

Using Dias' Legal Resources approach to Combat Manual Scavenging in India: A Human Rights Analysis

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INTRODUCTION: RE-ANALYZING THE CASTE QUESTION

In her essay "Can the Subaltern speak?" Gayatri Chakraborty Spivak raises questions about who speaks for whom when the subaltern of history becomes the subject of literary or any other kind of representation.² Spivak questions what gets lost when the object of representation (i.e., the subaltern subject) is spoken of or translated by someone whose socio-cultural and economic location is in a relationship of privilege to the object of representation.³ The politics of caste-based discrimination in India and the use of traditional methods of the rule of law to combat the dehumanizing effects of manual scavenging⁴ represent this same relationship of privilege and have been able to do very little to alleviate levels of social poverty in the country.

I. FAILURE OF TRADITIONAL METHODS OF GOVERNANCE TO COMBAT MANUAL SCAVENGING IN INDIA

Contrary to many of India's international legal obligations under the Universal Declaration of Human Rights, the ICCPR, the ICESCR as well as Articles 14, 17 and 21 of India's own Constitution,⁵ the traditional methods of rules, legislations and orders

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² See generally Gayatri C. Spivak, *Can the Subaltern Speak?*, in *MARXISM AND THE INTERPRETATION OF CULTURE* 271 (Lawrence Grossberg & Cary Nelson eds., 1988).

³ *Id.*

⁴ Manual Scavenging refers to the process whereby members of the lower castes in India are required, as a result of social structures, to collect and clear human excreta from dry and open latrines across the country. It is a punishable offence under the Prevention of Atrocities Act of 1988 and considered a blatant violation of the Universal Declaration of Human Rights, 1948. See *Manual Scavenging*, INTERNATIONAL DALIT SOLIDARITY NETWORK, <http://idsn.org/key-issues/manual-scavenging>.

⁵ Article 14 of the Indian Constitution 1950 grants every Indian citizen equality before the law and equal protection of the law. Article 17 abolishes untouchability, while Article 21 grants every person in India the right to life and personal liberty. INDIA CONST. arts. 14, 17, 21.

exhibit the same flaws which Spivak critiques in her essay, which is the absence of adequate social connect between the end that the legislation seeks to achieve, the objects (e.g., manual scavengers) who are the intended beneficiaries of such State action and law-makers. This distance of the law-makers from the intended beneficiaries of social equality/welfare legislations (the Prevention of Atrocities against Scheduled Castes/Scheduled Tribes Act of 1989⁶ is an excellent example of this) fails to address the deeper structural inequality within the Indian social fabric.⁷ Consequently, it has been nearly impossible for the manual scavenging community to convert the written text of the law and its institutional framework into an actual means of empowerment or emancipation.⁸

Given such socio-political realities and the failure of traditional methods of governance, the authors seek to examine the possibilities of using Clarence Dias' legal resources approach to offer a more credible alternative to combat the blatant and rampant human rights violations against the Dalit community in India, particularly manual scavenging.⁹ It is submitted that the three components which Dias uses to suggest alternatives for economic poverty alleviation for the rural poor (legal self-reliance, de-professionalization and interest group advocacy),¹⁰ can also be extended to deal with questions of social poverty and is possibly the only way in which such dehumanizing experiences can be curbed within the Indian context.

II. THE LEGAL RESOURCES APPROACH: CAN IT BE MADE APPLICABLE TO INDIA?

While laying out the theoretical paradigm for his model, Dias stresses the need for collective self help and strategies of governance which lead to increased levels of knowledge, skills, self-reliance and related ways to defend the shared interests of the community in question, with an aim of reducing the community's powerlessness and

⁶ The SC And The ST (Prevention Of Atrocities) Act, Act No. 33 of 1989.

⁷ See generally GOVERNMENT OF INDIA MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, ANNUAL REPORT ON THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 FOR THE YEAR 2005 (2005).

⁸ See generally UNDP & UN SOLUTION EXCHANGE, SOCIAL INCLUSION OF MANUAL SCAVENGERS: REPORT OF THE NATIONAL ROUND TABLE DISCUSSION (2012); HUMAN RIGHTS WATCH, CLEANING HUMAN WASTE: "MANUAL SCAVENGING," CASTE, AND DISCRIMINATION IN INDIA (2014).

⁹ See generally Clarence J. Dias & James C.N. Paul, *Developing Legal Resources for Participatory Organizations for the Rural Poor*, 4 THIRD WORLD LEGAL STUD. 19 (1985).

¹⁰ *Id.* at 31–33.

marginalization.¹¹ According to Dias, the need for significant changes in the design and administration of State-run programs therefore involves (a) providing greater access to tools of social justice (whether traditional or not) at the community level, (b) conceptualizing social development as “people-centric” and (c) creating essential conditions which enable people to press for legal help from the State and further community interests.¹²

In order to combat powerlessness and foster greater respect for human rights, Dias lays out the following components of the legal resources approach:¹³

- (a) Legal self-reliance, which seeks to educate communities about their rights and the laws and procedures relevant to their day-to-day lives so as to enable them to make decisions and strategize to solve their legal problems themselves.
- (b) Deprofessionalization, which seeks to break the legal profession's monopoly over legal knowledge and skills by developing community-based paralegals.
- (c) Interest-group advocacy, which is the advocacy of the poor's interests in national centers of decision-making through specialized national and international organizations that work with local groups.

