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**Violence against and Exploitation of "Untouchable" Children**

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**INDIA**

A Report Prepared for the Committee on the Rights of the Child by Human Rights Watch

March 24, 1999

In its April 1999 report titled *Broken People: Caste Violence Against India's "Untouchables,"* Human Rights Watch documents caste-based abuses against India's "untouchables" or Dalits, including caste violence, discrimination, and exploitation of Dalit children. The 291-page report is based on research conducted from January to March and July to August 1998. More than 300 Dalit men and women were interviewed. Human Rights Watch also spoke with more than one hundred government officials, social workers, Dalit activists, and attorneys. The recommendations for the report, some of which are included below, were drafted in consultation with over 40 activists representing eight Indian states. Many of these activists are also now involved in the newly constituted National Campaign for Dalit Human Rights.

Earlier Human Rights Watch reports on child bonded labor (*The Small Hands of Slavery: Bonded Child Labor in India*, September 1996) and police abuse against street children (*Police Abuse and Killings of Street Children in India*, November 1996) documented abuses in which Dalit children were the primary victims. Our latest report on India examines the caste system and the practice of "untouchability" as a major source of these and other violations in India.

## **Background**

More than one-sixth of India's population, some 160 million people, live a precarious existence, shunned by much of society because of their rank as "untouchables" or Dalits-literally meaning "broken" people-at the bottom of India's caste system. Dalits are discriminated against, denied access to land, forced to work in degrading conditions, and routinely abused at the hands of the police and of higher-caste groups that enjoy the state's protection. In what has been called India's "hidden apartheid," entire villages in many Indian states remain completely segregated by caste. National legislation and constitutional protections serve only to mask the social realities of discrimination and violence faced by those living below the "pollution line."

Despite the fact that "untouchability" was abolished under India's constitution in 1950, the practice of "untouchability"-the imposition of social disabilities on persons by reason of their birth in certain castes- remains very much a part of rural India. "Untouchables" may not cross the line dividing their part of the village from that occupied by higher castes. They may not use the same wells, visit the same temples, drink from the same cups in tea stalls, or lay claim to land that is legally theirs. Dalit children are frequently made to sit in the back of classrooms, and communities as a whole are made to perform degrading rituals in the name of caste.

Most Dalits continue to live in extreme poverty, without land or opportunities for better employment or education. With the exception of a minority who have benefited from India's policy of quotas in education and government jobs, Dalits are relegated to the most menial of tasks, as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers. Dalit children make up the majority of those sold into bondage to pay off debts to upper-caste creditors. Dalit men, women, and children numbering in the tens of millions work as agricultural laborers for a few kilograms of rice or Rs. 15 to Rs. 35 (US\$0.38 to \$0.88) a day. Their upper-caste employers frequently use caste as a cover for exploitative economic arrangements: social sanction of their status as lesser beings allows their impoverishment to continue.

Dalit women face the triple burden of caste, class, and gender. Dalit girls have been forced to become prostitutes for upper-caste patrons and village priests. Sexual abuse and other forms of violence against women are used by landlords and the police to inflict political "lessons" and crush dissent within the community. According to a Tamil Nadu state government official, the raping of Dalit women and girls exposes the hypocrisy of the caste system as "no one practices untouchability when it comes to sex." Like other Indian women whose relatives are sought by the police, Dalit women have also been arrested and tortured in custody as a means of punishing their male relatives who are hiding from the authorities.

The plight of India's "untouchables" elicits only sporadic attention within the country. Public outrage over large-scale incidents of violence or particularly egregious examples of discrimination fades quickly, and the state is under little pressure to undertake more meaningful reforms. Laws granting Dalits special consideration for government jobs and

education reach only a small percentage of those they are meant to benefit. Laws designed to ensure that Dalits enjoy equal rights and protection have seldom been enforced. Instead, police refuse to register complaints about violations of the law and rarely prosecute those responsible for abuses that range from murder and rape to exploitative labor practices and forced displacement from Dalit lands and homes.

Political mobilization that has resulted in the emergence of powerful interest groups and political parties among middle- and low-caste groups throughout India since the mid-1980s has largely bypassed Dalits. Dalits are courted by all political parties but generally forgotten once elections are over. The expanding power base of low-caste political parties, the election of low-caste chief ministers to state governments, and even the appointment of a Dalit as president of India in July 1997 all signal the increasing prominence of Dalits in the political landscape but cumulatively have yet to yield any significant benefit for the majority of Dalits. Laws on land reform and protection for Dalits remain unimplemented in most Indian states.

Lacking access to mainstream political organizations and increasingly frustrated with the pace of reforms, Dalits have begun to resist subjugation and discrimination in two ways: peaceful protest and armed struggle. Particularly since the early 1990s, Dalit organizations have sought to mobilize Dalits to protest peacefully against the human rights violations suffered by their community. These movements have quickly grown in membership and visibility and have provoked a backlash from the higher-caste groups most threatened—both economically and politically—by Dalit assertiveness. Police, many of whom belong to these higher-caste groups or who enjoy their patronage, have arrested Dalit activists, including social workers and lawyers, for activity that is legal and on charges that show the police's political motivation. Dalit activists are jailed under preventive detention statutes to prevent them from holding meetings and protest rallies, or charged as "terrorists" and "threats to national security." Court cases drag on for years, costing impoverished people precious money and time.

Dalits who dare to challenge the social order have been subject to abuses by their higher-caste neighbors. Dalit villages are collectively penalized for individual "transgressions" through social boycotts, including loss of employment and access to water, grazing lands, and ration shops. For most Dalits in rural India who earn less than a subsistence living as agricultural laborers, a social boycott may mean destitution and starvation.

