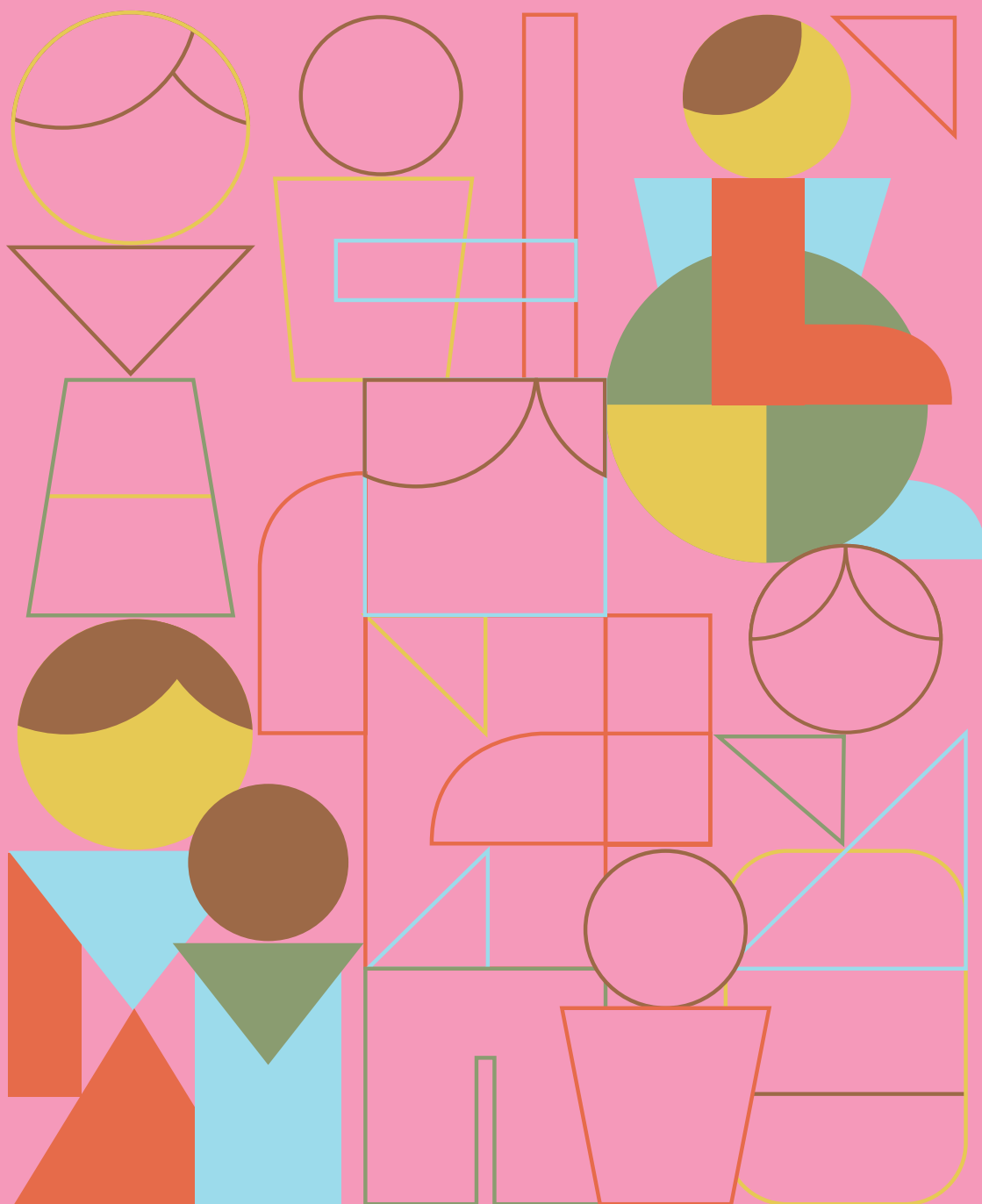


THE INTERSECTION OF DISABILITY AND CASTE

A Policy Paper



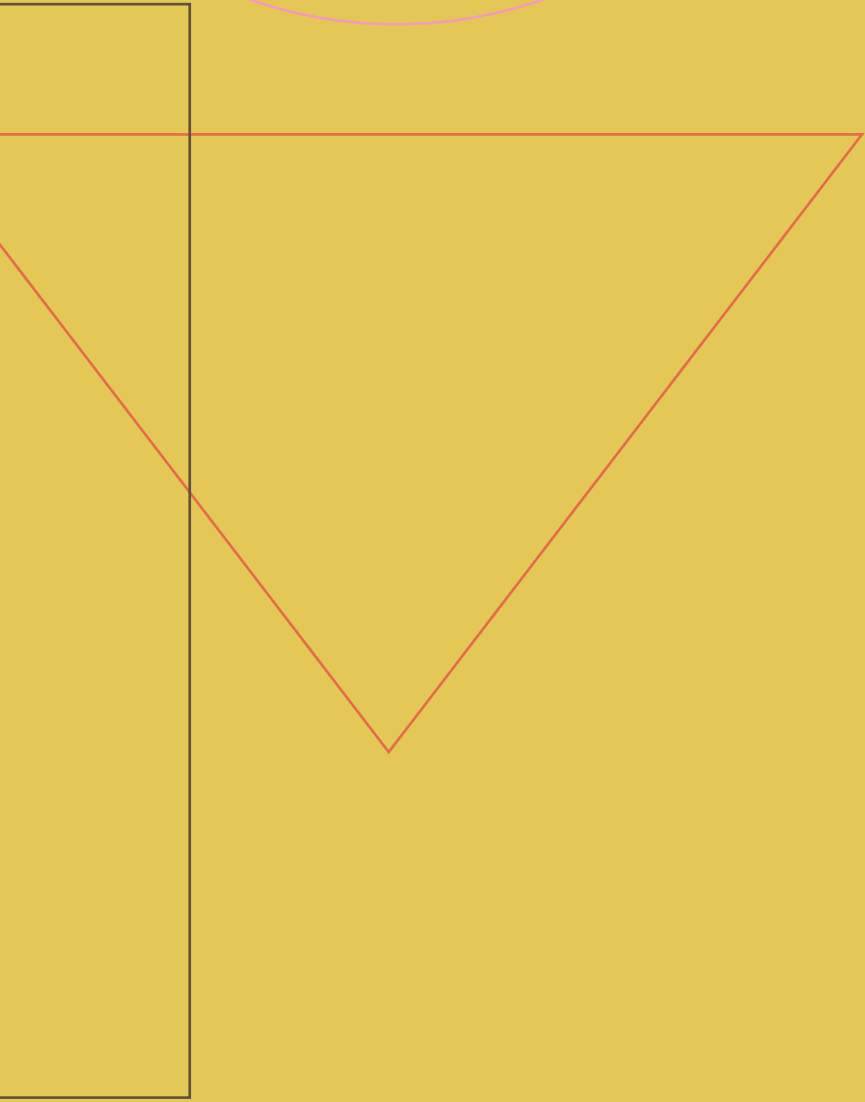
A POLICY PAPER



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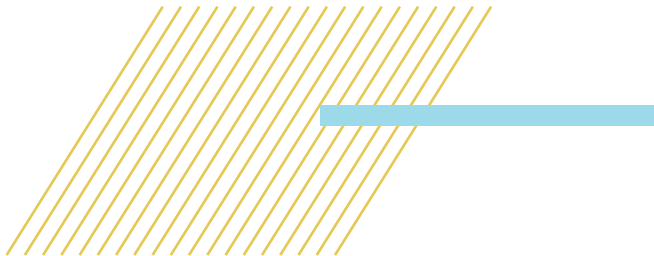
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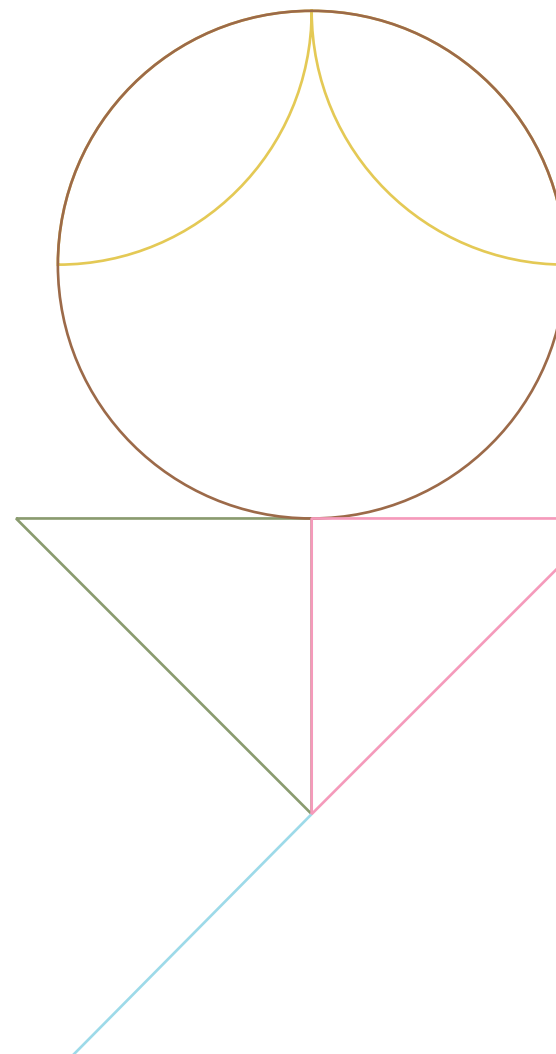
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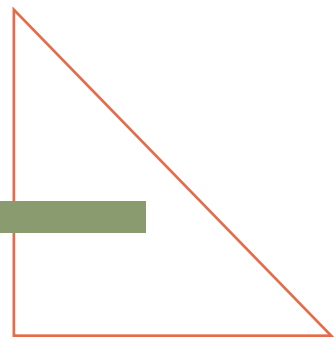
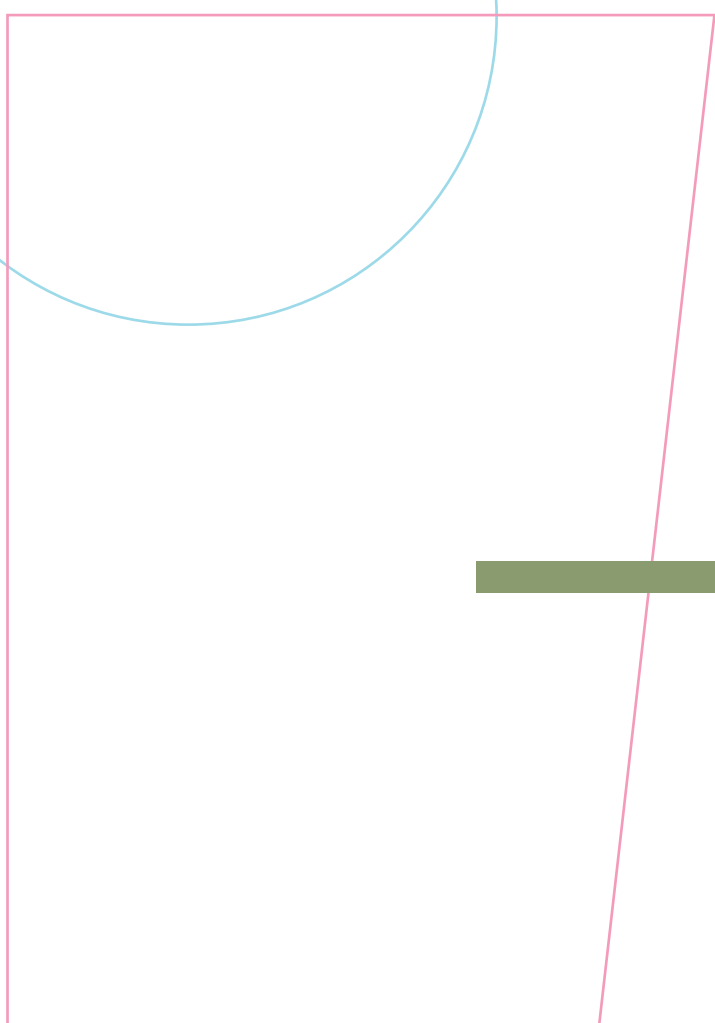
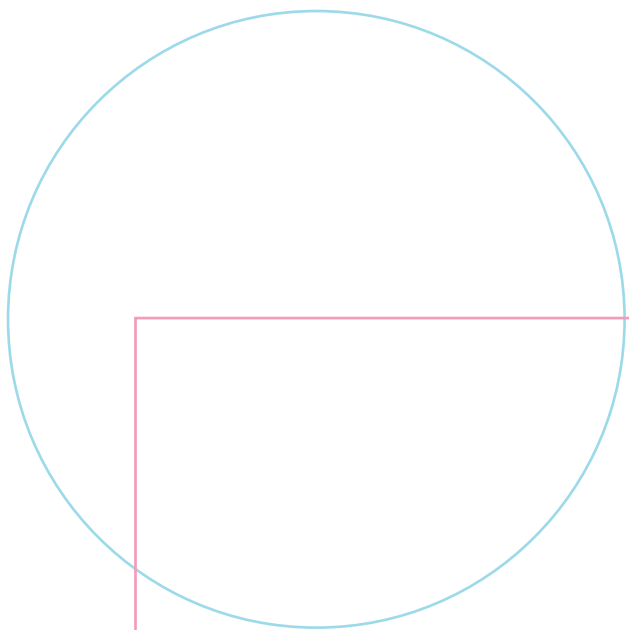
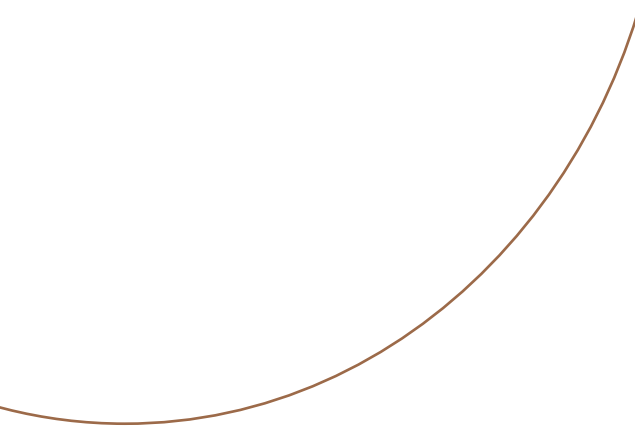
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INTRODUCTION

The recorded number of persons with disabilities in 1981 was about 13.6 million. In 1991 it grew to 16.3 million.¹ The number of persons with disability was 21.9 million in the 2001.² and 26.8 million as per the 2011 Census.³ This is a substantially high population. Although the 2002 NSSO data places that rate of disability at 1.83% in India, the actual rate is much higher given that the WHO places the world average at 10%.⁴

Persons with disabilities remain one of the most neglected sections of the society, facing discrimination and stigma and lack of access to basic rights. This marginalisation is further aggravated in caste oppressed communities who are already struggling to own material resources for survival and well-being. Among the total disabled population in India, Schedule Caste (“SC”) persons with disabilities were 49,27,433 and Schedule Tribe (“ST”) persons with disabilities are 21,40,763 according to recent data from 2018.⁵ Despite this, the existing legislations and welfare schemes for persons with disabilities have no provisions for SC, ST and other backward castes (“OBC”) persons with disabilities.

