as it will
allow us to discard all the peripherals within the debate that arose subsequently.
The debate, in fact, became a hair-splitting exercise and in going through the
records, one is reminded of a similar and extremely contentious debate in Indian
history in the early eighties which took place on the question of whether Indian
feudalism was a replica of European feudalism. However, caste remains an
unresolved question till date, and this is partly because the Indian state continues
to watch mutely while caste oppression assumes an ever-more violent form within
the subcontinent. Activists like Macwan are perhaps trying to reframe the question
of caste against this immediate reality, reformulating it in such a way that it no
longer remains simply an academic exercise. Other authors and movements have
also tried to do precisely that: for example, the Black Panther movement. To bring
home the point, it might be useful to quote from an article that Macwan wrote after
the Durban conference, which hits the nail on its head and sets the agenda that
activists had in front of them:

We are not academics. We are grassroots activists and Dalits working with the
sole objective of securing for our masses a life of dignity, freedom and equality,
not as a favour but as a right. In our opinion the internationalisation of the caste
discrimination issue has helped the cause, thanks to the Indian as well an
international media, and especially the Government of India, which by
thoughtlessly denying the problem, has ensured maximum publicity for the
issue.

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563 It would be difficult to argue at this juncture about the merits and demerits of this debate.
However, what is easy to grasp is that scholars are now engaging with the nature and extent of
feudalism in India rather than comparing it with some European variant. One needs to ask whether,
in finding solutions and answers, it is at all worthwhile to look for categories that have been
formulated in an entirely different political and socio-economic setting (for more see Irfan Habib
“Castes in Indian History in Essays in Indian History: Towards a Marxist Interpretation”).
564 It is, I consider an unresolved question because in spite of all legislative measures the problem of
caste discrimination persists in a pervasive manner all over the subcontinent.
Activists like Macwan argue that Durban-esque interventions are extremely needed due to two principal reasons: firstly, to drive home the point that caste discrimination is not an entirely academic issue, but is in fact a lived reality experienced by millions on a daily basis; and secondly that caste discrimination is a violation of human rights, something that has not been accepted even by various supposedly ‘enlightened’ sections. Macwan notes that:

There is a need to fight the ‘monumentalisation’ of caste based discriminations, with its existence attributed to incomprehensible social systems or prejudices and not to the failure of the Republic. ... We, as a nation, had refused to tolerate the presence of apartheid and the backlash against the civil rights movement of the blacks. We need to show the same level of intolerance towards caste discrimination and invite global attention to the issue in the true spirit of ‘vasudhaiv kutumbkam’.  

The concept of vasudhaiv kutumbkam is here used as the philosophical basis for debunking the government’s position that the question of caste was an ‘internal’ or ‘family matter’. It is precisely through the use of such obfuscating bourgeois terminologies and platitudes that the question has been kept dormant for a long time within the subcontinent. Macwan also makes the forceful point that the continuance of caste-based discriminations is a symptom of the failure of the Republic. And when a ‘family’ breaks up, rehabilitation is sought elsewhere, which is precisely what activists were trying to do at the Durban conference. This harsh judgment is also a final call towards total non-cooperation with a system which continues to hide behind the logic of ‘traditions’ or ‘long-standing structures’ or ‘culture’. When this question of a failed Republic is raised, it allows us to bypass, to an extent, the issue of whether caste is really the same as race or not.

It must be said that Dalit activists made concerted and clear-headed use of the Durban conference and clearly and unequivocally announced their decision to use the international platform to further Dalit rights on the grounds that activists

