

Non-Discrimination

Article 2 & Governments' Budgets

Failure to allocate and spend funds specially designated to counter the lingering effects of historic discrimination

The case in brief

In India Dalits are “outcastes,” people who fall outside the traditional four-fold caste system. They are physically and socially excluded, isolated from the rest of society. Historically they were considered “untouchables.” For centuries they were not permitted to own land and were barred from education. As a result, the majority live in poverty and over half are illiterate.

In more recent years legal protections have been put into place to address these injustices. A policy issued in 1979 by the Planning Commission of India called the Schedules Castes Sub Plan (SCSP) sought to ensure that Dalits were receiving their fair share of government spending. So that the government could more effectively move towards this goal, in 1995 the Planning Commission created a Minor Sub Head budget code, 789, to categorize all SCSP funds; in other words, expenditures by national and state departments targeting Dalits were to be marked with code 789. For years, however, the code was not applied. Without consistent application, it was impossible to know the extent to which government was complying with the SCSP mandate.

Since 2007, the National Campaign for Dalit Human Rights has worked with the Centre for Budget Governance and Accountability to document the failure of state and national governments to apply the code. They have also sought to track SCSP funds. To the extent that they have been successful in doing so, they have found that allocations have regularly been well below the 16 percent of the budget that should be earmarked for Dalits (in line with their share of the population). They have also uncovered numerous instances of funds designated for Dalits being diverted to uses that were in no way intended to advance Dalit rights.



The human rights issue

ICESCR article 2(2) prohibits both formal and substantive (*de facto*) discrimination. General Comment 20 of the UN Committee on Economic, Social and Cultural Rights (CESCR) elaborates on this provision. In paragraphs 8 and 9 of the General Comment the Committee says:

- (a) *Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice [...] States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination [...] (para.8)*
- (b) *In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination [...] (para. 9)*

In paragraph 7 the CESCR also says that non-discrimination is an immediate obligation.

The human rights argument

The Schedules Castes Sub Plan (SCSP) was adopted by the Planning Commission of India as a measure to “prevent, diminish and eliminate” historical conditions and attitudes that caused and perpetuated discrimination against Dalits. As a result, the SCSP would be permissible under the interpretation of ICESCR article 2(2) set out in General Comment 20.

The obligation of non-discrimination is an immediate one and, accordingly, governments must take immediate measures to correct conditions and attitudes that perpetuate discrimination. In this case, the Planning Commission created a code, 789, to allow funds directed to Dalits to be tracked, to ensure that an appropriate share of the national budget was being directed to Dalits. It appears, however, that for several years the Indian government failed to employ the code, thus making it impossible for it or outside monitoring agencies to determine whether appropriate shares of the budget were going to Dalits. Moreover, it appears that the government has regularly failed to fully allocate and spend the SCSP funds mandated by law, thus allowing the conditions that have resulted from systemic discrimination to persist unnecessarily.



Case study in detail

Introduction

The Constitution of India guarantees non-discrimination and declares that the “state shall promote with special care the educational and economic interests [...] in particular, of Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” In 1979 the Planning Commission of India introduced a Special Component Plan (SCP), which made it mandatory for the government to ensure that a proportion of the government’s overall funds commensurate with the size of the Dalit population would be directed to programs for Dalits. In 2006-07 SCP was renamed Scheduled Caste Sub Plan (SCSP). The central objective of SCP/SCSP has been to proactively promote the education as well as social and economic development of Dalits, and play a “positive interventionist role to neutralise the

accumulated distortions of the past” (National Policy of Education, 1986).

In practice, the SCP/SCSP has been plagued by a chronic under-allocation of funds. In 2007-08 only 6.1 percent of developmental funds were channelled through the SCP/SCSP mechanism. In 2011-2012, the allocations amounted to only 8.84 percent of the total outlay, when they should have been 16.2 percent. Moreover, many allocations were not in line with the purpose of the SCP/SCSP. At the state level, there have also been many cases of SCSP funds being diverted to activities that have no relation to the progress of Dalits.

An allocation is the amount the government *intends* to spend for a designated purpose. However, allocations on their own provide limited insight into a government’s compliance with its human rights obligations. To get a fuller picture, it is essential to examine what happens after an allocation is approved—by looking at how much of the allocation is spent and how it is spent. An allocation may appear to be in line with the government’s human rights commitments, but the spending may not be.