Disability literature locates the experience of disability mainly in relation to poverty and rural / urban dichotomies, in the context of access to employment, education and healthcare, completely ignoring caste.⁶ In both cases of caste and disability, gender dimensions are further excluded.

¹Ministry of Statistics and Programme Implementation, “Disabled Persons in India, NSS 58th round (July - December 2002), National Sample Survey Organization,” Government of India, (2003) < http://mospi.nic.in/sites/default/files/publication_reports/485_final.pdf > accessed on 19 June 2020. (NSSO)

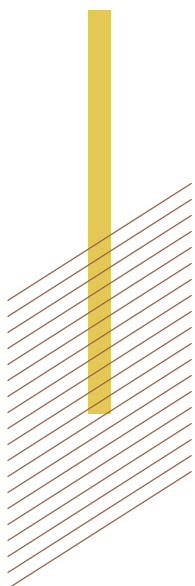
²Office of the Registrar General & Census Commissioner, India, Disabled Population - 2001 Census, Ministry of Home Affairs, (2001) < https://censusindia.gov.in/census_and_you/disabled_population.aspx#: > accessed on 19 June 2020

³Office of the Registrar General & Census Commissioner, Population Enumeration Data (Final Population) - Data on Disability, Ministry of Home Affairs, (2011) < https://censusindia.gov.in/2011census/population_enumeration.html > accessed on 19 June 2020; See also Jang Bahadur Prasad & Kamalesh Kumar Patel (2015) ‘Disability Differential in India: A Critical Evaluation of Caste-Wise Disability’ (2015) International Journal of Science and Research 4 (8) 1304 - 1309, 1304. (Prasad & Patel)

⁴NSSO (n 1) 1304.