566 Ibid. It is important to mention here that very rightly the activists group showed the interlinked nature of the caste problem with other national issues because the problem of caste is inextricably linked with larger structural socio-economic changes. The question of land reforms, abolition of manual scavenging and primary education, comprehensive legislation to protect rights of unorganized workers, equal opportunities for Dalit women, and globalization are some of the issues that demanded immediate attention along with the issue of caste.
fighting for the rights of other constituencies had done the same in the past. Kuldeep Mathur, for instance, describes the various responses of several political parties and social movements in India to the move made by developed countries to include a ‘social clause’ pertaining to ‘labour-rights’ as part of the negotiations in the WTO. The government of India wrote off the ‘social clause’ on similar grounds: that how India treats its labour is an internal matter. Left parties played the role of loyal opposition and decried the move as being imperialist. One wonders why Indian political parties and the Indian bureaucracy suddenly regress into this trope of ‘familial secrecy’ the moment a question of great social relevance is raised at the highest levels: perhaps this has something to do with the social background and context of the bureaucrats themselves? After all, the notion of ‘not washing dirty linen in public’, or to ‘silently bear the husband’s taunts, pokes and jibes’ has great historical antecedents and has the status of an unquestioned axiom within middle-class families.

Whatever the deeper forces behind the invention of this trope might have been, it is clear that the ‘going International’ strategy was not without its own problems. To begin with, there were several detractors amongst Dalits themselves who claimed that more was to be gained by being with the government and demanding concessions than by rubbing the government the wrong way. After all, Dalit rights could not be a one-conference affair and reducing it to that would lead to a failure of the mission that people like Macwan professed, viz. to bring about long-term, deep-rooted, sustainable changes in the lives of the Dalits who were toiling in unimaginably harsh circumstances.

There was also the pettier but really bitter issue of representation: those who were to lead the Dalit delegation in Durban were mostly English-speaking Christian converts, and this led to a resurfacing of the deep divide within Dalit communities. Other fissures erupted along different lines: for example, the age old antagonism

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between Mahars (Neo-Buddhists) and Matangs (still within the Hindu fold) in Maharashtra emerged with renewed vigour and Matangs insisted on sending their own representatives to the conference. Further, dedicated activists did not find much support from political parties who professed eternal sympathy for the Dalit masses and who banked on them for their electoral successes. For them, to admit that India was not doing anything on the Dalit issue would have been tantamount to committing political hara-kiri. These activists were seen by such parties as upstarts and political usurpers who were intent on capturing the political space and limelight.

The issue of representation has always been extremely contentious within Dalit activism. There is, firstly, no single unified Dalit category—the category has evolved over several centuries and is highly variegated and internally differentiated. Who was entitled to represent Dalits at Durban was a question that the government should have discarded altogether because ideally all those who believed in equality could have spoken. However, government suggested that it was the Hindu Dalits who had the right to speak on behalf of the Dalits. If this was a political strategy then it was successful in dividing the Dalit camp and at the same time alienating the progressive sections of society who had allied with the Dalit camp. Instead of challenging the government’s contention, most Dalits themselves felt that ‘they alone had the natural rights to speak on behalf of the Dalit anywhere and everywhere in the world’. 569

The question of representation was introduced into the debate by Gopal Guru. Guru posed certain provocative and troubling questions that seriously questioned the entire effort of making so much of one international conference. He questioned the naiveté of both sides—the government and the Dalit activist groups—who were basking in their self-professed concern for the Dalit problem.

568 The Indian Government at centre during the Durban Conference in 2001 was led by Atal Bihari Vajpayee. Bhartiya Janata Party (B.J.P.) a right wing national party acted as backbone to the National Democratic Alliance of which upholds the caste-system in India.
He attacked the government's position by raising a fundamental question. He asked if 'a formal, if not firm, commitment to the ideal of equality establish an automatic right to talk of the issue at different forums, including Durban?' From the government's point of view, a formal commitment scenario could hardly be defended and made a prerequisite for such representation. Guru therefore noted that:

...the Indian state by and large has shown only a formal and rhetorical commitment to equality as far as Dalits are concerned. Hence, even if it had chosen to speak for the Dalits at the conference, it would have had a weak moral case to defend its assertions. On the contrary, it showed extraordinary brazenness in asserting that there was no caste discrimination, (juridical if not in practise) in India, thus sliding further down the moral scale.570