Initial Research

In 1995, the Planning Commission created Minor Sub Head code 789 to categorize all SCSP funds. However, when the Commission originally issued the instruction, it set no time frame for compliance, and the code was not implemented. While SCSP allocations



First round of advocacy and mobilization

NCDHR prepared brief informative documents that summarized its main code 789 findings. It disseminated these to institutions and individuals concerned with human rights, to national and international organizations, and the media. In this first round, it sought to harness support from within the government system. It identified allies within important government structures committed to the advancement of Dalits. It gained access to high-level stakeholders to whom its findings were relevant and who had the capacity to put pressure on relevant decision-making and regulatory bodies.

NCDHR also approached the Comptroller and Auditor General (CAG) because of the latter's responsibility for auditing all government accounts. It brought its findings to the attention of the Planning Commission and provided members of Parliament with information based on its analyses.

In addition, NCDHR worked to build the capacities of social activists and administrators. It organized meetings in 14 states and Delhi to explain budget analysis, share its findings and disseminate information to the grassroots. It organized workshops on the importance of code 789 and how to track funds earmarked with it.

were notionally made in the national consolidated annual and five-year plan documents (that is, there were allocations stated in those documents in broad terms), these allocations were not reflected in the detailed "Demand for Grants" that the Executive submitted to the legislature for approval.

In 2007 the National Campaign for Dalit Human Rights (NCDHR) filed public interest litigation claiming that the government of Delhi state had not allocated the funds stipulated for Scheduled Castes. The state government insisted that it had, in fact in excess of the stipulated percentage of Scheduled Caste and Scheduled Tribe populations in the state. The government, however, was referring to notional (i.e., suggested) allocations and not to actual allocations in the detailed Demand for Grants.

NCDHR and the Centre for Budget Governance and Accountability (CBGA) gathered further evidence on SCSP

allocations throughout the budget. They compared budget allocations with detailed Demands for Grants. They discovered that there was no way to really identify the funds, because code 789 was not being applied. It was thus impossible to know the extent to which governments were complying with the SCSP mandate—and impossible to confirm whether adequate resources were being spent for the benefit of Dalits.

ICESCR article 2 prohibits both formal and substantive (*de facto*) discrimination. In this case the SCSP requirement that funding for Dalits be in line with their share of population could be said to have met the requirement of formal non-discrimination. However, Demands for Grants were not forthcoming, and expenditures fell far short of that share. The government was thus not complying with its obligation of substantive (*de facto*) non-discrimination.

In Delhi, a large demonstration and day-long sit-in brought attention to the fact that funds that had been promised had never really reached Dalits.

NCDHR next filed a Right to Information (RTI) application with the Delhi government, asking why the code was not being used in the state. The application, together with advocacy and networking activities, exerted so much pressure on the Delhi government that it ordered all departments to introduce code 789 in May 2008. That same year, the CAG directed finance departments of the government and states to assign budget code 789 to all SCSP allocations.

While these booklets focus on ICESCR article 2, human rights are inter-related and interdependent. This relationship is vividly illustrated by the role RTI applications have played in this case. Civil society and communities can be far more effective in ensuring that their economic and social rights are guaranteed if, at the same time, the government is realizing people's rights of access to information and to participate in public affairs.

More research – Dalit funds diverted

In November 2010 New Delhi hosted the Commonwealth Games. The media regularly reported on allegations of

corruption and misuse of funds related to the Games. The Housing and Land Rights Network, which was carrying out research on the social, human and financial costs of the games, came across a document indicating that SCSP funds were being used for the games. They alerted NCDHR, which then examined the budget. Using information resulting from an RTI application, it confirmed that INR 7.44 billion (roughly USD 163 million) originally earmarked for SCSP had been diverted to the Games.

Turning up the heat

The corruption scandals surrounding the Games attracted a lot of media attention. The moment seemed right to put a spotlight on the diversion of SCSP funds. A report, *"Whose Wealth? Whose Commons?"*, which gave the names of public officials and political leaders who had authorized the diversion, caught fire in the media. NCDHR held many press conferences, using the opportunity to educate journalists on the SCSP issue. Subsequent media reports raised public awareness of the issue, and as journalists increasingly questioned officials, pressure on the latter increased.