III. DEPROFESSIONALIZATION AND SELF-RELIANCE IN THE INDIAN CONTEXT: EXPANDING THE ROLE OF THE STATE

The post 1970s period in Asia saw the rapid expansion of court-centric “legal aid” services, sponsored by the government, and driven by the legal profession's sense of responsibility to provide legal services to all, irrespective of financial position. This push came about in response to the fact that the monopolization and management of “legal” know-how by lawyers failed to address the underlying needs of the community they were catering to and the need to create an alternative legal aid set-up.¹⁴

This constant social and physical distance of the courts from the community, especially within the Indian context, where the legal institutions are seen as the friend of the oppressor, failed to provide for reasonable access to justice.¹⁵ To remedy this, it is

¹¹ *Id.*

¹² *Id.* at 23.

¹³ *Id.* at 30.

¹⁴ See generally Clarence J. Dias, *Legal Aid in Asia: A Basic Human Right?*, 4 *THIRD WORLD LEGAL STUD.* 89 (1985).

¹⁵ Dias, *supra* note 9, at 22.

vital for the State to establish a framework to develop such a “connect” with the manual scavenging society, through training community based paralegals and State -appointed lawyers who represent the legal interests of the community and operate at the grass root level.

One of the greatest drawbacks of Indian legislation that sought to redress the problems of caste-based discrimination was its inability to ensure a sufficient degree of emancipation from the rigid structures of caste hegemony.¹⁶ If, for instance, one were to critically examine Indian laws that seek to rectify caste atrocities, one would observe how an actual mode of social mainstreaming through the generation of employment, etc. is not adequately provided for.¹⁷ In order to address these drawbacks, the role of the State as a facilitator, through the participation of the Ministry of Justice, NGO’s, rural help groups and various local state agencies in engaging with the development of social mainstreaming methods, must be envisaged.

The “deprofessionalization” conceptualized by Dias can be applied to India by replacing the often ineffective and distant legal aid system with government sponsored paralegals and an effective framework to bring community based lawyers to the grassroots level, providing legal services while spreading legal awareness within the manual scavenging community.

IV. INTEREST GROUP ADVOCACY: DEVELOPING A WELL-STRUCTURED SUPPORT SYSTEM IN INDIA

It is submitted that interest group advocacy, a method of representing community interests within various levels of State-based decision making, offers a credible alternative to the lack of effective participation and involvement in self-empowerment of the manual scavenging community at a political and social level that we witness in India today. Although the presence of national and international NGOs are widely felt in the affected areas, caste as a means of social oppression runs too deeply within the Indian fabric to be controlled only through external effort and international aid. Having acknowledged the deeper structural inequality that runs

¹⁶ It is a well established position that rigid caste structures continue to exist in India despite there being multiple legislative enactments to curb such levels of social discrimination. An example of this is the continued existence of atrocities against the SC/ST community despite the existence of the 1989 Act and the failure of the Employment of Manual Scavengers and construction of Dry Latrines (Prohibition) Act, 1993 to provide for nation-wide coverage and adequate rehabilitation avenues.

¹⁷ See The SC And The ST (Prevention Of Atrocities) Act, Act No. 33 of 1989.

through the Indian social fabric, interest group advocacy is a credible alternative and in certain situations a supplement, to the process of removing such structural inequality.

In order to give the process of empowerment and the use of “law” as a tool of empowerment a realistic chance at being successful, support groups and other State maintained agencies must advocate the representation of the community at a national decision making level. If this can be done effectively, a few of the shortcomings of existent Indian legislation, which includes the inability to correctly identify the target groups, and the lack of providing a proper rehabilitation mechanism,¹⁸ could possibly be solved. Although this must not be an exercise in expediency, interest group advocacy (as was seen in the case of Philippines based ZOTO, in its bid to save the Tondo lands for the impoverished)¹⁹ provides a rather solid means of developing the means of understanding the legal resource requirements of particular manual scavenging communities, and could be a long term strategy for actual social action.

CONCLUSION

The authors of this piece have focused primarily on highlighting the possibilities of using Clarence Dias’ legal resources approach to revisit possible State intervention in providing for means of emancipation of the manual scavenging community in India. Given the fact that the practice of manual scavenging is deeply knit with the structures of caste in the Indian social fabric, the authors believe that self empowerment as a means of social mainstreaming is the best way to provide the intended emancipation. Given the fact that a visible distance exists between the institutional machinery of the law and community that it seeks to benefit, the best way to go about revisiting this social vice is through the legal resources approach.

¹⁸ See generally UNDP & UN SOLUTION EXCHANGE, *supra* note 8.

¹⁹ See Dias, *supra* note 7 at 33.