



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventieth session

SUMMARY RECORD OF THE 1797th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 26 February 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 10.15 a.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) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of India took places at the Committee table.*
2. Mr. VAHANVATI (India) said that his country was sparing no effort to deal with the problem of discrimination based on caste in India. It had thus eliminated the concept of untouchability which appeared in the Constitution and adopted a wide range of measures explicitly designed to combat discrimination based on caste. Nevertheless, the Indian Government maintained that the concept of "caste" could not be confused with that of "race", nor be included in the concept of "descent" within the meaning of article 1 of the Convention. While it was willing to provide information on the caste issue, the Indian delegation did not regard that as part of its obligations under the Convention, which dealt exclusively with racial discrimination. India had always considered the members of so-called scheduled castes to be of the same racial and ethnic origin as other Indians.
3. For more than 20 years, India had been confronted with the problem of terrorism, but all its laws, including special anti-terrorist laws, were fully in line with international human rights standards. Concerning the 1958 Armed Forces (Special Powers) Act, in 1998 the Supreme Court had found that it met the requirements of the Constitution and that the armed forces were legitimately vested with special powers to act in certain circumstances to maintain law and order in trouble spots. The Armed Forces Act was not directed against any particular group but applied to all the population in the area concerned. As for the police, the Government was fully aware that the Police Act dated from the colonial period and that it was high time for a far-reaching reform of that institution.
4. The 1955 Citizenship Act did not allow foreigners to acquire Indian citizenship automatically on marrying an Indian citizen. They were required to fulfil a number of conditions to be able to apply for Indian citizenship under that Act.
5. Established by a parliamentary law, the National Human Rights Commission was headed by a former President of the Supreme Court. It investigated complaints concerning human rights violations and issued opinions on matters brought to its attention by civil society, the media, citizens or human rights specialists. The Commission concerned itself both with civil and political rights and with economic, social and cultural rights. The Government paid the utmost attention to its recommendations.
6. Although the death penalty was still in force in India, it was very seldom applied. In addition, the law provided for several stages of judicial review before a death sentence was handed down.
7. With regard to inter-caste marriages, the Supreme Court had instructed the public authorities and the police to protect spouses belonging to different castes. While India encouraged a change in attitudes towards inter-caste marriages, the question was one of individual freedom.

8. The Ministry of Justice encouraged the establishment of *Lok Adalats* ("people's courts") at all levels so that the poorest social groups would be able to secure justice and assert their rights. As an alternative mechanism for dispute resolution, the *Lok Adalat* used such techniques as negotiation, conciliation and mediation and ensured easier access to justice for the poor.

9. He stressed in conclusion that racial discrimination had always been abhorrent to the Indian people. India had always combated racial discrimination and considered it unacceptable to play on words by equating the concept of "caste" with that of "race". On the question of castes, the Indian Prime Minister had publicly stated that he was determined to promote the political, economic and social emancipation of the Dalits ("untouchables").

10. Mr. GUPTA (India) said that "untouchables" whose human rights were violated increasingly won their cases in the courts, even though there was a steady decline in the number of cases relating to the status of untouchable. The phenomenon of child labour affected all castes as it was essentially bound up with the problem of poverty. Members of all castes were increasingly better represented in political bodies. The improved situation was largely due to a higher level of education and literacy among the most disadvantaged classes. Generally speaking, Indians were proud to belong to a particular caste and did not try to conceal their caste affiliation. Cases of lynching had indeed arisen when individuals had gone against the wishes of their clan and their caste in marrying persons of another caste. Regarding the problem of land sharing in rural areas, that was not connected with castes but with the mind set of landowners who were reluctant to sell their land to persons outside their families.

11. In response to the question whether it was possible to leave one's caste, he said that the question was badly worded as it implied the existence of racial divisions between castes, although there were none. The Government maintained that "caste" could not be confused with "race" nor be incorporated into "descent" within the meaning of article 1 of the Convention and that consequently no parallel could be made between the caste system and racial discrimination. Descent referred to a genealogy which could be objectively demonstrated and, in India, the same caste could have different systems of descent. Every Indian, whether Muslim or Christian, belonged to a caste and was faithful to its identity. There was no war between castes and no one sought to leave the caste to which he or she belonged.