Guru saw the Indian state's position as morally unsound, as it put the question of caste discrimination perpetuated by the twice-born into the domain of patriarchal morality by arguing that caste was a family matter. He also posed unsettling questions that were directed at the various claimants who professed to speak for Dalits, noting also that since the entire debate was confined to the English electronic and print media, the validity of the entire exercise was highly dubious in terms of its real reach and impact. Guru asked whether 'caste and Dalit concerns become automatically valid because of an ability to write in the English print media or [if] one has the right body language and [a] T.V. friendly face'.571 Guru argued that what was left out amidst all this media publicity and glare was the subject itself—it was the Dalit in the villages who paradoxically disappeared from this entire debate on Dalit rights and Dalit representation! According to Guru, Durban really did not matter to this forgotten subject just as it did not matter to the privileged, affluent, English-educated upper classes in the country. For the latter, Durban did not matter as caste for it as an issue was already 'dead'—it was unconnected to the lived realities of mundane existence where jobs, salaries and perks were the chief causes for worry. For the rural society, on the other hand, Durban did not matter as

570 Ibid.
571 Ibid.
it was too distant a dream and too meagre a project to really counter the behemoth of caste oppression under which they knowingly and unknowingly laboured.\footnote{572}{Ibid.}

A direct fall-out of the exclusion of the question of Dalits within rural India was the total silence maintained within the vernacular press on the Durban issue. Guru was also amazed at the insensitivity and apathy that existed even within the most 'enlightened' intellectuals when it came to the question of Dalits, a symptom of which was the fact that Durban and race/class became an issue while the reality of caste oppression itself was relatively sidelined.\footnote{573}{Ibid.} It seems that Guru's primary complaint is that scholars wrote on the issue without bothering to take any feedback from those who were the real victims. He noted that:

The representation of Dalits by non-Dalits becomes problematic since it accords to the claimant a kind of morally superior position without realising that it sustains itself on the basis of a permanent exclusion of Dalits from the intellectual milieu. It produces new forms of intellectual hierarchy, thus making difficult the democratisation of intellectual representation. It marks the Dalit submergence into the language of the alien. It is primarily in this sense that a Dalit speaking for the Dalit can be justified; it helps the historical recovery of the Dalit voice.\footnote{574}{Ibid, pp. 31–32.}

Clearly, what academics like Guru are advocating for is a comprehensive realisation of the social reality of the Dalits. In arguing for a democratisation of the intellectual representation, the aim is to ask Dalits to show moral courage in confronting their reality in totality. Two things emerge very clearly from Guru's version. One, that the Durban initiative was hegemonised more by the opinion-makers among Dalits who were based in the metropolis. Secondly, and this follows from the first point, that 'there was a greater need to go to the people again and again, not only with promises but also problems'.\footnote{575}{Ibid, p.31.}

Why is it that academics and activists alike find themselves so fascinated by the entire debate over caste and race? Dipankar Gupta provides us with two possible explanations for this: it could have been partly influenced by the early European Indologists' susceptibilities towards colour and their straight-forward
juxtaposition of fair Aryans against dark Dravidians. Secondly, if one were to be charitable to these armchair theoreticians, there are definite similarities between the ways in which Blacks were treated in the southern states of United States of America, the way in which they were treated in apartheid South Africa, and the treatment meted out to so-called untouchables in caste Hindu Society.\footnote{576}

This similarity exists despite the symbolic gestures made within the Indian constitution towards equal rights for all, especially the most disenfranchised. The Chairperson of the Drafting Committee and by then one of the most powerful leader of the Dalits, B.R. Ambedkar made a vital observation on the relationship between the Constitution and Indian society when he said:

> On 26 January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man one value.\footnote{577}

Ambedkar was, in effect, pointing to the difference between formal equality as guaranteed by the civil and political rights in the Constitution and the absence of substantive equality in the lives of the millions in the country. While the Constitution-building exercise was the pinnacle of achievement which was in a way the culmination of the long-drawn Indian freedom struggle against British imperialism, it was devised not without significant worries about accommodating the various groups, many of whom were antagonistic to each other. This was also not an easy task in a country torn by the oppressive caste system, religious rivalries and grinding poverty and it was rendered even more difficult in the aftermath of the bloody partition that left millions homeless. The complexity of finding a medium that would make free and equal citizenship meaningful as much as to the Zamindars as to their bonded labourers, to the Hindu majority as much as to the various minority groups within the boundaries of State secularism, to the upper caste Brahmins as much as to the Dalits and Adivasis was not lost for a moment to those who sat in deliberation at the Constituent Assembly.