Investigations by India's National Commission for Scheduled Castes and Scheduled Tribes, the National Human Rights Commission, the National Police Commission, and numerous local nongovernmental organizations all concur that impunity is rampant. In cases investigated for this report, with the exception of a few transfers and suspensions, no action has been taken against police officers involved in violent raids or summary executions, or against those accused of colluding with private actors to carry out attacks on Dalit communities. Moreover, in many instances, repeated calls for protection by threatened Dalit communities have been ignored by police and district officials.

The "National Agenda for Governance," the election manifesto for the Bharatiya Janata Party (BJP), which came to power in the February 1998 elections, outlines a program of action for the "upliftment" of scheduled castes and scheduled tribes. The term "scheduled castes," by which Dalits are also called, refers to a list of socially deprived ("untouchable") castes prepared by the British Government in 1935. The schedule of castes was intended to increase representation of scheduled-caste members in the legislature, in government employment, and in university placement. The term is also used in the constitution and various laws. The term "scheduled tribes" refers to a list of indigenous tribal populations who are entitled to much of the same compensatory treatment as scheduled castes. It promises to take steps to establish "a civilised, humane and just civil order... which does not discriminate on the grounds of caste, religion, class, colour, race or sex"; ensures the "economic and educational development of the minorities"; safeguards the interests of scheduled castes, scheduled tribes and backward classes by "appropriate legal, executive and societal efforts and by large scale education and empowerment"; provides "legal protection to existing percentages of reservation in educational institutions at the State level"; and removes "the last vestiges of untouchability." However, to date, the Indian government has done little to fulfill its promises to Dalits.

### **Attacks on Dalit children in Bihar**

In some states, notably Bihar, guerrilla organizations advocating the use of violence to achieve land redistribution have attracted Dalit support. Such groups, known as "Naxalites," have carried out attacks on higher-caste groups, killing landlords, village officials and their families and seizing property. Such attacks on civilians constitute gross violations of international humanitarian law. Naxalite groups have also engaged in direct combat with police forces.

In response, police have targeted Dalit villagers believed to be sympathetic to Naxalites and have conducted raids in search of the guerrillas and their weapons. While there is no question that the Naxalites pose a serious security threat and that the police are obliged to counter that threat, the behavior of the police indicates that the purpose of the raids is often to terrorize Dalits as a group, whether or not they are members of Naxalite organizations. During the raids, the police have routinely beaten villagers, including children and the elderly, sexually assaulted women, and wantonly destroyed property.

Higher-caste landlords in Bihar have organized private militias to counter the Naxalite threat. These militias, or *senas*, also target Dalit villagers believed to be sympathetic to Naxalites. Senas are believed responsible for the murders of many hundreds of Dalits and scores of Dalit children in Bihar since 1969. The senas, which claim many politicians as members, operate with impunity. In some cases, police have accompanied them on raids and have stood by as they killed villagers and burned down their homes. In other cases, police raids have followed attacks by the senas. Sena leaders are rarely prosecuted for such killings, and the villagers are rarely or inadequately compensated for their losses. Even in cases where police are not hostile to Dalits, they are generally not accessible to call upon: most police camps are located in the upper-caste section of the village and Dalits are simply unable to approach them for protection.

One of the most prominent militias, the Ranvir Sena, has been responsible for the massacre of more than 400 Dalit villagers in Bihar between 1995 and 1999. The attacks frequently take place at night; in many cases, the victims, including women and children, have been shot in their beds while they were sleeping. The raping of women and girls is a common tactic employed by members of the Ranvir Sena and other caste militias to spread terror in lower-caste communities. Dalit girls have been raped and mutilated by sena members and pregnant women and children have also been killed. Sena members have often claimed responsibility for the attacks and have even announced beforehand which villages they planned to target. However, because the senas enjoy the patronage of powerful elites, they operate with impunity.

During the most recent sena massacre, on the evening of January 25, 1999, at least twenty-two Dalit men, women and children were killed in the village of Shankarbigha, Jehanabad district, by members of the Ranvir Sena. The massacre was the fifth of its kind since July 1996 in which Dalit and lower-caste men, women and children were killed by the sena for their suspected allegiance to Naxalites. According to press reports, members of the Ranvir Sena entered eight thatched huts in the village during the night and fired indiscriminately on the occupants. Many of the victims, including several children, were shot in the head and stomach at point-blank range. Police suspected that the attacks were in retaliation for the killing of two sena activists the week before by Naxalites. According to Jehanabad District Magistrate P. Amrit, the killers shouted Ranvir Sena slogans throughout the attacks. The village is only ten kilometers away from Laxmanpur-Bathe, the site of a December 1997 sena massacre. Ranvir Sena supporters told *Times of India* that the sena had planned to kill almost all the Dalits in the village, close to seventy people, but were unable to complete their task.

The Ranvir Sena first made international headlines in July 1996 with its attack on Bathani Tola in Bhojpur district, Bihar, which left nineteen Dalits and Muslims, mostly women and children, dead. Sixty members of the sena reportedly descended on the village and set twelve houses on fire. On the morning of April 10, 1997, members of the Ranvir Sena gunned down eight residents of Ekwari village in Bhojpur district in an operation that lasted two hours. Police officers stationed nearby forced open the villagers' houses and then stood by and watched as the massacre took place. Seven of the eight killed belonged to the lower-caste Lohars, Chamars, Dhobis and Kahars. An article in *The Telegraph*, a Calcutta-based daily, reported that the attackers raped two women before killing them: a fifteen-year-old girl and a woman who was eight months pregnant. A ten-year-old boy was shot in the head.