⁵Ministry of Social Justice & Empowerment, ‘Handbook on Social Welfare Statistics’ (September 2018) 270 < <http://socialjustice.nic.in/writereaddata/UploadFile/HANDBOOKSocialWelfareStatistic2018.pdf> > accessed on 27 April 2020.

⁶Nilika Mehrotra, ‘Disability, gender and caste intersections in Indian Economy’ (2013), in (eds) Disability and Intersecting Statuses, Research in Social Science and Disability (7) Emerald Group Publishing Limited, 295 - 324. (Mehrotra)

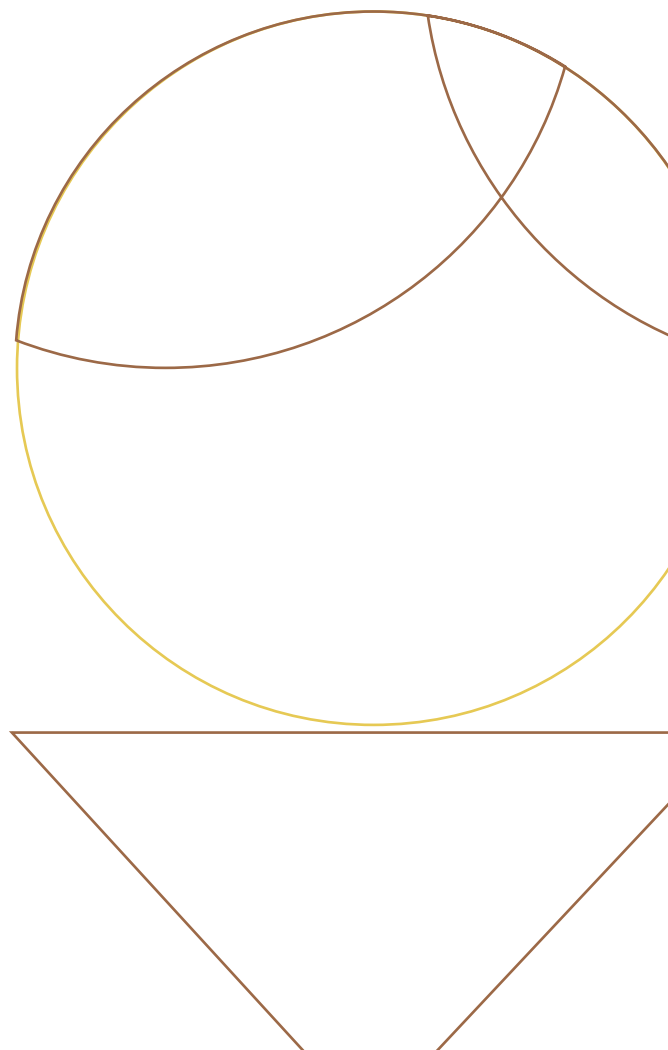


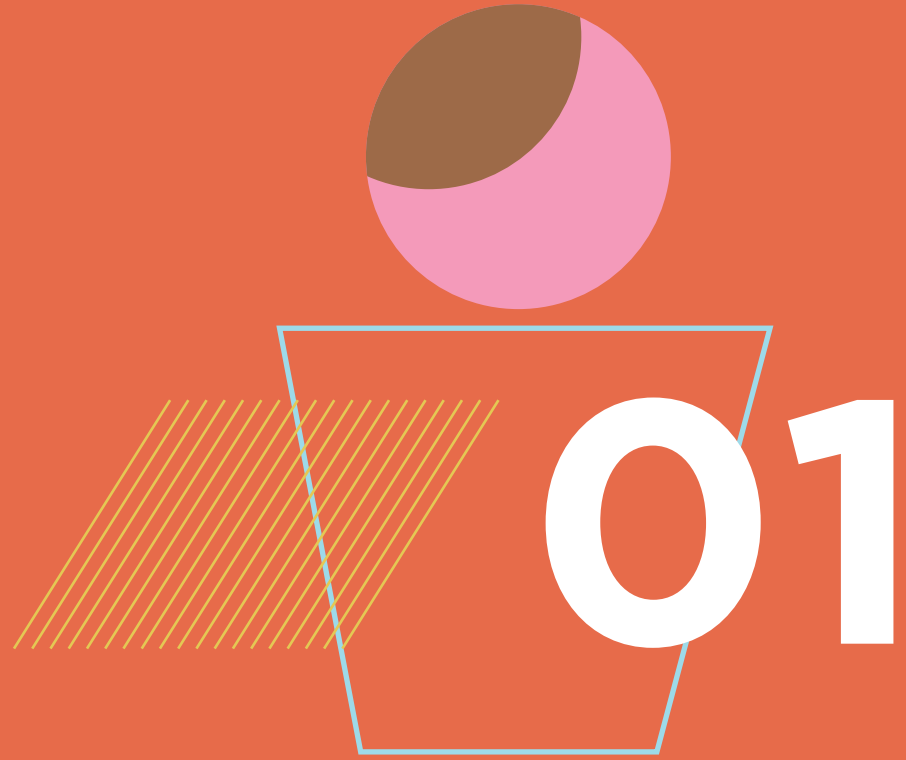
In this policy paper we seek to examine the importance of the intersections of disability and caste. Crenshaw's seminal work on intersectionality developed the understanding of the unique and aggravated forms of discrimination faced by people at the intersections of two or more identities.⁷ She argued that the marginalisation faced by black women was not because of their single identities of race or sex, but because black women exist at the intersection of both race and sex which makes their discrimination unique. Intersectionality is helpful in understanding multiple identities of people and how they interact in the larger workings of society. In the Indian context, the aggravated forms of social, economic and political exclusion are experienced by Dalit and Adivasi communities and persons with disabilities. The compounded identities of being SC/ST and having a disability creates a social group that is not only far more vulnerable to violence but experiences aggravated discrimination and deprivation that requires the formulation of specialized policy and reform.

In this Policy Paper we argue that if we want to address the fulfilment of basic social rights of employment, education, housing and health for the most vulnerable we need to look at people from an intersectional perspective. Disability does not exist in a social vacuum and is created and sustained by social practices and inequalities that value different bodies differently. Addressing disability alone would not give us the full picture of a person's lack of access to employment or equal pay, and other intersecting identities of caste, gender, religion etc all lend importance to the outcome. Addressing discrimination due to disability needs to take into account the intersectional experience and the aggravated form of discrimination that persons with disabilities face due to their caste status and this understanding needs to be incorporated in our law and policy response to disability rights.

⁷Kimberle Crenshaw 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) *Stanford Law Review* 43(6), 1241-99.

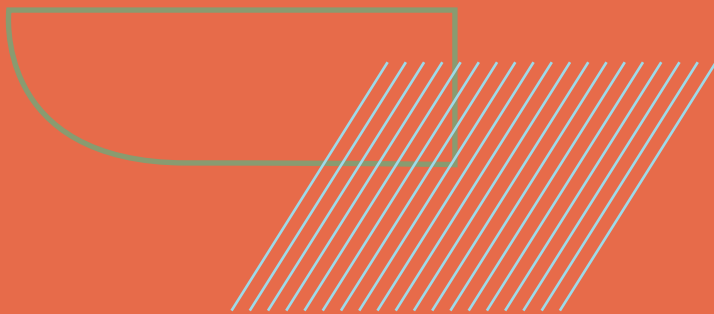
Disability and caste are usually not discussed together in India. Work on caste discrimination is seen as separate and distinct on its own. Similarly, the understanding of discrimination due to disability in India does not include caste dimensions.








Disability and caste





The marginalization of persons with disabilities and persons from SC/ST caste groups is the result of deeply embedded social and cultural beliefs that position them as inferior in society⁸.