\footnote{577 10 Constituent Assembly Debates 979.}
The principle of formal equality, it must be noted, is enshrined in the Indian Constitution specifically in Article 14 and it ensures the fundamental right to equality before law \(^{578}\); Article 16 (1) and (2) ensure the fundamental right to equality of opportunity in matters of public employment.\(^{579}\) Similar rights are also enshrined in Articles 19, 21 and 32.\(^{580}\) Ironically, the one-man one-vote principle (or the right to vote) that Ambedkar referred to is not part of the fundamental rights and can be found much later in the Constitution (Part XV) in clauses pertaining to elections, specifically in Articles 325 and 326.\(^{581}\) These are, however, merely nominal rights and do not mean anything unless translated into real gains for each and every citizen, especially those belonging to the ‘weaker section’ who have traditionally been the victims of discrimination and oppression. The Indian Constitution is rife with the marks of the struggle to balance the fundamental rights of the individual citizens with the urgency to ‘pursue substantive equality vis-à-vis certain historic formations in Indian society’.\(^{582}\)

\(^{578}\) It states that ‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’

\(^{579}\) Article 16 (1) states that ‘There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.’ Article 16(2) states that ‘No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be eligible for, or discriminated against in respect of, any employment or office under the State.

\(^{580}\) Article 19 protects the right to freedom and as it stands today protects the right to freedom of speech and expression, assembly and association, movement and residence, occupation, trade and business. Article 21 protects the citizen’s right to life and personal liberty. Article 32 guarantees the fundamental right to move the Supreme Court for protection of fundamental rights in Part III of the Constitution.

\(^{581}\) Article 325 states that ‘There shall be one general electoral roll of every territorial constituency for election to either House of parliament or to the House or either house of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.’ (emphasis mine.) Article 326 states that ‘The elections to the house of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election. (emphasis mine.)

Marc Galanter describes the difference between formal and substantive equality by using a visual metaphor of 'horizontal' versus 'vertical view' of equality. In the horizontal view:

Equality is visualized as identical opportunities to compete for existing values among those differently endowed, regardless of structural determination of the chances of success or of the consequences for distribution of values.\textsuperscript{583}

In other words, formal equality allows for equal opportunity without taking into account that the initial position from where different individuals may compete may be extremely different; this difference, moreover, may arise out of their varying positions in/outside the social structure. The vertical perspective, on the other hand, is 'seen as a transition from a past of inequalities to a desired future of substantive equality ... equalization by offsetting historically accumulated inequalities'.\textsuperscript{584}

The vertical perspective, thus, brings in the contentious matter of history. Substantive equality is about not just giving an 'equality of opportunity but an opportunity to be equal'. Hence for Galanter, Constitutions and laws are transformed into potential instruments of social justice and social change. While formal equality is concerned with recognising 'merit' and 'efficiency', substantive justice is concerned with changing the power relationships in society in favour of the victims.

The distinction between formal equality and substantive equality are sometimes seen in terms of equality guaranteed through political and civil rights in the first instance and through social, economic and cultural rights in the second. While the first places emphasis on individual rights, the second emphasises group rights. These aspects will be examined later in the light of understanding how politics has revolved in India around equality issues and what role the law has played in it. Political movements in India have traditionally focussed on inequalities that arise due to caste/tribe membership, class and gender, although there has been growth of movements around identity, especially through the

\textsuperscript{583} Ibid, p.379.
\textsuperscript{584} Ibid., pp.379–80.
increasingly visible and vocal LGBT (Lesbian, Gay, Bisexual and Transgender) movement. Of course, none of these have been insular—there have been overlaps and coalitions across boundaries.