On the evening of December 1, 1997, armed sena activists crossed the Sone river into the village of Laxmanpur-Bathe where 180 families lived. They raided fourteen Dalit homes and killed a total of sixty-one people: sixteen children, twenty-seven women, and eighteen men. In some families, three generations were killed. Twenty people were also seriously injured. As most of the men fled the village when the attack began, women and children numbered high among the fatalities. During the attack, at least five girls around fifteen years of age were raped and mutilated before being shot in the chest by members of the Ranvir Sena. Most of the victims allegedly belonged to families of Party Unity supporters; the group had been demanding more equitable land distribution in the area.

Human Rights Watch interviewed seven female residents of Laxmanpur-Bathe, many of whom witnessed the rape, mutilation and murder of five girls. Thirty-two-year-old Surajmani Devi recounted what she saw:

Everyone was shot in the chest. I also saw that the panties were torn. One girl was Prabha. She was fifteen years old. She was supposed to go to her husband's house two to three days later. They also cut her breast and shot her in the chest. Another was Manmatiya, also fifteen. They raped her and cut off her breast. The girls were all naked, and their panties were ripped. They also shot them in the vagina. There were five girls in all. All five were raped. All were fifteen or younger. All their breasts were cut off.

Activist claim that the purpose of Bathe was "to teach others not to rebel or raise a voice. In so doing women became vulnerable and were sexually assaulted¼ They raped women and cut off their breasts. A woman whose pregnancy was nearly complete was shot in the stomach. They said that otherwise the child will grow up to be a rebel."

Under the pretext of seeking out Naxalite militants police have conducted raids on Dalit villages and falsely arrested those accused of harboring Naxalites. In some cases, federal paramilitary forces have been deployed. Like the private militias, police have sexually assaulted women and attacked children who remained behind after the men fled the villages. Women have also been arrested and taken into custody in order to punish their families and force their male relatives to surrender. The purpose of the sena attacks and the subsequent police raids seems to be to terrorize Dalit communities sympathetic to Naxalite activities. Attacking the women and children of those communities is seen as the most effective way of teaching a political lesson.

### **Attacks on Dalit Children in Tamil Nadu**

In the southern districts of Tamil Nadu, clashes between Pallars (a community of Dalits) and Thevars (a marginally higher-caste non-Dalit community) have plagued rural areas since 1995. New wealth among the Pallars, who have sent male family members to work in Gulf states and elsewhere abroad, has triggered a backlash from the Thevars as the Pallars have increasingly been able to buy and farm their own lands or look elsewhere for employment. At the same time, a growing Dalit political movement has provided the Pallars with a platform for resisting the still-prevalent norms of "untouchability." While some Dalits have joined militant groups in Tamil Nadu, such groups have generally engaged in public protests and other political activities rather than armed resistance. The Thevars have responded by assaulting, raping, and murdering Dalits to preserve the status quo.

Local police, drawn predominantly from the Thevar community, have conducted raids on Dalit villages, ostensibly to search for militant activists. During the raids they have assaulted residents, particularly women and children, and detained Dalits under preventive detention laws. During one such raid, Guruswamy Guruammal, a pregnant, twenty-six-year-old Dalit agricultural laborer, was stripped, brutally beaten, and dragged through the streets naked before being thrown in jail. She told Human Rights Watch, "I begged the police officers at the jail to help me. I even told them I was pregnant. They mocked me for [having made] bold statements to the police the day before. I spent twenty-five days in jail. I miscarried my baby after ten days. Nothing has happened to the officers who did this to me." During a raid on Desikapuram village in June 1997 many villagers, including a total of nineteen women, were illegally arrested during

the raid. Many of the women were sent to jail with their minor children for fifteen to twenty-nine days.

With the tolerance or connivance of local officials, police have also forcibly displaced thousands of Dalit villagers. In Mangapuram village in June 1997, hundreds of Thevar villagers, with the help of local police, attacked the Pallars and set their houses on fire. As most of their houses had burned to the ground, the Pallars took refuge in nearby villages. In February 1998 Human Rights Watch visited the area where displaced Pallar families had taken shelter and where they remained eight months after the incident. An area just over three acres in size, literally adjacent to Mangapuram village, housed more than 350 people in 200 poorly constructed huts. An adjoining area housed over 200 people in seventy huts. Families with over four members, many with small children, were made to live in huts approximately thirty-five square feet in size. The small spheres of public space were used for cattle and makeshift latrines. Most families were left without a source of income, and there was little word from the government about returning them to their village. No action was taken against the Thevars responsible for the attacks or against police officials complicit in allowing the displacement to occur. Many villagers still bore scars, which they attributed to lathi (wooden cane) attacks by police officers who took part in the displacement.

### **Police Abuse of Street Children** (from *Police Abuse and Killings of Street Children in India*)

India has the largest population of street children in the world. At least eighteen million children, many of them Dalits, live or work on the streets of urban India, laboring as porters at bus or railway terminals; as mechanics in informal auto-repair shops; as vendors of food, tea, or handmade articles; as street tailors; or as ragpickers, picking through garbage and selling usable materials to local buyers.

Indian street children are routinely detained illegally, beaten and tortured and sometimes killed by police. Several factors contribute to this phenomenon: police perceptions of street children, widespread corruption and a culture of police violence, the inadequacy and non-implementation of legal safeguards, and the level of impunity that law enforcement officials enjoy. The police generally view street children as vagrants and criminals. While it is true that street children are sometimes involved in petty theft, drug-trafficking, prostitution and other criminal activities, the police tend to assume that whenever a crime is committed on the street, street children are either involved themselves or know the culprit. Their proximity to a crime is considered reason enough to detain them. This abuse violates both Indian domestic law and international human rights standards.