Disability is generally seen as a “defect” in the cases of persons born with disabilities and is also inextricably tied to the Hindu idea of Karma from a past life – a categorization that is also the basis for caste discrimination in Hinduism.⁹ As Mehrotra explains, being born into a “good” caste is the fruition of having led a holy life in a past birth, while being born into a lower caste is the suffering that is the consequence of misdeeds in a past life.¹⁰

Under this rigid socio-religious complex, both caste minorities and persons with disabilities are relegated to the margins of a Savarna (upper caste) dominated society. Persons with disabilities are treated as undesirable burdens to the family or treated as objects of pity and charity, dismissing their agency or potential as human beings. SC /ST persons on the other hand are aggressively excluded from all spheres of public and private life and treated as subordinate due their “impure” status and if disability is added to these oppressions, it pushes the individual into a unique space of vulnerability.¹¹ Further, caste and tribe structures are also not simple and there are complex hierarchies of sub-castes and sub-groups with distinctive dominant and non-dominant positions.¹²

⁸Uma Chakravarti, ‘Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State’ (1993) *Economic and Political Weekly*, 579; Sharmila Rege, *Against the Madness of Manu: BR Ambedkar’s Writings on Brahmanical Patriarchy* (Navayana) 2013.

⁹Mehrotra (n 6) 298.

¹⁰*Ibid.*

¹¹G.C. Pal, ‘Dalits with Disabilities: The Neglected Dimension of Social Exclusion’, (2010) *Indian Institute of Dalit Studies, Working Paper Series* 3(4) 2. (Pal 2010)

¹²Madhusudan Subedi, ‘Caste in South Asia: From Ritual Hierarchy to Politics of Difference’ (2016) 40 *Politeja* 319–340 <www.jstor.org/stable/24920210> accessed 17th June 2020.

Being from a caste minority and having a disability essentially means being denied access to even those few entitlements that might have otherwise been available under a single identity.

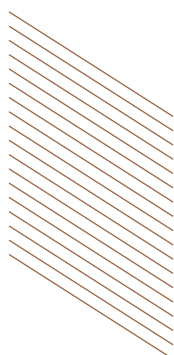
For example, in the case of a disabled Dalit person who was given a tricycle by the local government was unable to actually ride it through the streets because local Hindu custom forbade Dalits from the using the roads in the area.¹³ The entitlements available to SC/ST persons may be rendered meaningless given functional limitations of access and opportunities for those with disability. Social and economic status of the family also determines the standard and quality of care that persons with disability would be able to receive. In case of SC/ST families, studies have found that the magnitude of chronic deprivation of the family directly impacts the health, life-span and quality of life of persons with disability in the family.¹⁴ They are frequently denied access to important medical facilities or timely treatments that directly result in the acquisition or exacerbation of their disabilities.¹⁵ Negative stereotypes exist for both Dalits and disabled persons of being incompetent and this impacts their ability to participate effectively in the workforce due to severe social deprivation and lack of reasonable accommodation being provided.¹⁶

¹³S. Viswanathan, S. 'Defying Casteism' (July 14, 2006) Frontline Chennai, <<https://frontline.thehindu.com/other/article30210123.ece>> accessed 25 April 2020.

¹⁴Paul Kowal & Sara Afshar, 'Health and the Indian Caste System', *The Lancet*, Vol. 389 (9966), 415-416; Avatthi Ramaiah, 'Health Status of Dalits in India', *Economic & Political Weekly*, Vol. 50, Issue No. 43 (2015), 70-74.

¹⁵Jayna Kothari et al, 'Intersectionality: A Report on Discrimination based on Caste with the intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala' (2019) Centre for Law & Policy Research Bangalore, 109. (Kothari)

¹⁶'Case study: Dalits with disabilities in India', *MinorityStories*, <<http://stories.minorityrights.org/lifeatthemargins/chapter/case-study-living-with-the-stigma-of-caste-and-disability-the-challenges-facing-disabled-dalits-in-india/>> accessed on 27 April 2020. (Case Study)



1 Empirical Data on Disability and Caste

There is very little empirical work done on disability and caste in India. This paper has undertaken the analysis of some data reports and analysis on disability and its relationship with caste and gender. G.C Pal in his study based on the data collected from the 2002 National Sample Survey (NSS) shows that while the prevalence of disability in the general population was 1.85%, it was at a much higher incidence of 2.4 % among Dalits.¹⁷

There is higher prevalence of physical, locomotor and sensory disabilities among Dalits particularly Dalit males with the highest percentage of disability being visual and hearing impairment. Factors like anaemia, pneumonia and low levels of nutrition play a prominent role in disability of persons from SC/ST communities.¹⁸

Other studies also make the important observation that the incidence of disability is highest among SCs, particularly among rural male members of the SC community.¹⁹ Despite a higher percentage of disability among SC and ST, 89.1% of Dalits with disabilities and 89.8% of STs have received no aid/support from government programs designed specifically for persons with disabilities because of unaffordability, unavailability by personal means, or lack of awareness about such services and sources.²⁰

¹⁷G.C. Pal, 'Disability, Intersectionality, and Deprivation: An Excluded Agenda' (2011) *Psychology and Developing Societies* 23(2), 159-176. (Pal Report); see also NSSO (n1).

¹⁸Nidhi Sadana 'Dalit Children in Rural India: Issues Related to Exclusion and Deprivation' 2010) Indian Institute of Dalit Studies, Working Paper Series 3(5) 2009.< <https://in.one.un.org/wp-content/uploads/2016/09/0905.pdf>> accessed on 25 April 2020

¹⁹Prasad and Patel (n 3) 1307.

²⁰Pal 2010 (n 11) 21.

2

Adding Gender to the Intersections of Disability and Caste

Women and transgender persons with disabilities exist at the intersection of multiple marginalities of caste, gender as well as disability. If the discourse on disability and caste is sparse, the research conducted on the positionality of Dalit / tribal women and trans persons with disability is virtually non-existent.

SC/ST women with disabilities are routinely subjected to sexual violence at the hands of both Dalit and upper caste men which makes them particularly vulnerable.²¹

SC/ST women even with disabilities are expected to be economic contributors to the household while also being some of the most deprived in terms of social mobility, access to entitlements and education.²² Within the family they are even more vulnerable because even within the minority caste groups, men with disabilities prefer to seek non-disabled women as partners.²³

Within SC/ST communities, women and girls are far more vulnerable due to gender based discriminatory practices of Devadasi dedication and also more women being forced into manual scavenging. Studies have shown that disability makes young girls particularly vulnerable to dedication.²⁴ For transgender persons from SC/ST communities and with disabilities, the marginalization is even more.

Nilika Mehrotra points out importantly that there seems to be little dialogue between Dalit, women and disability rights activists and scholars.²⁵ She argues that by taking caste and gender as structuring principles of existence of people with disabilities, we would get a more clearer picture of their access or inaccessibility to work, jobs and wages in an unequal society.

²¹Mehrotra (n 6) 298.

²²P. R. C. Dutt, 'Of Dalits, Disabilities and Devadasis' (2016) *Contemporary Voice of Dalit*, 8(2), 177-185.

²³Pal 2010 (n 11) 17.

²⁴B. Wilson, A. Giliyal, & S. Raman 'A Qualitative Study of the Legal Dimensions Of 'Devadasi' Dedication Phenomenon' Centre for Child and the Law, NSLIU (2019) https://www.researchgate.net/publication/332141651_A_QUALITATIVE_STUDY_OF_THE_LEGAL_DIMENSIONS_OF_'DEVADASI'_DEDICATION_PHENOMENON .

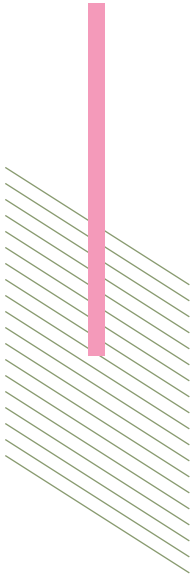
²⁵Mehrotra (n 6) 296.

3 Aggravated discrimination and lower access to education and employment for people at the intersections of Disability and Caste

The Indian discourse and data on disability also suffers from the problem of disability essentialism, that treats disabled persons as a monolithic group that excludes their class, gender, sexuality and most importantly caste identities. This is apparent from the data available on caste and disability which highlights that caste categorization in data collection and surveys on disability is negligible or entirely absent. Existing data and academic research reveal a few incontrovertible conclusions. There seems to be a clear and distinct relationship between disability and deprivation.