Coming back to the point we were discussing earlier, the history of assertion of Dalit rights during the colonial times reached a height through the efforts of Ambedkar. Though Ambedkar was instrumental in drafting the Indian Constitution which enshrined equality as one of its basic principles, he himself was fully aware that this nominal equality did not always translate into substantive equality. This is perhaps why, in his activism he placed more emphasis on formal political rights, although social rights like scholarships and employment opportunities were never far behind. In 1928, Ambedkar appeared before the Simon Commission to demand reserved seats in the legislative bodies for Depressed Classes apart from educational concessions and recruitment in government posts. These demands were accepted by the Commission, but rejected by the Congress leaders.

Later, at the First Round Table Conference, Ambedkar, along with leaders of other religious communities, demanded separate electorates and a special government department to look into the welfare of Depressed Classes. At the end of the Second Round Table conference which led to the Communal Award, the Depressed Classes were awarded regular votes in the general election and separate electorate in areas where they were in a majority in addition to the regular votes. The Award was thwarted by the fasting of Mahatma Gandhi leading to the Poona Pact in September 1932.

This struggle for formal equality became vastly significant in the view of the severe opposition posed by the Congress leaders, especially Gandhi whose understanding of the caste system, the issues of untouchability and remedies to the problem were almost diametrically opposite to those of Ambedkar. Eleanor Zelliot
gives the most plausible and powerful explanation for the differences between Ambedkar and Gandhi:

One way of explaining the conflict between Ambedkar and Gandhi perhaps an oversimplification, is to say that Ambedkar saw advancement for the untouchables in terms of using political means to achieve social and economic equality with the highest classes in a modern society, while Gandhi held to a more traditional concept of varna system, cleansed of untouchability, in which 'Untouchables' would be 'Shudras' and their unclean work made honourable.585

In brief, to Gandhi the caste system was an impurity/stigma on the body of Hinduism and one that could be handled 'internally' without seeing the 'Harijans' as a category that was separate from the larger body of Hindus. More importantly, of course, he did not want caste rivalries to splinter the united front of the national movement. Interestingly, as we have seen earlier, this argument of caste being an 'internal' matter was echoed by the Government of India in a different context to oppose the inclusion of caste in the agenda of the UN World Conference against Race, Racial Discrimination, Xenophobia and Related Intolerance, which was held in Durban in 2001.

Despite such apparent insensitivity to the Dalit plight by the most sensitive nationalist leaders [though this would be contested by many], Article 17 of the Indian Constitution abolished untouchability and the interests of the Dalits were supposedly protected through several measures like reservations in legislative bodies, government services, academic institutions and government schemes like land allotment and housing; special benefits likes scholarships, grants, loans, healthcare facilities, and free legal aid; and social justice legislation like Protection of Civil Rights Act, 1956 and S.C./S.T (Prevention of Atrocities Act) 1989 (Hereafter Atrocities Act) were devised. In spite of these constitutional and legal protections, Martin Macwan, one of the leaders of the Dalit movement who was present at the Durban conference, claimed that 'caste and not national constitution continues to be the dominant factor' in the lives of the Dalits in modern India.586

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A Black Panther Party poster

A march by Dalit Activists at Durban Review Conference, Geneva, 20-24 April, 2009
The reality of his statement is borne out by the fact that four decades after independence, an Atrocities Act had to be legislated (section 3 of the Act defines ‘atrocity’ and provides a list of sixteen types of relatively minor atrocities and five more serious types of atrocities—the distinction being made purely in terms of the differences in punishments prescribed). The minor atrocities include blackening of face, parading naked, poisoning of water sources, abusing through use of caste names in public place, wrongful dispossession from land, sexual molestation, rape, preventing from entering temples or public place, forcing to vote for a particular candidate, providing false evidence and forcing to leave place of residence. The major atrocities include murder, arson, and destruction of places of worship. Given that this controversial piece of legislation arose from several reports of the National Commission for Scheduled Castes and Scheduled Tribes which narrated the actual incidents of atrocities across the length and breadth of the country, it is a marker of the deep divide between formal and substantive equality in the context of Dalit rights.