Street children are also easy targets. They are young, small, poor, ignorant of their rights and often have no family members who will come to their defense. It does not require much time or effort to detain and beat a child to extract a confession, and the children are unlikely to register formal complaints. Police have financial incentives to resort to violence against children. Many children report that they were beaten on the street because the police wanted their money. The prospect of being sent to a remand home, the police station or jail, coupled with the threat of brutal treatment, creates a level of fear and intimidation that forces children or in some cases, their families, to pay the police or suffer the consequences.

Indian law contributes to the problem. Under the Indian Penal Code, anyone over the age of twelve is considered an adult, and ambiguities in the code concerning the ability of the child to be cognizant of a crime have made it possible for children as young as seven to be treated as adults under the law. There are no provisions in the code that prohibit the detention of juveniles in police stations or jails. The Juvenile Justice Act, which applies to all the states and Union Territories in India except Jammu and Kashmir, does prohibit the detention of "neglected" or "delinquent" juveniles in police lock-ups or jails, but these provisions are routinely ignored by police. Moreover, at the remand stage, the law makes no distinction between neglected and delinquent children, so that a six-year-old orphan on the street and a fifteen-year-old child who has committed murder are likely to be treated the same way under the law, an issue analyzed further below.

Finally, there is the de facto immunity of police from prosecution. The government of India has known about the extent of custodial abuse, including abuse of children, at least since 1979 when the National Police Commission issued a devastating indictment of police behavior. Two decades later, none of its recommendations have been adopted, and police can detain, torture and extort money from children without much fear of punishment.

### **Exploitative Forms of Labor**

Although our caste violence report focuses primarily on abuse against Dalit communities that have begun to assert themselves economically or organize themselves politically, it also examines the weakest sectors of the population: those with no political representation, living in the poorest of conditions, and made to perform the most degrading of tasks with little or no remuneration. To eke out a subsistence living, Dalits throughout the country, numbering in the tens of millions, are driven to bonded labor, manual scavenging, and forced prostitution under conditions that violate national law and their basic human rights.

An estimated forty million people in India, among them fifteen million children, are bonded laborers, working in slave-like conditions in order to pay off a debt. A majority of them are Dalits. According to government statistics, an estimated one million Dalits are manual scavengers who clear feces from public and private latrines and dispose of dead animals; unofficial estimates are much higher. An activist working with scavengers in the state of Andhra Pradesh claimed, "In one toilet there can be as many as 400 seats which all have to be manually cleaned. This is the lowest occupation in the world, and it is done by the community that occupies the lowest status in the caste system." In India's southern states, thousands of girls are forced into prostitution before reaching the age of puberty. Devadasis, literally meaning "female servant of god," usually belong to the Dalit community. Once dedicated, the girl is unable to marry, forced to become a prostitute for upper-caste community members, and eventually auctioned off to an urban brothel.

### **Bonded Labor**

"Bonded labor" refers to work in slave-like conditions in order to pay off a debt. Due to the high interest rates charged and the abysmally low wages paid, the debts are seldom settled. As documented by Human Rights Watch in a 1996 report titled *The Small Hands of Slavery: Bonded Child Labor in India*, bonded laborers are frequently low-caste, illiterate, and extremely poor, while the creditors/employers are usually higher-caste, literate, comparatively wealthy, and relatively more powerful members of the community. Approximately forty million people, including fifteen million children, work as bonded laborers in India. The majority are Dalits.

### **Manual Scavenging**

Manual scavenging is a caste-based occupation. Dalit manual scavengers exist under different caste names throughout the country, such as the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu. Members of these communities are invariably placed at the very bottom of the caste hierarchy, and even the hierarchy of Dalit sub-castes. Using little more than a broom, a tin plate, and a basket, they are made to clear feces from public and private latrines and carry them to dumping grounds and disposal sites. Though long outlawed, the practice of manual scavenging continues in most states. Children of manual scavengers often assist their families in completing the work and are inevitably assigned the same caste-based tasks as they get older.

Those working for urban municipalities are paid Rs. 30 - 40 a day (less than US\$1), and those working privately are paid Rs. 5 (US\$0.13) a month for each house they clean. Even those working for municipalities rarely get paid and are offered little health benefits for a job that entails many health hazards. In cities scavengers are actually lowered into filthy gutters in order to unclog them; they are fully immersed in human waste without any protective gear. In Bombay, children made to dive into manholes have died from carbon monoxide poisoning. In many communities, in exchange for leftover food, scavengers are also expected to remove dead animal carcasses and deliver messages of death to the relatives of their upper-caste neighbors. Their refusal to do so can result in physical abuse and ostracism from the community.

In a 1997 report, the National Commission for Safai Karamcharis claimed that manual scavengers are "totally cut off from the mainstream of progress" and are "still subjected to the worst kind of oppression and indignities. What is more pathetic is the fact that manual scavenging is still largely a hereditary occupation. *Safai karamcharis* are no doubt the most oppressed and disadvantaged section of the population." The commission is a statutory body set up pursuant to the National Commission for Safai Karamcharis Act, 1993. Safai karamcharis are defined as those persons engaged in, or employed for, manually carrying human excreta or any sanitation work.

Social discrimination against scavengers is rampant. Most scavengers live in segregated rural colonies and are unable to make use of common resources. According to an Andhra Pradesh activist:

In one toilet there can be as many as 400 seats which all have to be manually cleaned. This is the lowest occupation in the world, and it is done by the community that occupies the lowest status in the caste system. Even other scheduled-caste people won't touch the safai karamcharis [cleaning workers]. It is "untouchability" within the "untouchables," yet nobody questions it.

Human Rights Watch was taken to various tea stalls to witness the separate tea tumbler system in which scavengers are made to wash and handle their own tumblers so that glasses reserved for caste Hindus are not "polluted."