12. Mr. PURI (India), responding to the question whether India intended to ratify the amendment to article 8 of the Convention concerning the financing of the Committee's work, said that his country had fulfilled all its financial obligations towards the Committee. On the question whether India intended to make the declaration provided for in article 14 recognizing the competence of the Committee to receive and consider communications from individuals claiming to be victims of discrimination, he recalled that India had put in place an effective framework of protection against human rights violations, composed in particular of the National Human Rights Commission and human rights commissions set up in the country's two States.

13. As to whether the State party was planning to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, he explained that, since its accession to independence in 1947, India had taken in millions of refugees, including more than 10 million from Bangladesh in 1971. India's efforts in that area

had been widely recognized and appreciated. India, which participated actively in the work of the Office of the United Nations High Commissioner for Human Rights, of which it was a member of the Executive Committee, considered however that the 1951 Convention and its 1967 Protocol did not deal with the rights and obligations of host countries and countries of origin and did not contain provisions on mass influxes of immigrant populations. That being so, it was difficult for it to accede to those two instruments. Although India did not have specific legislation governing the status of refugees, it respected the non-refoulement principle, and granted all refugees the right to equal treatment and the right to life and freedom.

14. Concerning the situation of Dalit women, he referred Committee members to the periodic report that India had recently submitted to the Committee on the Elimination of Discrimination against Women.

15. On matters relating to indigenous and tribal peoples, he stressed that International Labour Convention No. 169 concerning indigenous and tribal peoples in independent countries applied only to tribal peoples in independent countries whose social, cultural and economic conditions distinguished them from other sections of the national community and to peoples in independent countries who were regarded as indigenous on account of their descent from the populations which had inhabited the country at the time of conquest or colonization or the establishment of present State boundaries. India considered that the Committee was not competent to consider the situation of indigenous or tribal peoples.

16. On the whole, India's policies in regard to tribal peoples allowed them to develop and to preserve their identity and way of life. India gave considerable attention to the situation of the tribes in the Nicobar and Andaman islands, and in particular the Jarawa tribe, but considered that the Committee was not qualified to address that issue, which had nothing to do with racial discrimination. Furthermore, if no case of racial discrimination had been recorded in India, it was because the question of racial discrimination had no place in the national mind. The Criminal Tribes Act, which had been promulgated by the British colonial administration when India had still been a colony, had long been repealed.

17. Ms. DAH wished to know the caste of a child born of a mixed marriage.

18. Mr. PURI (India) replied that a child born of such a union belonged to no caste. Such cases were frequent in India and the persons concerned were satisfied with their status.

19. Ms. DAH noted that the "without caste" status was also a form of caste. Moreover, since the State party had put in place policies and programmes to abolish the caste system, it would be interesting to know whether those programmes were seeking to build a society where the major part of the population would no longer be identified with a caste.

20. Mr. AVTONOMOV explained that racial discrimination could not be reduced to discrimination on the basis of skin colour and that other distinctive signs could be at the origin of violations of the rights set out in the Convention. The reason the Committee wished to know more about the tribal peoples living in India was in order to understand better the particularly complex situation in that country and to be able to make useful recommendations to the State party.

21. Mr. PROSPER did not fully understand the argument that no one sought to pass for a member of another caste in the State party. Nor did he see how policies to combat racial discrimination were different from policies to combat discrimination based on membership of a caste. The mechanisms of discrimination were the same whether the discrimination was based on race, descent, gender or other factors and, consequently, the relevant strategies could have many points in common.

22. He noted with regret that the delegation had not acknowledged that some castes were distinctly more exposed to discrimination and to serious violations than others and that some of them were totally disenfranchised. In addition, the delegation had not mentioned any measure to improve the situation of disadvantaged castes. Lastly, the term "ethnic group" did not refer only to the physical characteristics of a particular population group but also encompassed far wider concepts such as way of life and culture.