When looking at economic deprivation i.e. poverty, it is apparent that though there is pervasive poverty among rural households with disabled persons, even among them, SCs & STs see a higher prevalence of economic backwardness.²⁶

²⁶Prasad & Patel (n 3) 1307.



The impact of social deprivation among Dalits / Adivasis with disabilities is apparent from their lower rates of participation in the skilled workforce, lower access to benefits & entitlements, low rates of primary, secondary and higher education that their upper caste counterparts. Another significant aspect of disability among Dalits/ Adivasis is the acquisition of disability and risks associated with living as a disabled Dalit/ Adivasi. Caste-based occupations usually assigned exclusively to Dalit and Adivasi communities are inherently hazardous jobs such as leather tanning and manual scavenging. The exposure to chemicals and the occupational diseases they have acquired establishes the self-evident relationship between this type of caste-based labour and risk of disability.²⁷ Thus, Dalits are twice as likely to be employed in hazardous working conditions due to their caste status.²⁸ GC Pal also concludes that the likelihood

of becoming disabled is much higher among Dalit / Adivasi communities owing directly to the lack of access to proper nutrition, sanitation and unsafe work environments.²⁹

Persons with disabilities especially in the rural areas are in more disadvantaged positions. Persons with disabilities among STs have better opportunities for working in household enterprises in the rural areas than their Dalit counterparts.³⁰ A majority of persons with disabilities who work as casual wage labourers in public work in the urban areas are Dalits. But in the rural areas, higher percentage of Dalits with disabilities are engaged in casual wage labour in work other than public work.³¹ Mehrotra concludes that Dalits experience distinct discrimination and exclusion in the labour market in both hiring and payment of wages and cites sample surveys that indicate that Dalits are routinely paid lesser

²⁷Indian Committee of Netherlands, 'Do leather workers matter? Violating Labour Rights and Environmental Norms in India's Leather Production' (ICN, March 2017) 12 <<http://www.indianet.nl/pdf/DoLeatherWorkersMatter.pdf>> accessed on 17 June 2020.

²⁸National Campaign on Dalit Human Rights, 'Alternate Report to the Joint 2nd to 5th Periodic Report of the State Party (Republic of India) on The Implementation of International Covenant on Economic, Social and Cultural Rights (A Periodic Report Submitted by the State Parties under Articles 16 and 17 of the Covenant)' (2008) Office of the High Commissioner for Human Rights, 41. < <https://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/NCDHR-IDSNIndia40.pdf>> accessed on 27 April 2020.

²⁹Aishwarya Rao, 'Dalit Women in Politics: Aishwarya Rao on why disabled women must be included in mainstream dialogues' (19 March 2019) Firstpost, <<https://www.firstpost.com/india/dalit-women-in-politics-aishwarya-rao-on-why-disabled-women-must-be-included-mainstream-dialogues-6198001.html>> accessed on 27 April 2020.

³⁰Pal Report (n 17) 168.

³¹Pal 2010 (n 11) 13.

wages than non-SC labourers and significantly less than the market wages.³² Urban women with disabilities see the lowest rates of unemployment due to lower levels of literacy and a male dominated urban labour industry. Mehrotra also notes that overall, rural Dalits experience severe deprivation in the context of access to public

spaces and facilities such as public transport, markets schools, hospitals, etc. Apart from the fact that most public transport in rural areas is not accessible, she points out that those with stigmatized conditions such as leprosy are further prevented from utilizing these facilities even if they are accessible.³³

Only 2 to 3% of persons with disabilities receive any vocational training at all, and most of them are from higher castes.³⁴ SC & ST persons with disabilities are routinely forced to engage in what is termed as “unproductive work” such as begging or are considered “non-working”.³⁵

A 2007 World Bank Report made key observations of the particular vulnerability of Dalits and STs and found that the overall probability of employment generally for men with disability is 1.8% while the probability of SC/ST men with disabilities is only 0.13%.³⁶

³²Mehrotra (n 6) 311.

³³ibid.

³⁴ibid 308.

³⁵Pal Report (n 17) 174; see also NSSO (n1).

³⁶Philip O' Keefe, 'People with Disabilities in India: From Commitments to Outcomes' (2007) World Bank 13 <<http://documents.worldbank.org/curated/en/358151468268839622/pdf/415850IN0Disab1ort0NOV200701PUBLIC1.pdf> > accessed on 27 April 2020.

It found that a large barrier of access to entitlements among Dalits and STs was the sheer complexity of the processes involved in claiming benefits, social pensions or even certification as disabled and the access to social capital, levels of education and awareness along with the existence of stigma are incontrovertible factors unique to Dalits with disabilities.³⁷

With regard to education, persons with disabilities have a higher level of illiteracy at 52% as compared to the general population whose illiteracy is at 35%.³⁸ The proportion of non-literate persons with disabilities is highest among STs (69 per cent) followed by Dalits (64%).

These are distinctively higher than the proportion of non-literates among higher caste groups.³⁹ Only 2.6% of Dalit persons with disabilities have Secondary Education and 1.3% have Higher Secondary Education whereas 3.8% upper caste persons with disability have Higher Secondary Education.⁴⁰ This is telling of the sociological factors that determine access to education for minority groups at the intersections.

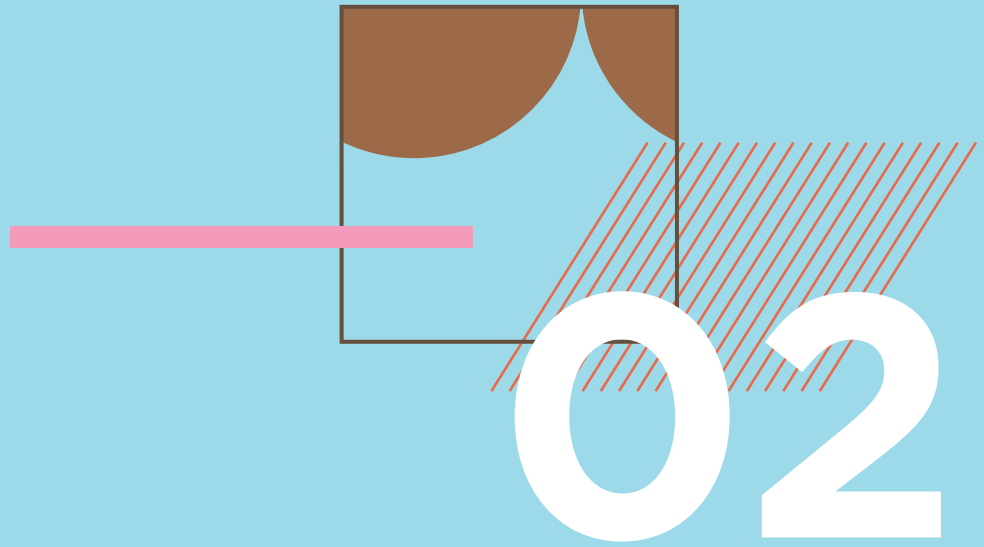
This is emblematic of the unique social deprivation experiences by poorer and caste minority persons with disability and there is a clear need for governmental policy on accessible and inclusive education to take into account an intersectional perspective.

³⁷ibid 114.

³⁸Mehrotra (n 6) 307; see also NSSO (n1).

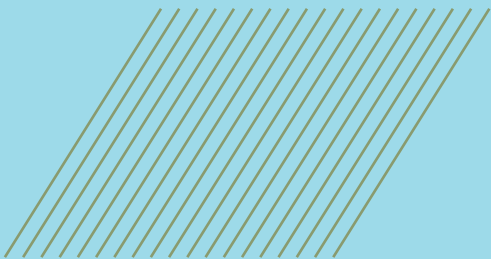
³⁹ibid.

⁴⁰Mehrotra (n 6) 307.





**Are the needs of Dalit /
Adivasi persons with
Disabilities addressed
under the existing legal
framework?**



While caste may still be considered from the lens of gender, disability in India is often not studied from the lens of intersectionality.⁴¹ Even our existing laws only look into the label of caste (whether SC/ST) or disability (able-bodied/disabled).

This section will try to review existing legislation in India on caste and disability to examine whether they provide any comprehensive protection for persons with disabilities from the SC/ST community and analyse whether intersectional discrimination on the basis of caste and disability has been addressed in the core areas of education, employment, healthcare, housing and access to public spaces.

⁴¹ Kothari (n 15) 15.