When we are working, they ask us not to come near them. At tea canteens, they have separate tea tumblers and they make us clean them ourselves and make us put the dishes away ourselves. We cannot enter temples. We cannot use upper-caste water taps. We have to go one kilometer away to get water.

Despite their appalling work conditions, manual scavengers are unable to demand higher wages or sanitary instruments for use in the collection of human excreta: "When we ask for our rights from the government, the municipality officials threaten to fire us. So we don't say anything. This is what happens to people who demand their rights." According to Macwan, in Ranpur town, Ahmedabad district, women who arrived late for work were made to clean men's urinals as punishment, "even if the men were still inside." Another social worker active in Gujarat added that Bhangis were forced to deliver messages of death to upper-caste family relatives; "They will be boycotted and beaten so they cannot say no."

Human Rights Watch spoke to an activist working to organize Sikkaliars in the Theni district of southern Tamil Nadu. He works with fifty Sikkaliar families in a Thevar-dominated area. The interview revealed that apart from having to perform degrading tasks, the Sikkaliars are also subject to physical and sexual abuse as well as restrictions on their right to vote.

Sikkaliars have to bury the Thevars' dead animals, and women have to collect waste. They only get meals for their work, even for burying animals. Sometimes Sikkaliars take the dead animal's meat and divide it among themselves. The Thevars harass women laborers, particularly young ladies. Once a girl attains puberty, she is harassed by Thevar men. If anyone opposes it, they will be severely punished. Sikkaliars depend on Thevars, and because there is no other support they often leave for other villages out of fear when fighting occurs. They are doing scavenger work as well as [agricultural] laborer work for which they are paid less than minimum wage. They clean the latrines, the bathrooms, the drains, and they do cremation work. If not they are severely punished by the Thevars. The children are not able to go to school.

### **The relationship between scavenging and debt bondage**

When interviewed in early 1998, thirty-year-old Parsotambhai, a mother of three in Ahmedabad district, Gujarat, earned Rs. 10 (US\$0.25) a month for each house she cleaned. She also received small amounts of food once a day and complained that there was too much work. Others voiced similar complaints:

They give one person too much work so they have to take their family members, even their

children, at night to finish the work; otherwise they would get fired. It takes four people to do the work that they give one person. None of the children are really studying. Girls sometimes study up to fifth standard, boys up to seventh.

Given the insignificant amounts of remuneration and the need to engage several family members in work assigned to one, it comes as little surprise that many families borrow money from their upper-caste neighbors and consequently going into bondage. Their poverty is so acute that Macwan has even documented a Bhangi practice of separating non-digested wheat from buffalo dung to make *chappatis* (flat bread). One scavenger commented:

There is no health care, no benefits from the government. We cannot live on what we get paid, but we have to. We also have to take loans from the upper caste. They charge 10 percent in interest per month. We have no clothes, no soap, no wages, and no payments on time.

### **Sexual Exploitation of Children and the Raping of Dalit Girls**

Rape is a common phenomenon in rural areas. Dalit women and girls are raped as part of an effort by upper-caste leaders to suppress movements to demand payment of minimum wages, to settle sharecropping disputes, or to reclaim lost land. They are raped by members of the upper caste, by landlords, and by the police. Women have also been raped as punishment for taking part in inter-caste or inter-religious marriages. According to Dalit activists, Dalit girls have been forced to have sex with the village landlord. In rural areas, women are also induced into prostitution (Devadasi system) in the name of religion. The prevalence of rape in villages contributes to the greater incidence of child marriage in rural areas. Early marriage between the ages of ten years and sixteen years persists in large part because of the girls' vulnerability to sexual assault by upper-caste men; once a girl is raped, she becomes unmarriageable. An early marriage also gives parents greater control over the caste into which their children are married.

Dalit girls who are raped face insurmountable obstacles in seeking redress for the crimes committed against them. If a girl is poor, belongs to a lower caste, and lives in a rural area, it is more difficult for her to gain access to the justice system. Those who are able to pursue cases of sexual assault have to battle entrenched biases at every stage of the process: with the police, the doctors, the judges, and even their own families. Many cases fail to even reach the trial stage because the accused are able to use their political leverage in getting their names deleted from the First Information Report (FIR, the first report of a crime recorded by the police). A twelve-year-old Dalit girl was raped in September 1997 by a twenty-one-year-old Thevar man in a southern district of Tamil Nadu. Successful prosecution of her case was thwarted when the accused paid bribes to the police.

The practice of *devadasi*, in which a girl, usually before reaching the age of puberty, is ceremoniously dedicated or married to a deity or to a temple, continues in several southern states including Andhra Pradesh and Karnataka. Literally meaning "female servant of god," devadasis usually belong to the Dalit community. Once dedicated, the girl is unable to marry, forced to become a prostitute for upper-caste community members, and eventually auctioned into an urban brothel. The age-old practice continues to legitimize the sexual violence and discrimination that have come to characterize the intersection between caste and gender. The patrons of the devadasis are generally from the higher castes. This system of patronage has given way to a system of commercial prostitution in the populated big cities. Activists involved in the Dalit women's movement explain that the nexus between caste and forced prostitution is quite strong and that the devadasi system is no exception. Most Indian girls and women in India's urban brothels come from lower-caste, tribal or minority communities. Like other forms of violence against women, ritualized prostitution, activists believe, is a system "designed to kill whatever vestiges of self-respect the untouchable castes have in order to subjugate them and keep them underprivileged." By keeping Dalit women and girls as prostitutes, and by tying prostitution to bondage in rural areas, upper-caste men reinforce their declaration of social and economic superiority over the lower castes.