**Durban Review Conference**

The issue of caste-based discrimination was for the first time raised at an international stage during United Nations World Conference against Racism held in 2001 at Durban, South Africa. It can be clearly seen how the question of caste was treated very euphemistically by the WCAR at the conference. The report of the conference referred to the matter as ‘discrimination based on work and descent’. A ‘Durban Review Conference’ was held recently on April 2009 in Geneva and the outcome report of this review conference avoided even the mention of the term caste in the category that was devised a decade earlier by UN’s Committee on the Elimination of Rural Discrimination.587

S. Anand points out the fact that the battle was only half-won in 2001 too. Despite intense lobbying, the preparatory document had included Paragraph 73, which urged the Indian government ‘to prohibit and redress discrimination on the

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basis of work and descent'. The Indian government, sticking to its position of 'keeping the matter a domestic affair', mounted diplomatic pressure on other governments of the South Asia region to abandon this part from the final document. The efforts of those who stood for this cause were diplomatically scuttled in almost all intergovernmental meetings barring non-governmental meetings where they garnered some sympathy for their cause.588

Anand makes yet another important observation, that even when India resisted discussing the question of caste at UN forums, other South Asian nations took positive official positions in this regard. Considering this to be a gain from the Durban Review Conference, Rikki Nohrlind, who is a coordinator of International Dalit Solidarity Network in Copenhagen, remarked that:

Several other caste-affected countries such as Nepal, Pakistan, Bangladesh and Mauritius addressed the issue in their statements. Nepal's Ambassador Dinesh Bhattarai made an explicit reference to the need for a global fight against the 'evils of untouchability and caste discrimination'. Malik Ahmad Khan, Pakistan's Minister of State for Foreign Affairs emphasised that 'victims of racism must include those who are marginalised on the basis of descent and caste'.589

Another lobby led by the United States of America, which was joined in by Australia, Canada, Israel, Italy, New Zealand and other four European powers, and other members of United Nations boycotted the Durban Review Conference. The reason cited for the boycott was that the 'review-document' did not obliterate certain portions of the document which had been adopted in 2001. This document had affirmed 'the inalienable right of the Palestinian people to self determination and to the establishment of an independent state' and that 'the Holocaust must never be forgotten'. It is worth mentioning here that these declarations were adopted in spite of the fierce opposition from the United States, Israel and their allies.590

588 Ibid.
589 Ibid.
There are various interpretations about the nature of the WCAR, and the question of the expediency of presenting caste discrimination for discussion at the global arena. Some express strong indignation against 'internationalising' and present it as an 'internal reality'. But anyone who examines the pre-Durban phase, the Durban Conference and post-Durban developments indicated that the discourse about discrimination of Dalits had moved from the internal to the international arena. This is not only due to what happened in Durban alone, but also because of the years of struggle waged by Dalits against every form of oppression and domination. Those at Durban who highlighted the caste question also raised another historical and social issue: that race is only one form of discrimination. Since race is a Western form of social stratification, other horrendous forms of discrimination known as 'Hidden Apartheid' are excluded from the purview of global discussion.

It was argued that the Durban Conference proceedings went contrary to the logic of the Indian government which continues to treat caste discrimination as an 'internal matter'. The Indian political elite which had till now projected itself as a crusader against Apartheid, found its double standards challenged at Durban. Human rights activists urged the Indian ruling caste and class to 'set their own house in order'. This reduced the space for the Indian leaders to cry hoarse about Apartheid out there. This was a considered a major achievement by Dalits and Human Rights activists and others who perceived the validity and legality of this struggle. The bold stand of the NHRC, lauded by Mary Robinson, Commissioner of UNHRC, is significant and must be mentioned here. Robinson congratulated 'the principled stand taken by NHRC which stood up to help the Dalits and extend moral support'.

