

OPINION

by MARTIN MACWAN

Untouchable apartheid



Dalit activists wearing posters at a protest outside the UN Palais de Naciones in Geneva, May 2001.

Discrimination against Dalits is a South Asian problem, and arguing over semantics will not get us anywhere.

For decades, India championed from afar the anti-apartheid cause and supported America's civil rights movement. But now India stands poised to block discussion of caste-based discrimination against its own 160 million Dalits, a Hindi word meaning "the oppressed", which refers to its underclass of "untouchables" at the UN World Conference against Racism (WCAR) to be held in Durban later this month. Employing the same tactic used by defenders of apartheid and of America's Jim Crow laws, India's government argues that "caste is an internal matter."

The last Indian census based on caste identity, conducted in 1931, found that 20 percent of India's population consisted of Dalits—a generic term for people deemed filthy and impure to touch, approach, or merely see in daylight. Current statistics suggest that the proportion of untouchables, known as "scheduled castes" in constitutional jargon, has since declined to 16 percent, reflecting the fact that many Dalits have embraced Christianity, Islam, Buddhism, or Sikhism. But even as converts to religions that claim to renounce caste discrimination, stigmatisation of the Dalits continues. In South India, for example, separate Christian churches exist for Dalits, a practice copied from Hinduism.

Indian officials have been notably Janus-faced about caste discrimination. In January 2000, India's president, KR Narayanan, himself of Dalit origin, conceded that while untouchability has been legally abolished, "shades of it remain in the ingrained attitudes nurtured by the caste system." Barely four months later, however, India declared unequivocally at the WCAR's first preparatory meeting that caste discrimination had been relegated to the past.

India's constitution does, indeed, abolish untouchability. But a lack of political will has rendered formal prohibition little more than a legal fiction. Fifty percent of Dalit children (and 64 percent of Dalit girls) cannot complete primary education in part due to humiliation by teachers, while

poverty remains widespread as land reforms have gone unimplemented. A 1997 survey by Navsarjan, a private research group, found that Dalits legally owned 6000 acres in 250 villages in Gujarat state but did not hold physical possession of any of that land. According to the Indian government's own data, over 800,000 Dalits are engaged in the dehumanising practice of manually handling human waste—a caste-based role reinforced by the World Bank's financial support for construction of dry latrines.

Even more disturbing, untouchables continue to be subject to widespread violence, particularly when they transgress caste traditions. In a case concerning 79 Dalit families that were ostracised for 27 months in the village of Devaliya, India, the National Human Rights Commission concluded: "When young Dalits assert their right to equal treatment, attempt to protect their dignity and that of their women, or resist the perpetration of atrocities committed against them, they are often branded as 'extremists', falsely implicated in alleged crimes, and killed in staged encounters. When they resist as a group, wholesale killings, arson, mass rape of their women, and parading them naked through the village are regular occurrences."

A recent study by Human Rights Watch supports this finding of systematic, premeditated brutality when Dalits challenge caste discrimination, with women suffering particularly savage retaliation. During massacres of Dalits in Bihar, a north Indian state, Dalit women were shot in their vaginas. In the South, hundreds of Dalit women are victims of Devdasi, a system of prostitution in the name of religion which upper-caste Hindus are quite happy to exempt from the practice of untouchability.

Employment quotas favouring Dalits have, of course, improved their life prospects—but not by much. Dalits and low-caste tribals, who together comprise 23 percent of India's population, fill only 5 percent of civil-service jobs. High-caste groups, in contrast, account for 25 percent of the population,

but fill 89 percent of such posts (as well as most top jobs in politics and business). Yet even this minor curtailment of upper-caste privilege has led to two bloody riots since quotas were introduced, resulting in the deaths of hundreds of Dalits.

Alarmed by the potential embarrassment it faces because of its denial of systematic and violent discrimination against Dalits, India's government now claims that caste is not race and therefore has no place on the agenda of the UN conference in Durban. Fortunately for India's Dalits, the UN's Human Rights Commission rejects this argument, holding that "the situation of scheduled castes falls within the purview of article 1 of the International Convention on the Elimination of Racial Discrimination."

Dalit leaders contend that if caste discrimination in India violates that Convention it should be included in the Durban conference's draft declaration under the heading "discrimination based on work and descent," a formulation introduced by Barbados and Switzerland. But the WCAR's drafting committee faces strong pressure to reject this demand, and not only from Indian officials. Similar caste-based discrimination, including bonded manual labour, is rife in Nepal, Pakistan, Bangladesh, and Sri Lanka, which applaud India's bogus hairsplitting.

But the purpose of the UN meeting in Durban is not to haggle over the semantics of caste and race. Its mission is to develop means to combat discrimination based on descent, so that what India's government—what any government—claims is an internal problem does not become an eternal condition. Having backed the opponents of apartheid and Jim Crow, it is sad that India rejects accountability for the ongoing human rights disaster caused by its entrenched social order. (Project Syndicate)

Martin Macwan, a Dalit activist, has been awarded the Robert F Kennedy, Gleitsman and Human Rights Watch awards and convened the National Campaign on Dalit Human Rights in India.