23. Mr. LINDGREN, unreservedly endorsing those remarks, said that it was preferable to move away from the theoretical debate on the difference between caste and race and, since the State party had itself acknowledged that the caste system was discriminatory, to find common ground in order to solve the problems facing India with regard to implementation of the Convention. Since, according to the delegation, India did not have any indigenous peoples in the strict sense, explanations would be desirable as to the meaning of the term "scheduled tribes".

24. Mr. CALI TZAY said that there was a contradiction between the fact that, first, the delegation had stated that persons belonging to a caste were satisfied with their situation and did not wish to change caste, and then, subsequently, the response given to Ms. Dah that persons born of mixed marriages were happy not to belong to any caste. He recalled that the reason why the Committee was so interested in indigenous peoples was that, throughout the world, such peoples were very often the victims of discrimination. He therefore wished to know whether certain castes or other groups could be likened to indigenous peoples in the State party.

25. Mr. KEMAL noted that, although race and caste were not synonymous, it could not be denied that, in the region of the State party, some castes presented distinct physical characteristics and that in that sense there could be an overlap between the concepts of race and caste.

26. Mr. THORNBERRY pointed out that the authors of the Convention had not wished to limit the scope of the definition contained in article 1 of that instrument, which was why they had included a whole series of concepts, it being understood that those concepts could be combined. He wished to know what authority was empowered to determine whether an individual belonged to a scheduled caste or tribe and how the measures adopted for the Jarawa tribe, on the island of Andaman, were implemented in practice.

27. Mr. VALENCIA RODRÍGUEZ recalled that, within the United Nations, India had been the driving force against apartheid and that, through dogged efforts, it had managed to have that question placed on the agenda of the General Assembly. He therefore hoped that the State party would be guided by that experience in finding common ground with the Committee and smoothing out their differences.

28. Mr. AMIR noted that "untouchables" were victims not only of extreme poverty and endemic disease but also of discrimination, which the State party considered to

be based on social affiliation and the Committee on race, whence the difference of opinion.

29. Mr. YUTZIS recalled that race was just one of the criteria listed in article 1.1 of the Convention. He drew the delegation's attention, in particular, to the criterion of descent, which was of particular significance in the context of India and the caste system. The fact that members of a caste were proud to belong to it did not suffice to justify the very existence of that system; it was the repercussions of that system for the very large number of persons belonging to the most disadvantaged castes that were of concern to the Committee

30. The Committee had a high regard for the State party and expected it to be reciprocated. The Committee members were sufficiently competent to know what information to select from among that submitted to them by NGOs. Moreover, some States parties based their reports on the often valuable statistics and information provided by local NGOs.

31. The CHAIRPERSON, speaking as a member of the Committee, inquired about the content of the decision taken by the Supreme Court in the case *Lata Singh v. the State of Uttar Pradesh* concerning the protection of couples whose members were from two different castes.

32. Mr. SINGH (India) said that his country was concerned about the phenomenon of discrimination on the basis of caste and was resolved to combat it.

33. Mr. KHANNA (India) said that, to be included in the list approved by the President, "scheduled tribes" had to fulfil certain specific criteria. Such tribes were not to be confused with those known as "nomadic" or "denotified" tribes. Denotified tribes were those whose members had been regarded in the past as born criminals, whose freedom of movement was considerably restricted. After independence, the Criminal Tribes Act had been abrogated, which had at last allowed the persons concerned to escape the constant surveillance of the police and subsequently to benefit from numerous projects and other advantages, such as concessionary housing loans, occupational training programmes and education grants. Some of them had afterwards been included in the list of scheduled castes, while others had been placed in the group of "backward classes". It was difficult to give an estimate of the number of persons belonging to each of the aforementioned castes as they were covered by separate censuses. Central Government had recently taken the initiative of setting up a commission to review the specific problems of nomadic and so-called "denotified" tribes and to see what could be done to enable them to achieve economic freedom. The commission would be submitting its conclusions in February 2008.