The most balanced view in this debate however was adopted by D. L. Seth, who points out the conspicuous absence of political parties like ‘Bahujan Samaj

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593 Quoted in Prakash Louis, op. cit., pp.26–27.
Party' and the 'Republican Party' from Durban, even though they claim to represent Dalit interests. They did not join the debate and the campaign remained mainly confined to the NGOs. Most of the organisations involved were attached to the World Council of Churches. An important thing that surfaced with the newly-gained confidence and aggression of the NGOs was that disagreement with the principles of equality proclaimed by them could lead to stigmatisation as a supporter of 'untouchability' and 'Brahmanism'. Perhaps this was a symptom of their new-found moral authority as a result of their principled stand.

D. L. Seth agrees to the serious political implications of viewing the problem of the ‘caste’ from the perspective of ‘race’, yet sees nothing wrong in the internationalisation of caste and has cited strong reasons in favour of his argument:

First, caste based discrimination is by no means confined to Indian society alone. It is found in several countries of South Asia and East Asia, even though its nature and extent may vary. Even untouchability is not exclusively an Indian practice. For example ‘Buraku’ of Japan due to their long association with leather work in the past suffer a predicament comparable to that of ‘Chamars’ in India. ‘Peekchongs’ of Korea and ‘Ragyappas’ of Tibet would fall in the same category. Second, if untouchability is crime against humanity, which indeed is, how on earth can we assume that all humanity is exhausted in the Indian nation state? Therefore this issue should not be seen as one of nationalism; it is about the right to be human. And this question therefore be raised both nationally and globally.

Reservation-Affirmative Action

The most recent manifestation of the entire question of caste has been the debate over reservations in modern India. This issue was powerful before and resurfaced strongly in the aftermath of the conference too and reflects the deeply divided sentiments amongst various sections when it comes to the question of battling caste oppression. It also reflects the nature of the Indian state which has always believed in a politics of symbolism that favours a few rather than the politics of substantive change, something that we have touched upon earlier. The reservation policy as envisaged in the Indian Constitution and affirmative actions as proposed in the

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595 Ibid.
United States of America resemble each other closely. In both cases, the expressed intention is to rely on preferential policy to uplift those communities that have been historically disadvantaged. The Scheduled Castes and Tribes in India and the ‘Native Indians’ and Blacks in the United States have been victims of discrimination and prejudice for long periods of time. This prevented them from acquiring the educational and cultural skills necessary for economic success in contemporary societies. Skills such as the ones they possessed not only confined them to the lowest ranks in the traditional order, but also failed to empower them to independently forge ahead when the old economy and its accompanying social relations were dismantled.

In India, the whole idea of ‘protective-discrimination’ is based on the twin assumptions that existing conditions of inequality in this country are so huge and that a special consideration must be given to the disadvantaged groups before social equality is finally achieved. After all, not just social, but also economic and political backwardness of a certain section of the society is coincidental with ritually ‘impure-status’ of the downtrodden in India. This country has waged a unique and bold experiment with the implementation of ‘reservations’ for the downtrodden in education, employment and the polity in order to make them socially viable, economically sustainable and politically assertive respectively.

On in sharp contrast, the racist ‘separate but equal’ clause operated in the United States of America particularly in relation to educational institutions till as recently as 1954. Under this clause, Black children could be legally disallowed from attending schools meant for White children. Even after this provision was shot down in the justly famous Brown vs. Board of Education case in 1954, many Southern States in the United States refused to implement it. Affirmative Action first made its appearance during Kennedy’s Presidency, and even then it was not powered by legislation, but by Executive Decrees.

The Civil Rights Movement, though it gained momentum relatively late, exposed the pain of institutionalised segregation in the United States. The movement did set an agenda for a preferential treatment of the Blacks in order to correct the historical wrongs. President Lyndon Johnson supported the suggested preferential treatment for racial minorities in his address at Howard University, Washington D. C., in 1965. He declared:

You do not take a person who for years, has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, you are free to compete with all the others and still justly believe that you have been completely fair.597