1 Legislation on Disability Discrimination in India

It was only recently that the new Rights of Persons with Disabilities Act 2016 (RPWD Act) was passed by both houses in December 2016, replacing the old Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996.

The RPWD Act was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities. The RPWD Act unfortunately does not refer to persons with disabilities who are from vulnerable caste groups and hence would face aggravated discrimination due to this. While it does address women with disabilities and children, it does not address persons with disabilities from SC/ST communities.

The Act refers to SC/ST only twice. Section 60 provides for the constitution of a Central Advisory Board and provides that out of the ten Members nominated to the Board, at least one person each shall be from the Scheduled Castes and the Scheduled Tribes. Similarly, Section 66 refers to the constitution of a State Advisory Board (“SAB”) and also has such a requirement. Therefore, which the presence of members from the SC/ST community is important in the Central and State Advisory Board for persons with disabilities to address the intersectional experience of caste and disability discrimination. Even these provisions have not been implemented. Only 12 out of the 24 states i.e. only 50% have

⁴² Rights of Persons with Disabilities Rules 2017, rule 14A(1).

even constituted the SABs.⁴³ Out of these SABs, it is not clear whether each of them has one member from SC / ST categories. With regard to the Central Advisory Board, no information is made available about the Board's constitution.⁴⁴

The RPWD Act has specific provisions on education, women

with disabilities, housing, employment and social security, but none of these provisions refer to the aggravated discrimination that would be faced in access by persons with disabilities from SC/ST communities.

The only intersection addressed in the RPWD Act is with regard to sexual violence against women and girls with disabilities and prescribes imprisonment and fines for anyone who would “outrage the modesty of a woman with a disability.”

⁴³Explanatory Notes to the Rights of Protection of Persons with Disabilities 2016: These states are Assam, Goa, Himachal Pradesh, Kerala, Madhya Pradesh, Manipur, Meghalaya, Nagaland, Odisha, Punjab, Tamil Nadu and Uttarakhand.

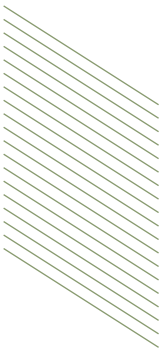
⁴⁴Ministry of Social Justice & Empowerment, 3rd Meeting of Central Advisory Board on Disability Held (19 September 2019) <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1585579>> accessed on 27 April 2020.

It also protects all persons with disabilities from all forms of abuse, violence and exploitation, with specific measures to be taken by appropriate governments, executive magistrates and the police. These measures include establishing procedures for reporting violence against persons with disabilities, creating public awareness, and ensuring that persons with disabilities have protection, free legal aid, and access to disabled persons organizations.⁴⁵

2 Caste Discrimination Legislation

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes. In 2015, certain amendments were brought in which recognised acts of violence against SC/ST women as atrocities, thus recognising the aggravated intersectional discrimination faced by Dalit women. There have also been legislations prohibiting the devadasi practice, which is related to caste.

However, none of these caste discrimination statutes address forms of violence faced by Dalit persons with disabilities. The PoA Act does not even mention disability, thereby making the scope of application of the Act quite narrow in terms of disability cases. There is, thus, a need to expand the legislation to include this intersection as well.



⁴⁵Rights of Persons with Disabilities Act 2016, s 7.

⁴⁶The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules 2016, rule 12(4) r/w Annexure I.

3 Access to Education

Children from marginalised communities who already struggle to attend school due to physical distance, segregation and discriminatory treatment, face even greater difficulties accessing education when they have disabilities.⁴⁷ The report on intersectionality conducted by CLPR showcased the discrimination faced in schools by learners with disabilities who were also Dalit/Adivasi. Learners with disability who are girls, and/or from Dalit and Adivasi backgrounds are further excluded and lack of adequate resources at the family level is a key factor that influences educational progress of persons with disabilities.⁴⁸

The Right of Children to Free and Compulsory Education Act, 2009 (“RTE Act”) is the one legislation that addresses discrimination faced by children with disabilities and children belonging to scheduled caste, but does not address the intersections of children with Disabilities AND who are Dalit/Adivasi.

⁴⁷Case study (n 16).

⁴⁸Kothari (n 15) 15.

Section 3 of the RTE Act provides that the provisions of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 will apply in the case of children with disabilities.

Section 4 provides that all children above six years have the right to be admitted to a school in a class appropriate to his or her age for completing elementary education. A majority of out-of-school children belong to disadvantaged communities: scheduled castes, scheduled tribes, Muslim minorities, migrants, children with special needs, urban deprived children, working children, children in difficult circumstances, for example, those living in difficult terrain, children from displaced families, and areas affected by civil strife, etc. This provision in the RTE Act enables these out-of-school children to be admitted to an age-appropriate class and complete elementary education.⁴⁹

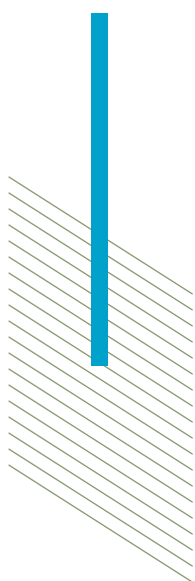
Section 12 provides that all private unaided schools shall admit in class I, to the extent of at least twenty-five per cent. of the strength of that class, children belonging to weaker

sections and disadvantaged groups in the neighbourhood and provide free and compulsory elementary education till its completion. A “Child belonging to disadvantaged group” means a child with disability or a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification.⁵⁰ The inclusion of children with disabilities in Section 12 and 2(d) to bring them within the category of ‘disadvantaged groups’ was done under an amendment in 2012. Thus, under the category of ‘disadvantaged group’ both SC/ST and disability is included.

In higher education, most state governments provide for reservation of seats in Educational Institutions to Other Backward Classes, the Scheduled Castes and Scheduled Tribes and for persons with disabilities, for admission into educational institutions in the State.

⁴⁹Ministry of Human Resources & Development ‘The Right of Children to Free and Compulsory Education Act, 2009 Clarification on Provisions’ (Clarification, 2012) <https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf> accessed on 27 April 2020.

⁵⁰RTE Act, s 2(d).



4 Employment

Caste-based discrimination in employment has been recorded in different forms. It ranges from termination to verbal abuse, unequal pay and expecting employees to do menial tasks on a regular basis owing their caste. Disability is also cited as a ground for termination of employment or refusing employment. The Constitution of India, through

Article 16 provides reservation in public employment to Scheduled Caste and Scheduled Tribes. Along with this, the RPWD Act provides reservations of 4% of posts for persons with disabilities in public employment. Reservations in public employment is perhaps the one area where the intersection of caste and disability is indeed addressed.

The category of caste is seen as a vertical reservation category, whereas disability is seen as horizontal reservation, and therefore the posts for persons with disability are reserved horizontally across the vertical categories, thus also providing for interlocking or intersecting categories for SC / ST persons with disabilities.

Dalit and Adivasi persons with disabilities are in more disadvantaged positions in the context of employment. In rural areas, where the situation is particularly bleak, lack of basic skills gained through education restricts opportunities for vocational and other training leading to employment. Access to employment also depends on social capital, and persons with disabilities – and to an even greater extent those who are Dalit/Adivasi – suffer from stigmatization and negative stereotypes that cast them as unproductive and dependent.⁵¹

The low educational and employment status of Dalits with disabilities in turn increases the likelihood that their households, whose limited resources are already stretched, will face poorer living conditions and greater poverty.⁵² Interestingly, the proportion of females who are engaged in economic activities is relatively higher in the rural than urban areas.⁵³ Further, within the niche area of caste and disability, Dalit / Adivasi women and trans persons with disabilities face even bigger hurdles in gaining access to employment.

5

Violence: Caste and Disability – A Gender Perspective

Dalit and tribal women and girls with disabilities are situated at the bottom of our social hierarchy. They are especially vulnerable to violence, performing the most dangerous work and face constant threats of sexual violence from members of their own community as well as from upper castes. Those with disabilities are especially vulnerable to abuse and exploitation.⁵⁴

While there is legal protection for women in crimes of a sexual nature, the protection does not consider the intersection of caste or disability. The PoA Act states the punishment for atrocities of a sexual nature but does not address violence faced by Dalit women with disabilities.⁵⁵

⁵¹ Case study (n 16).

⁵² *ibid.*

⁵³ Pal 2010 (n 11) 16.