According to the Ambedkar Centre for Justice and Peace, a Canada-based NGO,

Thousands of untouchable female children (between 6 and 8 years) are forced to become maidens of God (Devadasis, Jogins, a Hindu religious practice in Andhra Pradesh, Karnataka State, Maharashtra, Orissa State, to mention only a few). They are taken from their families, never to see them again. They are later raped by the temple priest and finally auctioned secretly into prostitution and ultimately die from AIDS. It is estimated by NGOs that 5,000 to 15,000 girls are auctioned secretly every year.

In an interview with Human Rights Watch, the head of an NGO active in Karnataka explained that in her state the girl is offered to the Goddess Yellamma in a village ceremony:

Earlier it was for priests, but now it is for high-caste men. They used to live in the temples<sup>¼</sup> now anyone can use them including lorry drivers<sup>¼</sup> Dreadlocked hair is taken as a sign from the Goddess Yellamma that the girl is meant to be a devadasi. In a festival, a marriage ceremony takes place between the girl and god. The eldest lady of the devadasi community ties the mangal sutra [marriage necklace]. In some ceremonies the girl was paraded almost naked. The girl is then given some money but still works in the fields. She lives separately in the village and is used by all the men, including Dalit men.

In 1992 the Karnataka state government passed the Karnataka Devadasi (Prohibition of Dedication) Act and called for the rehabilitation of devadasi women. Like many laws aimed at protecting women and lower castes, the act suffers from a lack of enforcement. Moreover, the police themselves have been known to use devadasis. As the Karnataka activist explained, the law works to the disadvantage of women because it criminalizes their actions and not the actions of their patrons. Police will even go so far as to demand sex as a bribe: "They will threaten to file charges under the act if the woman says no." Their perceived status in society, as women who are supposed to serve men sexually, also makes it more difficult for devadasis to approach the police for help: "When a devadasi is raped, it is not considered rape. She can be had by any man at any time."

In reviewing India's third periodic report to the U.N. Human Rights Committee, submitted under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) in July 1997, the Human Rights Committee regretted "the lack of national legislation to outlaw the practice of Devadasi, the regulation of which is left to the states," and added that "it appears that the practice continues and that not all states have effective legislation against it." The committee emphasized that the practice was incompatible with the ICCPR and recommended that "all necessary measures be taken urgently" toward its eradication.

## **Failure to Implement National and Legislation**

### **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act**

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, enacted in 1989, provides a means to address many of the problems Dalits face in India. The act is designed to prevent abuses and punish those responsible, establish special courts for the trial of such offenses, and provide for victim relief and rehabilitation. A look at the offenses made punishable by the act provides a glimpse into the retaliatory or customarily degrading treatment Dalits may receive. The offenses include forcing members of a scheduled caste or scheduled tribe to drink or eat any inedible or obnoxious substance; dumping excreta, waste matter, carcasses or any other obnoxious substance in their premises or neighborhood; forcibly removing their clothes and parading them naked or with painted face or body; interfering with their rights to land; compelling a member of a scheduled caste or scheduled tribe into forms of forced or bonded labor; corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by scheduled castes or scheduled tribes; denying right of passage to a place of public resort; and using a position of dominance to exploit a scheduled caste or scheduled tribe woman sexually.

The potential of the law to bring about social change has been hampered by police corruption and caste bias, with the result that many allegations are not entered in police books. Ignorance of procedures and a lack of knowledge of the act have also affected its implementation. Even

when cases are registered, the absence of special courts to try them can delay prosecutions for up to three to four years. Some state governments dominated by higher castes have even attempted to repeal the legislation altogether.

Between 1994 and 1996, a total of 98,349 cases were registered with the police nationwide as crimes and atrocities against scheduled castes. Of these, 38,483 were registered under the Atrocities Act for the sorts of offenses enumerated above. A further 1,660 were for murder, 2,814 for rape, and 13,671 for hurt. Given that Dalits are both reluctant and unable (for lack of police cooperation) to report crimes against themselves, the actual number of abuses is presumably much higher. The National Commission for Scheduled Castes and Scheduled Tribes has reported that these cases typically fall into one of three categories: cases relating to the practice of "untouchability" and attempts to defy the social order; cases relating to land disputes and demands for minimum wages; and cases of atrocities by police and forest officials.

### **The Bonded Labour System (Abolition) Act**

The Bonded Labour System (Abolition) Act, 1976 abolishes all agreements and obligations arising out of the bonded labor system. It aims to release all laborers from bondage, cancel any outstanding debt, prohibit the creation of new bondage agreements, and order the economic rehabilitation of freed bonded laborers by the state. It also punishes attempts to compel persons into bondage with a maximum of three years in prison and a Rs. 2,000 (US\$50) fine. However, the extent to which bonded laborers have been identified, released, and rehabilitated in the country is negligible.

Most agricultural laborers interviewed for our report on caste violence were paid between Rs. 15 and Rs. 25 (US\$0.38 to \$0.63), or two to three kilograms of rice, per day, well below the minimum wage prescribed in their state. Women and girls were consistently paid less than men. Many laborers owed debts to their employers or other moneylenders. Under the Bonded Labour System (Abolition) Act, 1976, payment of less than minimum wage for the purposes of working off a debt amounts to bondage. The act's definition of the "bonded labour system" includes "any system of forced, or partly forced labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that

(v) by reason of his birth in any particular caste or community, he would --

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages....

Nominal wages are defined as wages which are less than

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force; and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour to the labourers working in the same locality.

