

[Working Paper Series: The Protection of Minority Rights in Asia – Part 1]

The Protection of Dalit Rights in Nepal: Status and Way Forward

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Background

Nepali society interacts through a caste-based ideology, system, and structure. However, the discrimination, indignities, and inequalities bred by the caste system get swept under the carpet or shushed by those in power—the dominant caste groups. The caste-based hierarchy excludes the lower caste categories from equal and inclusive representation and access to decision making and justice, and has jeopardized their lives by exploiting their human rights, labor, and skills.

These caste inequalities have infiltrated all aspects of citizenry and state and have further marginalized the already excluded, particularly women, Dalits, indigenous populations, and different gender identities, who have yet to find true meaningful representation and participation in democracy and nation-building. The barriers associated with ethnicity, culture, religion, vernacular, and geographical diversity add an additional layer to the already existing discrimination.

Nepal's marginalized and excluded communities have long resisted the supremacy of Brahmanical patriarchy and demanded equitable access to resources, allocations, and mobilization. Dalit resistance continues to stand against the unforgiving and unremitting caste-based discrimination to this day. However, the state and the dominant power groups have long neglected them, their voices, and their resistance, forcing them to the margins of society in exclusion. And yet, it is always and only the Dalits at the forefront of the resistance despite the fact that the caste inequalities have in one way or another persecuted every other caste.

Who are the Dalits?

The National Dalits Commission defines “Dalits” as “those communities who, by virtue of atrocities of caste-based discrimination and untouchability, are most backward in social, economic, educational, political, and religious fields, and deprived of human dignity and social justice.” The worldwide total population of Dalits is estimated at 36 million, and according to the 2011 census, the Dalits in Nepal comprise 13.6% of the total population, with seven Hill Dalit castes and 19 Madhesi Dalit castes. Of

them, 51% are women. Dalits are one of the most marginalized communities of Nepal. Along with less access to resources, they have food insecurity, sustain themselves on daily wages, and have less access to rights and the justice system.

In the specific context of the Dalits, poverty walks hand-in-hand with the practice of untouchability, affecting access to work and meaningful income possibilities. Caste-based discrimination and untouchability (CBDU) continue to be deeply entrenched in Nepalese society. As a consequence of the system based on casteism in many parts of the country, Dalits are still subjected to the worst forms of discrimination. They are subjected to endless humiliation and injustices in their social, cultural, economic, administrative, and political lives; assaulted, raped, and murdered; and denied access to places of worship, common water sources, education, and dignified jobs. The impact of poverty on civil and political rights, as well as on economic, social and cultural rights such as the rights to health, housing, food, education, and social security.

The longstanding discrimination and deprivation of economic benefits by the state and society has left the Dalit community economically backward. The Dalit community is the second lowest in terms of Human Development Index (HDI) ranking, just above the Muslim community in Nepal. Although Dalits work in traditional occupations, a large portion of Dalits have day-to-day problems, contributing to an inadequate standard of living. The Dalit community always struggles with food scarcity. The daily wages they earn are not adequate to cover their nutrition needs.

According to the 2011 Census, there are 1.8 million Dalit women in Nepal, making up 13% of the total female population of the country. Dalit women's lives are uniquely characterized by exclusion through customary provisions of caste institutions based on the notion of purity and pollution as well as patriarchy and gender discrimination. As a result of such exclusion and discrimination, they endure extreme forms of poverty, humiliation, and denial of social and economic rights and recognition as human beings. Dalit women, like other women from minority communities or indigenous peoples, Madhesi, and Muslims: they tend to remain invisible.

Although Dalit women constitute half of the Dalit population, they face intersectional three-fold discrimination: class, sex, and caste. Dalit women in Nepal continue to endure discrimination in many areas including education, health, employment, and access to economic resources. They are discriminated against not only by dominant castes, but also within their own communities, where men are dominant. Traditional harmful practices against Dalit women include extreme verbal abuse and sexual epithets, physical assault, and rape. Impunity for perpetrators is rampant due to weak legal mechanisms. Dalit women still face hardships regarding property rights and do not enjoy ownership of property on equal footing with Dalit men. Child marriage, early pregnancy, and uterus prolapse are just some of the conditions that have worsened the health conditions of Dalit women, mostly the Madheshi Dalit women.