NCDHR prepared informative notes for members of Parliament (MPs) and the legislative assembly. This information allowed MPs to ask the right questions. In

August 2010, the Home Minister of India acknowledged the misuse of funds and committed the government to providing restitution. (Since then, over 75 percent of the funds have been returned).

Finally, a November 2010 report by a Planning Commission Task Force concluded that "Hardly any ministry is showing its SCSP outlays under separate budget heads. Some ministries are showing a notional earmarking, but the criterion followed in doing so is not uniform and transparent. Also, in the absence of this outlay being shown under a separate minor head (789), such notional earmarking does not have much significance, nor is its non-divertibility ensured." In February 2011 the Union Government opened code 789 and all departments started using it.

The government's obligation of non-discrimination is integrally related to the other obligations in ICESCR article 2. The CESCR has said that corruption in government expenditures amounts to a failure by the government to comply with its obligation to use the maximum of available resources to realize ESC rights. (See booklets on use of maximum available resources).

Questions you might ask yourself or your government about allocations and expenditures necessary to implement special measures adopted to combat the effects of historic discrimination.

Are there groups in the country that would qualify for special measures? If so, who are they? Does the government have in place policies, plans and programs to address and alleviate the effects of historic and/or systemic discrimination experienced by these groups? Were the affected groups involved in the formulation of these policies, plans and programs?

If there are such groups, are there specifically earmarked allocations in the budget to respond to the particular needs of the groups? If so, were the allocations arrived at by building on the relevant policies, plans and program designs? If not, on the basis of what factors was the size of the allocations determined?

Have accounting codes been established that distinguish such earmarked funds from other funds in the budget?

What processes, if any, has the government put into place to monitor the expenditure of these funds? Have the affected groups been formally involved in this monitoring process? If not, why not?

If they have not been formally involved, have independent civil society groups been monitoring expenditure of the funds? If so, what have been their findings?

Does such monitoring include :

- Matching policy and implementation plans to budget allocations and audited expenditures?
- Benefit incidence analyses to ensure that the affected groups are benefitting from the policies, plans and programs as intended?
- A designated procedure for reviewing all of the above by the legislature (specific committees, hearings, etc.)?

Are the policy, budget allocations, and expenditure and audit reports available to the public and easy to understand?

NCDHR

The National Campaign for Dalit Human Rights, NCDHR, was established in 1998 to a) enhance the visibility of Dalit issues, and b) hold the government responsible for implementing the laws of the land and making it accountable for “gross willful negligence of office bearers.” Dalit Arthik Adhikar Andolan (DAAA), a movement of NCDHR, aims to realize the ESC rights of Dalits focusing on budgetary entitlements, education, health and other resources. To this end DAAA works with Dalit organizations and movements so that the Dalit community will be able to productively participate in and benefit from national and global economic development.

DAAA's main objectives are:

- Reclaiming the Dalit share, that is, preferential opportunity in all economic aspects;
- Inclusion of Dalit stakeholders and promotion of Dalit interests in the economy of the country;
- Addressing caste-based discrimination and exclusion in education, health and employment; and
- Addressing Dalit rights and entitlements in disaster mitigation, relief and rehabilitation.

For more information on NCDHR, go to:
ncdhr.org/in/

The Article 2 Project

This booklet is part of the *Article 2 & Governments' Budgets* handbook. The handbook has been developed by the Article 2 Project, a working group housed first at the Partnership Initiative of the International Budget Partnership (IBP), and then at the Global Movement for Budget Transparency, Accountability and Participation. The project aims to enhance understanding of the implications of article 2 of the ICESCR for how governments should develop their budgets, raise revenue and undertake expenditures. The project encourages the use by civil society and governments of the legal provisions of article 2 to monitor and analyze governments' budgets. Download the complete handbook at:

www.internationalbudget.org/publications/ESCRArticle2.

The case study in this booklet is derived from Vimala Ramachandran and Sapna Goel, “Tracking Funds for India’s Most Deprived: The Story of the National Campaign for Dalit Human Rights’ ‘Campaign 789’,” Albert van Zyl (Coord.), *From Analysis to Impact*, Partnership Initiative Case Study Series, IBP, 2011.

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