### **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act**

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 punishes the employment of scavengers or the construction of dry (non-flush) latrines with imprisonment for up to one year and/or a fine as high as Rs. 2,000 (US\$50). Offenders are also liable to prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In 1992 the government launched a national scheme that called for the identification, training, and rehabilitation of safai karamcharis throughout the country. According to the National Commission for Safai Karamcharis (cleaning workers), the progress "has not been altogether satisfactory." As a result it has benefited only "a handful of safai karamcharis and their dependents. One of the reasons for unsatisfactory progress of the Scheme appears to be inadequate attention paid to it by the State Governments and concerned agencies." When confronted with the existence of manual scavenging and dry latrines within

their jurisdiction, state governments often deny their existence altogether or claim that a lack of water supply prevents states from constructing flush latrines. This despite the fact that a sum of Rs. 4,640,000,000 (US\$116 million) was allocated to the scheme under the government's Eighth Five Year Plan. Activists claim that the resources, including government funds, exist for construction and for the rehabilitation of scavengers; what is lacking is the political will to do so. Members of the National Commission for Safai Karamcharis consider it imperative that the commission be "vested with similar powers and facilities as are available to the National Commission for Scheduled Castes and Scheduled Tribes." Currently the commission only has advisory powers and no authority to summon or monitor cases.

### **Failure to Comply With International Treaties**

The abuses documented in this report are in violation of the international human rights treaties outlined below. As a party to these treaties, India is obligated to comply with their provisions.

#### **Convention on the Rights of the Child, 1989**

Article 2 of the Convention on the Rights of the Child provides that:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

The following three provisions mandate protections that are particularly relevant for the bonded child laborer:

Article 32: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or... be harmful to the child's health or physical, mental, spiritual, moral or social development." States are directed to implement these protections through appropriate legislative, administrative, social and educational measures. In particular, they are to:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment; and
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

Article 35: "States Parties shall take all appropriate. . . measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form." A significant portion of the bonded child laborers of India are trafficked from one state to another, and some are sold outright.

Article 36: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

Similarly, the International Labour Organisation (ILO) Forced Labour Convention requires signatories to "suppress the use of forced or compulsory labour in all its forms in the shortest period possible." In 1957, the ILO explicitly incorporated debt bondage and serfdom within its definition of forced labor.

Severe beatings of children by police are a form of torture and are prohibited by international standards. Torture is expressly prohibited in numerous international treaties and standards. The prohibition of torture can be considered customary international law, binding on all nations regardless of whether they are parties to the Convention against Torture. Even where physical and mental abuse does not cause severe pain or suffering, it may be prohibited as "cruel,

inhuman or degrading treatment or punishment" under the the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (see below).

### **International Convention on the Elimination of All Forms of Racial Discrimination, 1965**

The Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC), have both expressed concern over the severe social discrimination still practiced against members of scheduled castes and scheduled tribes. Both committees have also recommended measures that can be taken to ameliorate the situation.

In the concluding observations of its forty-ninth session held in August 1996, as it reviewed India's tenth to fourteenth periodic reports under the convention, the Committee on the Elimination of Racial Discrimination (CERD) affirmed that "the situation of Scheduled Castes and Scheduled Tribes falls within the scope of" the International Convention on the Elimination of All Forms of Racial Discrimination, 1965. Article 6 of the convention provides that state parties shall "assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

The committee added that the provisions of Article 6 are mandatory and that "the State party [should] continue to and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the Scheduled Castes and Scheduled Tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention." It recommended that:

- special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and tribes, and in the case where such acts have been committed, to conduct thorough investigations, to punish those found responsible and provide just and adequate reparation to the victims;
- a continuing campaign be undertaken to educate the Indian population on human rights, in line with India's constitution and with universal human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, and aimed at eliminating the institutionalized thinking of the high-caste and low-caste mentality;
- legal provisions be adopted to make it "easier for individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to caste or a tribe."

### **International Covenant on Civil and Political Rights, 1966**

In July 1997 the sixtieth session of the Human Rights Committee considered India's third periodic report submitted under Article 40 of the International Covenant on Civil and Political Rights (ICCPR). The committee made the following observations pertaining to caste:

The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, *inter alia*, inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the *de facto* perpetuation of the caste system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination:

it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance with articles 2, paragraph 1, and 26 of the Covenant.

In addition to the violations outlined above, Articles 7, 9, 14, and 26 of the ICCPR are of

particular relevance to the abuses documented in this report. Article 7 prohibits the use of torture, or cruel, inhuman or degrading treatment or punishment. The right to liberty and security of person is guaranteed by Article 9 and includes freedom from arbitrary arrest and detention, entitlement to a trial within a reasonable time or to release, and compensation for victims of unlawful arrest or detention. Illegal arrests and detentions are by definition "arbitrary"; such acts can also be arbitrary if not in conformity with international standards of human rights and procedural fairness, regardless of specific provisions of domestic law.

While noting India's reservation to Article 9, the Human Rights Committee commented that this reservation, "does not exclude, *inter alia*, the obligation to comply with the requirement to inform promptly the person concerned of the reasons for his or her arrest."

The committee also added that:

preventive detention is a restriction of liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of article 14, paragraph 1, of the Covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision. Therefore:

the Committee recommends that the requirements of article 9, paragraph 2, of the Covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with article 14, paragraph 1, [the right to equality before all courts and tribunals] of the Covenant. It further recommends, at the very least, that a central register of detainees under preventive detention laws be maintained and that the State party accept the admission of the International Committee of the Red Cross to all types of detention facilities, particularly in areas of conflict.

Finally, Article 26 of the ICCPR guarantees the right to equal protection before the law and prohibits discrimination on any ground including, among others, race, sex, religion, political or other opinion, social origin, birth, or other status.

#### **International Covenant on Economic, Social and Cultural Rights, 1966**

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that state parties shall "recognize the right of everyone to the enjoyment of just and favorable conditions of work." These include "fair wages and equal remuneration for work of equal value without distinction of any kind," and "safe and healthy work conditions."