⁵⁴ Krishnan M, 'Caste Dynamics behind Sexual Violence in India' DW.COM (New Delhi 10th May 2018) <<https://www.dw.com/en/caste-dynamics-behind-sexual-violence-in-india/a-43732012>> accessed June 17, 2020.

⁵⁵ The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, s 3.

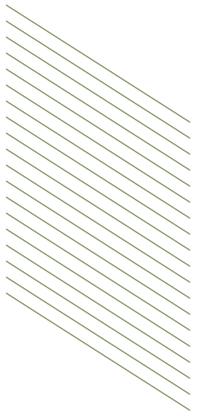
The Protection of Children from Sexual Offences Act 2012 (“POCSO”) introduced a range of child-friendly procedures and Special Courts to try child sexual abuse,⁵⁶ accommodations for all children on the basis of their age, and specific accommodations for children with disabilities but makes no reference to children from SC/ST communities facing sexual violence.⁵⁷

In this context the Madras High Court has held that if the act of an accused is an offence under the Protection of Children from Sexual Offences Act (POCSO), as well as the PoA Act, the Special Court established under the POCSO Act alone shall have jurisdiction to try the offender and shall have powers to grant all the reliefs to the victim to which they are entitled to under the PoA Act⁵⁸

⁵⁶ Smita Sharma, ‘Everyone Blames Me’ (Human Rights Watch, 2014) <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors> accessed on 27 April 2020.

⁵⁷ Protection of Children from Sexual Offences Act 2012 s 26(3), 38(2). If a child has a disability, the Special Court may have the assistance of a special educator, any person familiar with the manner of communication of the child, or an expert in that field, to record the statement and evidence of the child.

⁵⁸ Sureshkumar, ‘Powers of POCSO court prevail over SC & ST court’ (June 10 2007) The Hindu, <<https://www.thehindu.com/news/national/tamil-nadu/powers-of-pocso-court-prevail-over-sc-st-court/article18957447.ece>> accessed on 27 April 2020.



A One Stop Crisis Centre Scheme has been established under the Nirbhaya Fund in places across the country where integrated services—police assistance, legal aid, medical and counselling services—are available to victims of violence.⁵⁹ However this scheme does not address violence faced by women with disabilities. In the Target Group it states that “The OSC will support all women including girls below 18 years of age affected by violence, irrespective of caste, class, religion, region, sexual orientation or marital status.” Therefore, while this scheme supports women even from SC/ST backgrounds who face violence, women with disabilities who are at a higher risk of violence are not even mentioned. Thus, we see that the intersection of disability with caste in law and welfare programmes is completely neglected. What is most glaring is that women with disabilities are already severely overlooked because of their status, which makes Dalit women with disabilities rendered virtually invisible in the discourse of law and policy.

6 Access to public buildings and public spaces

The legislative framework in India does not address the intersection of caste and disability regarding access to housing, healthcare, public buildings and public spaces. While some statutes may focus on either caste or disability, it is difficult to see an inclusive law on both, including the Constitution. Art. 15 of the Constitution states that there shall be no discrimination on grounds of religion, race, caste, sex or place of birth. It does not include disability as a ground for discrimination, thereby leaving a gap to be filled in terms of discrimination laws even at the apex of the Indian legal system.

⁵⁹ Ministry of Women & Child Development, ‘One Stop Crisis Centre’ (18 July 2019) <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579355>> accessed on 27 April 2020.

7

Housing

India has the highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947).⁶⁰ Of those displaced, 40 per cent are indigenous/tribal peoples while 20 per cent are SC/Dalits.⁶¹

SC/Dalits, including women, regularly confront discrimination and violence while trying to access housing and land. They own the lowest percentage of land in rural India (9.23%).⁶²

In many villages, Dalit settlements are located on peripheries without adequate access to basic services. Access to housing and land by SC/ST persons with disabilities is even more difficult as they are more marginalized.

'Adequate housing' is not merely the provision of shelter in the form of four walls and a roof but also includes fundamental elements necessary for individuals, groups, and communities to live adequately,

and with peace, safety, security, and dignity, as elaborated by the Special Rapporteur on Adequate Housing⁶³ and the General Comments of the UN Committee on Economic, Social and Cultural Rights. The human right to adequate housing is also integrally linked to a range of other human rights, including those required for the fulfilment of an adequate standard of living.

⁶⁰ HRLN, The Human Rights to Adequate Housing and Land in India: Report to the United Nations Human Rights Council for India's Third Universal Periodic Review (Joint Stakeholder's Report December 2016) <https://www.hlrn.org.in/documents/Housing_Land_Rights_UPRIII_HLRN.pdf> accessed on 18 May 2020.

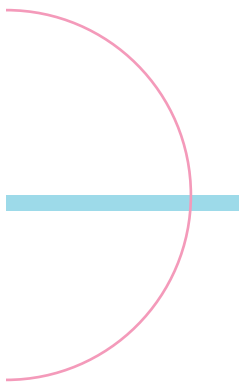
⁶¹ Department of Land Resources, Report of the Standing Committee on Rural Development (2011-2012), (CRD No. 33 Ministry of Rural Development) <https://www.prsindia.org/sites/default/files/bill_files/SCR__Land_Acquisition%2C_Rehabilitation_and_Resettlement_Bill_2011.pdf> accessed on 18 May 2020.

⁶² National Sample Survey, Household Ownership and Operational Holdings in India, (70th Round, January- December 2013, National Sample Survey Office, Ministry of Statistics and Programme Implementation, Government of India, 2015), < http://mospi.nic.in/sites/default/files/publication_reports/Report_571_15dec15_2.pdf > accessed on 19 May 2020.

⁶³ UNCHR, 'Report of the Special Rapporteur on Adequate Housing' (2019) A/HRC/40/61, <<http://www.unhcr.org/user/pages/04.resources/Access%20to%20justice%20Report.pdf>> accessed on 27 April 2020.

Although India has ratified several international human rights instruments, which mandate the guarantee and protection of the human right to adequate housing, there is no legislation guaranteeing the right to adequate housing. The courts have however expanded the scope of the right to life under Article 21 of the constitution to include the right to shelter and housing. The Supreme Court has held in a spate of cases that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.⁶⁴

The Supreme Court has in several judgements recognised the right to shelter for Schedule Castes and Schedule Tribes. The appalling housing conditions of Scheduled Castes and Scheduled Tribes was judicially taken notice of by the courts in *Kasireddy Papaiah v. Govt. of A.P.* where the court held that “The housing conditions of Harijans (sic) all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously.”⁶⁵ Similarly, in *Chameli Singh v. State of UP*⁶⁶ a case where land was acquired to provide housing for SC/ST persons, the Court held that,



“Want of decent residence, therefore, frustrates the very object of the constitutional animation of the right to equality, economic justice, fundamental right to residence, dignity of person and the right to live itself.”

⁶⁴ *Francis Coralie v. Union Territory of Delhi* (1981) AIR SC 746 753, *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan* (1997) 11 SCC 121.

⁶⁵ *Kasireddy Papaiah v. Govt. of A.P.* 1975 AIR(AP) 269.

⁶⁶ *Chameli Singh v. State of UP* (1996) 2 SCC 549.

“To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights”.

It held that providing house sites to Dalits, Tribes and the poor itself is an unsolved national problem where their needs remain unfulfilled and the urgency continues to subsist.

In *State of Karnataka v. Narasimhamurthy* the Supreme Court held that right to shelter is a fundamental right under Article 19 (1) of the Constitution and to make the constitutional right meaningful to the poor, the State has to provide facilities and opportunity to build houses and acquisition of the land to provide house sites.⁶⁷ In *Shantistar Builders v. Narayan Totame*, the Court directed the government to implement and monitor a scheme for builders to provide housing for those belonging to the weaker sections.⁶⁸ The Court directed that the Central Government should come forward with appropriate guidelines to indicate who would be included within weaker sections of the society and noted that it

has become impossible for any member of the weaker sections to have residential accommodation anywhere, especially in urban areas. It held that a reasonable residence is an indispensable necessity for fulfilling the constitutional goals and should be taken as included in ‘life’ in Article 21.

While there have been judgements where the right to housing especially for the poor and the SC/ST community is recognised, there is no such observation made for the need for housing for persons with disabilities. The RPWD Act only provides for 5% reservation for persons with disabilities and women especially in all schemes for allotment of land.⁶⁹ Hence, there is a need for a comprehensive housing rights legislation that would address housing for the most vulnerable, especially persons with disabilities, SC/ST persons and those at the intersections and to ensure that they do not face discrimination in access to housing.