Though the introduction of preferential policies to uplift the historically disadvantaged came about for different reasons in different countries, the Indian case still remains unique because preferential policies were introduced here along with the inauguration of democracy and founding of the Republic. What took about 200 years to make a tentative appearance in the United States emerged fully articulated and theorised almost at the instant when India became a sovereign and democratic nation state about half a century ago. Malaak Shabazz emphasising the indispensable utility of Affirmative Action in bringing about the betterment of Afro-Americans states:

Affirmative Action policy has to some extent given us the chance for such opportunities which were denied to us for a long time. We deserved more than Affirmative action because of slavery and all the restrictions imposed on us. Affirmative Action was deserved right. Strange it may sound but more White women are on welfare than Blacks, but you would never know this aspect of things. What is propagated is the opposite that it is the Whites who are providing welfare to the Blacks. Today Affirmative Action is being misconstrued. There is a thought being pushed now by some people who had used Affirmative Action to reach where they are that Affirmative Action should be stopped. It makes the Blacks feel dependent. I personally think this is a ridiculous proposition. Without Affirmative Action, how do you pay back for what you have done to a whole culture for long?598

M. N. Srinivas, citing from the ‘Report of Administrative Reforms Committee’, Government of Kerala, Volume I, 1958, pointed out three noted disadvantages usually referred to with respect to the reservation system in India.

598 Malaak Shabazz in a personal interview conducted at Manhattan, New York City on 10 July 2008. Shabazz is youngest daughter of Malcolm X.
First, there is a continuous clamour about including more and more ‘caste-communities’ in the list. And the basis for the assessment of their backwardness is not entirely satisfactory. Second, there are among the ‘backward-classes’ communities which are ‘relatively-advanced’ and those who are really backward. The latter have a feeling that the benefits of the reservation generally goes to the former. Third, there is a consideration that such reservation inevitably brings down the quality and standard of the services. Most important of all, this system creates a psychology amongst all communities by which caste and communal consciousness is perpetuated.\(^{599}\) The Report further notes:

On account of these disadvantages, it has been suggested by some that the criteria for backwardness should be economic rather than those based merely on communities. This suggestion looks attractive, but apart from the fact that over eighty percent of our people should be considered to be economically backward, it ignores the historical fact that economic backwardness in our country, has in most cases, been the concomitant and result of social backwardness.\(^{600}\)

There is no simple solution available however, for fixing up a criterion which suits everyone. It was agreed upon that a certain amount of protection and encouragement to the backward classes is necessary for some period so that they are able to overcome their disadvantages to which they have been subjected to for centuries. But the report does not ignore the real grievance of the economically backward sections of the so-called forward classes. Their complaint is that under the garb of reservation, richer people of less merit belonging to backward communities are able to seek better facilities in education and services at the cost of people of merit in the forward classes who are economically poor. The report therefore, observed:

We are therefore of the view that the benefit of the reservation for the backward classes should be given only to those individuals who fall below a prescribed economic level. We suggest this as a first step towards the recognition of economic backwardness as the index for giving state protection.

The fact that a Constitutional Amendment was easily made after the Champakam vs. State of Madras case of 1951 to accommodate caste-based admissions and preferences is quite unthinkable in American jurisprudence. This is

\(^{599}\) M. N. Srinivas, *Caste in Modern India and Other Essays* (Bombay, 1964), p. 3.

\(^{600}\) Ibid, p.3.
why whenever there is any sign of Affirmative Action infringing on individual rights, the courts in the United States of America generally rule against Affirmative Action.601 In this sense, the Indian political scenario is, in some ways, more progressive than the rather more negative attitude adopted by the courts and the establishment within the United States. The entire ruckus that arose around the question of reservation also testifies to the liveliness of Indian democracy, where questions are debated extensively through various parties that profess to stand for the interests of various sections. What stands out, and this is something that we have tried to highlight in our discussion of the Durban conference too, is the fact that the Indian state has been guilty of taking measures that do not disturb the status quo, that do not challenge the entrenched hierarchy and that do not tackle the question of caste oppression at its roots. The Indian state continues to veer towards ‘symbolism’ rather than ‘substantiveness’: perhaps this has partly been a legacy of the colonial state.