#### **Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984**

Succumbing in part to pressure from domestic human rights NGOs and the National Human Rights Commission, India signed the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment on October 14, 1997. The provisions of the convention will become binding upon its ratification.

The convention defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Severe beatings of Dalit men, women and children by the police fall well within this definition. Indian police routinely employ torture techniques in police stations, lock-ups, and detention centers throughout the country. The sexual abuse of women and girls by state agents in a

custodial setting amounts to torture if the agent uses force, the threat of force, or other means of coercion to compel a woman to engage in sexual intercourse. If the agent uses force or coercion to engage in sexual touching of prisoners, including aggressively squeezing, groping, or prodding women's genitals or breasts, and the acts cause severe physical and mental suffering, that too would amount to torture.

Acts that do not rise to the level of torture or cruel or inhuman treatment may nevertheless be classified as degrading treatment, which is defined as treatment that causes or is intended to cause gross humiliation or an insult to a person's dignity. The prohibition on degrading treatment also extends to the use of demeaning language where the employment of such language is intended to dehumanize and weaken an incarcerated person.

## **Recommendations**

### **Human Rights Watch recommends that the Committee on the Rights of the Child:**

- Investigate human rights abuses against Dalit children. This investigation should focus on the effects of these abuses on ongoing cycles of violence, exploitation, and discrimination. Investigate police abuse against Dalit children, the sexual abuse of Dalit girls, and the government's failure to abolish bonded labor, manual scavenging and other forms of exploitation.
- Assist the government to fulfill its constitutional commitments to providing free and compulsory education to all children up to fourteen years of age, and promoting Dalit educational and economic interests and protecting them from social injustice and all forms of economic exploitation.

### **The Committee on the Rights of the Child should urge the Indian government to:**

- Uphold constitutional guarantees of equality, freedom, justice and human dignity, and demonstrate its commitment to the eradication of caste violence and caste-based discrimination by implementing the following recommendations at the earliest possible date.
- Implement measures designed to ensure that states abolish the practice of "untouchability," in compliance with Article 17 of the constitution; commit to taking steps to prevent further violence and prosecute both state and private actors responsible for caste-motivated attacks on Dalit communities; enforce relevant legislation and educate state agents and the greater population on the rights and constitutional freedoms of all citizens.
- Immediately and without fail, disband the Ranvir Sena, prosecute and punish state and private actors responsible for abuses documented in this report, and place a high priority on the protection of Dalit children.
- Ensure strict implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including the establishment of special courts and special prosecutors in each revenue districts. Each police station should have a scheduled caste/scheduled tribe atrocities cell to handle investigations of abuses and alleged violations of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Each revenue district should also have a special deputy superintendent of police charged with investigating atrocities under the act. In keeping with the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, police who refuse to register cases under the act should be punished accordingly. For full implementation of the act, these cells should be statutorily empowered to receive and address complaints of violations under the act and complaints of official misconduct.
- Ensure strict implementation of the bonded labor-related provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As Dalits constitute the majority of bonded laborers, the government should ensure that states and districts establish and oversee bonded labor vigilance committees, as required by the Bonded Labour (System) Abolition Act, 1976. The government should ensure that a sufficient number of investigators can be included in

the committee to guarantee implementation of the act. Lawyers, social workers, teachers, civil servants, and others with ties to bonded laborers and their families should be enlisted as investigators. Nongovernmental organization (NGO) representatives should be consulted in the recruitment of investigators. The government should provide in-depth training to district officials charged with enforcing the Bonded Labour (System) Abolition Act, 1976, as directed by the Supreme Court in *Neeraja Chaudhary v. State of Madhya Pradesh*, 1984.

- Ensure appropriate implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, including prosecution of officials responsible for the perpetuation of the practice and rehabilitation of affected scavenger communities, the majority of which are Dalits. The government should ensure that states and districts constitute and oversee vigilance and monitoring committees with adequate representation of NGOs, women, and members of the scavenger communities. State governments should also train district officials charged with enforcing the act.
- Implement the recommendations made by the National Police Commission in 1980, specifically those that call for a mandatory judicial inquiry in cases of alleged rape, death, or grievous injury of people in police custody and the establishment of investigative bodies whose members would include civilians as well as police and judicial authorities.
- Implement the Juvenile Justice Act in all states and Union Territories and amend the Juvenile Justice Act to provide for a complaints and prosecution mechanisms for cases of custodial abuse of children. These mechanisms should be constituted along the lines described in the National Police Commission's recommendations for the creation of civilian, judicial, and police complaints bodies for cases of police abuse.
- Implement measures designed to ensure that states are in compliance with Article 45 of the constitution, which mandates free and compulsory education for all children up to fourteen years of age. Primary education is the first step in breaking the cycle of discrimination and caste-based employment.
- Implement measures designed to ensure that states are in compliance with Article 46 of the constitution, which directs states to promote with special care the educational and economic interests of the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of economic exploitation.
- Incorporate education on relevant legislation for Dalits and women into school curricula (including education on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Human Rights Act, 1993).
- Launch a nationwide public awareness campaign regarding the legal prohibition of "untouchability," "atrocities" and other forms of discrimination against Dalits. This campaign should explain in simple terms what actions are legally prohibited, what recourse is available to Dalits and their families, and what are the procedures for filing an FIR. It should also include a program of public service announcements in all states aimed at sensitizing the population on Dalit issues and creating awareness of Dalit rights.
- Strengthen the capacity of the National Human Rights Commission and the National Commission for Women to operate branch offices in all states with enough financial resources and powers to initiate prosecution of cases. Amend the Protection of Human Rights Act, 1993, so that national and state human rights commissions are not automatically exempted from inquiring into matters already pending before a state commission or any other commission duly constituted under any law.

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