34. The 2006 Forest Rights Act covered scheduled tribes and other traditional forest dwellers. It contained a definition of traditional forest villages, namely, settlements established by the Forest Department for forest work, and of forest dwellers, namely members of the community whose subsistence had depended on the forest for at least three generations, where one generation was understood as being a minimum of 25 years.

35. Contrary to the information available to the Committee, the National Commission for Scheduled Castes and Tribes had a large staff distributed among six regional offices and was not a tiny eight-member organization, as had been suggested. A national commission with extensive powers had also been set up to

deal in particular with the question of the untouchables responsible for garbage and waste collection. It submitted an annual report to the President of the Republic, in which it made proposals to guide related State policy. Such commissions had also been set up at local government level; they submitted reports to States' legislative assemblies.

36. Aware of the problems experienced by members of scheduled castes, the legislator had provided for the establishment of committees composed of members of Parliament to study the usefulness and effectiveness of the governmental programmes designed for them. Members of those committees travelled all over the country meeting with the officials responsible for the programmes and their beneficiaries. Similar committees had been established in local government, which reviewed the situation of low castes at the local level. Numerous other committees served to link together people working at grassroots level and the various local government bodies responsible for protecting the interests of scheduled castes and tribes and putting them into contact with NGOs. Those committees saw to it that complaints of offences were registered and were followed by investigations. Special police stations had been set up to record complaints from members of scheduled castes and tribes, together with courts to examine them. Under article 12 of the Protection of Civil Rights Act, when a member of a scheduled caste lodged a complaint concerning an offence of which he or she had been a victim, the judge started from the principle that the presumed offender, in the absence of evidence to the contrary, had so acted because the complainant belonged to a low caste. Lastly, no fewer than 2, 700 NGOs were involved in carrying out programmes in support of scheduled castes, as well as in preparing them, in particular by attending preparatory meetings of working groups.

37. Mr. GUPTA (India) said that descent and caste were not as closely interlinked as Ms. Dah thought. That was proved by the fact that a child born of parents belonging to two different castes did not belong to any caste, although his or her descent could not be denied or called into question. He emphasized once more that the members of scheduled castes were not disenfranchised, whatever some Committee members might say. He was proud to belong to a country where persons of such different origins lived together in a single nation, despite the doubts that had been expressed on the subject at the time of India's independence.

38. Mr. SICILIANOS, Country Rapporteur, said that he would have liked the debate to have been in the image of the remarks made by Mr. Khanna, who had tackled the real issues in a constructive spirit. He did not wish to go back on the matter of legal disagreement between the Committee and the State party. The information at the disposal of the Committee was varied and consistent and had been supplied not by a handful, but by dozens of NGOs. The Committee also had information from other treaty bodies and from United Nations agencies and bodies, not to mention that received from the National Human Rights Commission and the National Commission for Scheduled Castes and Tribes. The Committee would of course take into account the information communicated orally by the delegation during its deliberations.

39. Recalling that the international community had commended India for its hospitality towards refugees, he said that he did not understand in what way the Convention relating to the Status of Refugees and its 1967 Protocol could not be adapted to the Indian context. In any case, nothing prevented India from adopting

domestic legislation on the question. He expressed the hope, lastly, that the State party would wish to continue dialogue with the Committee with a view to improved implementation of the Convention.

40. Mr. SINGH (India) thanked the Committee for the frank dialogue established with his dedication and expressed his appreciation of the demonstrations of friendship and goodwill shown towards his country. He hoped that his delegation had clearly and convincingly expressed its position on the Committee's General Recommendation XXIX regarding descent; the Committee should not stray from the purpose of its mandate which was to combat racial discrimination. Lastly, he was convinced that consideration of the twentieth periodic report would open a new chapter in relations between his country and the Committee and would reinforce their mutual esteem.

The meeting rose at 1.10 p.m.