BOOK REVIEW

by MARK TURIN

This land is my land... (and I'm a woman)

Last month, while most of the country was watching the Maoist hostage drama unfold in Rolpa, legal history was being made in Kathmandu. On 17 July, the Parliamentary Law and Justice Committee approved the controversial eleventh amendment to the Nepal's *Muluki Ain* (Civil Code), allowing women to retain ownership of parental property after marriage. Eclipsed by issues of national security, this ground-breaking clause, popularly known as the Women's Bill, provoked relatively little discussion in the national dailies. Particularly intriguing are the results of a survey conducted in all of Nepal's fourteen zones by the Law and Justice Committee earlier this year. If true, these findings once and for all dispel the myth that rural Nepal is an intellectual backwater where progressive ideas are unwelcome: eighty-five percent of those questioned were in favour of women retaining property after marriage. That's a great many progressively-minded villagers.

One man who was certainly reading the papers with great interest was Dr Devi Prasad Kandel, author of *Property Rights of Women in Nepal*. The release of this book dovetails nicely with the historic changes in property rights law, and with hindsight, a number of Kandel's assertions appear to be prophetic: "The status of Nepali women legally seems to be strong but institutionally and practically it is very weak" (page 76). The book is divided into seven chapters and progresses from general issues to more specific examples. The best chapters are definitely the latter, which deal with the intricacies and details of Nepali property rights. Chapter one is weakened by ungrammatical errors and generalities such as: "women cover near about half [sic] of the world's population" (page 1) and "the position and status of Iranian women... is that they are totally under male" (page 5).

In chapters two and three, it becomes apparent that Kandel relies heavily on secondary sources and previous works on the subject. Early in the preface the author informs us that "all the available source materials relating to the topic... have been collected, scrutinised and analysed". And despite an occasional nod in the direction of ethnic diversity, Kandel clearly subscribes to the idea that Nepal is a "Hindu State" and consequently that "Nepalese society, undoubtedly, is conducted by the Hindu philosophy" (page 17). While this statement may apply to large parts of the country, there are still many regions in which disputes over property and inheritance are resolved according to local non-Hindu traditions. According to Kandel's analysis, Sherpa, Limbu and Tharu women "were and are more free than the woman [sic] of other communities in Nepal" (page 20). While his aim is true, more specific examples would have been instructive here, particularly since the situation in hill villages is not always so simple. By the end of book then, one feels genuine compassion for Hindu women and their lot, and wonders why the author didn't focus more on the position of women from non-Hindu groups if they indeed have, as he describes, greater "control over their marriage portion" (page 59). The author's indifference to the cultural characteristics of specific *janajati* groups is made apparent when we are informed that the Sherpa, Rai and Limbu "are culturally, socially and ethnically akin to the Tibetans"

As the Women's Bill edges closer to becoming law, a new book describes the relevant provisions of the *Muluki Ain*.

(page 75). In this vein, a particularly uncomfortable typographical error occurs on page 75, turning "Mongoloid" into "Mangaloid", a slip which should be corrected in any future edition.

The strongest sections in the book are chapters three and four which outline specific features of the *Muluki Ain*. For those (like myself) who haven't read the Civil Code from cover to cover, let alone all the amendments, these details make for fascinating reading. One learns, for example, that a man may remarry if his first wife becomes incurably insane (page 22), that the *Ain* of 2020 BS legalised inter-caste marriage (page 25) and that "half of the property of any person who commits rape shall be confiscated and... given to the victim" (page 73). A particularly interesting ordinance in the sixth amendment seems to acknowledge the possibility of child abuse and incest when a daughter is adopted: the girl must be under ten years of age, and the "gap in the age of the father and the adopted daughter should be at least 20 years" (page 36). An insight into male aggression, and the provisions made for female victims thereof, is offered by the section concerning the amount of property a husband is obliged to give his wife should she become "lame" or lose "any part of her body by frequently being beaten" (page 39). These chapters are genuinely informative and educational, and read rather like an annotated Civil Code.

A further angle of *Property Rights of Women in Nepal* is its social and political action plan. In common with

other Nepali books on social issues, strongly worded assertions are compressed into a single page in the conclusion, with little or no guidelines about how to achieve these noble aims: "the traditional belief in the superiority of man and inferiority of woman should immediately be obliterated" (page 76). It would be hard to disagree.

The provision for women's property rights in Nepal is a delicate issue, not least because of the recent legal changes in this domain. We can only wait and see whether last month's Property Rights Bill will prove to be, as the author suggests, "a headache for the state first and then... a challenge against Hinduism" (page 32). Aside from the few limitations described above, Dr. Kandel should be given full credit for bringing these concerns into the open and for providing an analysis of important sections of the *Muluki Ain*.

Property Rights of Women in Nepal, Dr Devi Prasad Kandel, Ratna Pustak Bhandar, Kathmandu, 2058. 86 pages, including 6 pages of Nepali language appendices. ISBN 999333-0-213-9. Rs 110.

(Mark Turin is completing a grammar of the Thangmi language and is a member of the Himalayan Languages Project at Leiden University in The Netherlands.)