⁶⁷ *State of Karnataka v Narasimhamurthy* 1995 SCC (5) 524.

⁶⁸ *Shantistar Builders v Narayan Totame* (1990) 1 SCC 520.

⁶⁹ Rights of Persons with Disabilities Act 2016, s 37.

8

Healthcare

The linkages between group identity and health assume importance if we look at the level of deprivation of each group in comparison with other dominant communities and link access to health care with discrimination and isolation.⁷⁰ For persons with disabilities, access to health care is extremely limited, even for those from upper caste and OBC groups. Studies on health status of SCs and STs show that children from Dalit and Adivasi populations faced higher risks of mortality as compared to the Non-SC/STs. These disparities were noticeable in all states except a few such as Assam, Haryana, Himachal Pradesh, and Jammu and Kashmir.⁷¹ Studies have revealed that the nutritional status of Dalit and Adivasi women and children in India is relatively poor.⁷² The disparities in health status and healthcare access of Dalit and Adivasi children as compared to other

groups is largely linked to the practices of untouchability and discrimination against Dalits.⁷³ The morbidity and health care burden of Dalit women are higher than others due to their lower access to healthcare services.⁷⁴ If the discriminatory facets of Dalits with the disabled are combined, it can bring to light the particularly disadvantageous position that they find themselves in.

There is no overarching legislation guaranteeing the access to healthcare in India. The RPWD Act provides that the government shall take necessary measures for the persons with disabilities to provide free healthcare in the vicinity and barrier-free access in all parts of Government and private hospitals.⁷⁵ There is no similar legislation for access to health care for SC and ST persons.

⁷⁰ George Sobin, 'Caste and Care: Is Indian Healthcare Delivery System Favourable for Dalits', (Working Paper 350, ISEC), available at <<http://www.isec.ac.in/WP%20350%20-%20Sobin%20George.pdf>> accessed on 27 April 2020.

⁷¹ V K Baraik and P M Kulkarni, "Health and Nutritional Status" in S. Thorat, S and Sabharwal N S (eds), Bridging the Social Gaps: Perspectives on Dalit Empowerment. New Delhi: (Sage 2014) 155-68.

⁷² *ibid.*

⁷³ T Sukhadeo Thorat 'Human Poverty and Socially Disadvantaged Groups in India' (Discussion Paper Series 18 2007), Human Development Resource Centre, UNDP, New Delhi.

⁷⁴ V K Borooah, N S Sabharwal and S Thorat 'Gender and Caste Based Inequality in Health Outcomes in India.' (2012) IIDS Working Paper Series, Volume 6, No. 3, New Delhi.

⁷⁵ Section 25 of The Rights of Protection of Persons with Disabilities 2016

There have been Supreme Court and High Court judgements expanding the right to life to include the right to health care under Article 21 of the constitution.⁷⁶ While this is important, even these judgements do not take into account the

discrimination faced in access to health care by persons with disabilities or persons from SC/ST communities and especially at the intersections, SC/ST persons with disabilities.

9 An overarching Equality and Anti-discrimination law needed

All of these legislations show that the intersectionality of caste and disability and further gender is not addressed in our existing legislations on disability rights and caste discrimination.

There is a need for an overarching anti-discrimination law that would address intersectional discrimination which is more aggravated and which reflects the lived experiences of people in access to housing , employment, welfare measures, education and other needs.

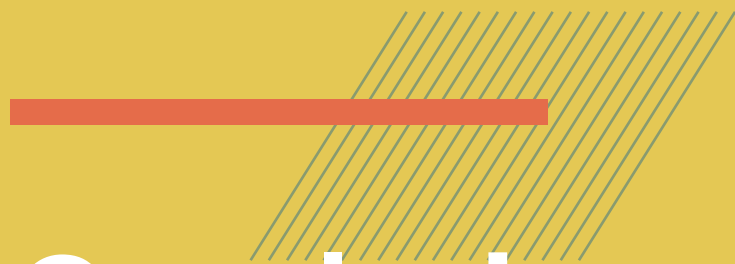
Since there is no existing legislation on health care and housing, such an anti-discrimination law would be useful in ensuring that persons with disability and from Dalit /Adivasi backgrounds and from other protected grounds would not be discriminated in access to such services.

⁷⁶ Vincent Panikurlangara vs. Union of India & Ors 1987 AIR (SC) 990; CESC Ltd. vs. Subash Chandra Bose 1992 AIR (SC) 573, 585; Consumer Education and Research Centre vs. Union of India AIR 1995 SC 922.

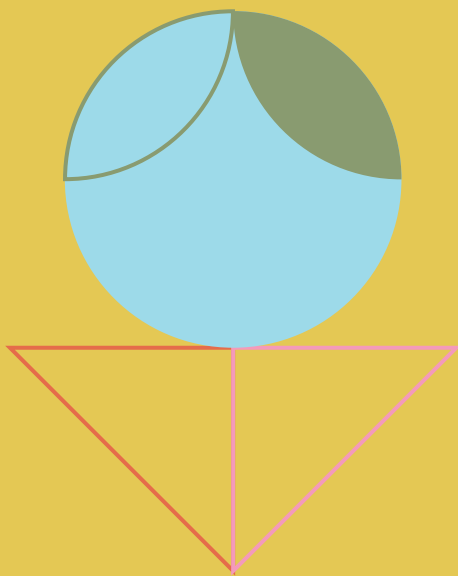
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03





Conclusions & recommendations



IN LIGHT OF THE ABOVE ANALYSIS, THE FOLLOWING RECOMMENDATIONS ARE PROPOSED

01 Comprehensive Data needed on Disability and Caste :

Empirical research and data collection is required to understand the full scale and depth of the socio-economic deprivations faced by Dalits / Adivasi persons with disabilities. After the last census in 2011, the Ministry of Statistics & Programme Implementation (MoSPI) has published a Profile on Disability in India in 2016. The Census and MoSPI Report however fail to provide any information on caste and disability. The central and state data collections agencies should undertake a comprehensive survey on persons with disabilities from SC/ST backgrounds, OBC and other caste groups to record how disability is acquired, the number of such households and disaggregated data based on the different social indicators so that there is a macro level picture on caste and disability. Data on women and transgender persons with disabilities belonging to Scheduled Castes and Schedule Tribes also needs to be collected, especially in the context of vulnerability to gender based violence as well as social inclusion.

02 An intersectional approach in Policy and Welfare Schemes :

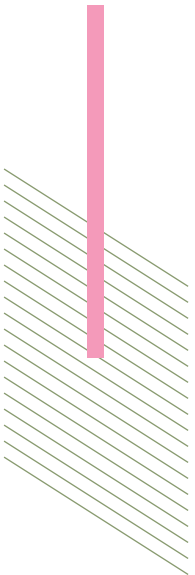
Information regarding the socio-economic demographics of such vulnerable groups is crucial to formulate and implement meaningful policy reform and welfare programs. The data on disability and caste should enable policy reform so that welfare measures and schemes of the government are framed from an intersectional perspective. Policies and schemes on employment, access to basic and higher education, healthcare, housing, social security and other measures should be reviewed and should incorporate a strong intersectional focus. This will need greater budget allocation to ensure that the most vulnerable get access to such policies.

03 An Over-arching Anti-Discrimination Law Needed :

Currently, there is no legislation that addresses the aggravated discrimination faced by Dalits /Adivasis with disabilities and people at the intersections of other categories as well, such as Dalit women, transgender persons with disabilities etc. We need to enact a comprehensive anti-discrimination legislation that not only addresses intersectional discrimination but also prohibits discrimination in the areas of education, employment, housing, health, public spaces and social security among others.

04 Need for Social movements to work together :

One of the main reasons why intersectionality is not recognised is because social rights movements across categories often do not work together as closely as they should. The anti-caste movements in India and disability rights movements need further dialogue between them. Given the general lack of qualitative and quantitative literature on the intersections of caste and disability in India, it is imperative to increase social awareness and encourage discourse on the issue. There is a need to increase awareness about the high incidence of disability among Dalits/Adivasis due to poor nutrition, health and hazardous working conditions and the barriers to their social and economic inclusion. Finally, academic and non-academic studies and discourse should be encouraged to build knowledge and catalyse social and developmental reform.





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