Status of Protection of Dalit Rights in Nepal: An Overview

Status in Education

According to the 2011 Census, the average literacy rate in Nepal is 65.97%, with 75.21% of men and 57.53% of women being literate. The literacy rate for Dalits aged 6 years and above is 52.4% compared to the national average of 65.9%, while the literacy rate for Tarai/Madheshi Dalits is just

34.5%. Women from all Dalit groups have lower literacy rates compared to the national average and their male counterparts. The literacy rates of Dalit women are 45.5% overall, with women from the Musahar and Dom community at the bottom, with literacy rates of 17.4% and 17.9%, respectively.

Children from Dalit communities face discrimination at school from their teachers and peers. Due to the prejudiced mindset, teachers provide less care for Dalit children, who are not permitted to drink water, are addressed in a rude manner, and are placed in separate lines, seats, and so on. Ultimately, these students fall behind in their learning achievements, often dropping out. In turn, low educational attainments have a multifaceted impact on the socio-economic and political life of Dalits, and become a barrier to human development. The isolation and segregation of Dalit students are apparent. Teachers in Nepalese schools are largely upper caste males who have not internalized the value of caste and gender equality. Dalits are discouraged from becoming teachers and occupying higher executive positions in schools because the non-Dalit community does not want to pay respect to a Dalit.

Status of Life Expectancy

Dalits fall behind in all major health indicators. For example, the under-five mortality rate among Dalits is 90 deaths per 1,000 live births, compared with the country level of 68. Nepal has immunization coverage of 83%, whereas immunization rates for Dalits are 13 points below the average. In 2011, around 31% of children under five had a low weight-for-age ratio. Disaggregated results across ethnic and caste groups depict that the proportion of underweight children is highest among Madhesi Dalits (36.3%) and Hill Dalits (33.9%), with the exception of Madhesi caste groups (41.2%). This clearly indicates that there are problems with access to nutritious food for Dalit groups among others. Many Dalit women in rural areas suffer from uterus prolapse, and their morbidity rates are high. Child marriage, early pregnancy, and reproductive health issues are other problems faced by Dalit women.

Status of Poverty

Dalits comprise the poorest community in Nepal in terms of all poverty measures—income, consumption and human development. Discrimination is the single most important factor explaining why the *Dalit* are disproportionately affected by poverty. Around 42% of *Dalits* live below the poverty line (43.6% of Hill *Dalits* and 38.2% of Terai *Dalits*), whereas the national poverty rate is 25.2%. While the immediate causes of this gap are limited employment opportunities due to occupation specialization preventing *Dalits* from accessing well-paid jobs, as well as lack of access to (quality) education and land that perpetuates poverty from one generation of *Dalits* to the next, the persistence of social discrimination is the overarching factor explaining this situation.

Land is the main asset for determining an individual's social status and standard of living in Nepali society. The land holdings of the Dalit community are small, and landlessness among Dalits is extreme, with 36.7% of Hill and 41.4% of Madhesi Dalits being landless. Landlessness makes Dalits economically vulnerable and dependent on landlords. Most Dalits are agricultural and occupational laborers and are generally landless. This makes them vulnerable to violence and discrimination. The Constitution guarantees provision of lands and housing for landless Dalits according to the law. However, the amended law on land distribution is overly complex, imposing

many conditions on land acquisition. Similarly, Dalits can obtain housing, but under complex conditions. The root causes of Haliya, Balighare/Khalo, Charuwa, Haruwa, etc. systems are associated with the issues of landlessness and small holdings.

Status of Atrocities against Dalits

In Nepal, Dalits are regarded as a group of people who don't have any sort of human rights, let alone access to justice or a voice. Nabaraj BK and five of his friends were killed in Rukum West on May 23, 2020. On the very same day, the body of a 13-year-old child, Angira Pasi, was found hanging from a tree in Rupandehi after she was reportedly raped and murdered.

In 2016, Ajit Mijar was murdered for marrying a girl from a so-called upper caste. His body still lies cold at TU Teaching Hospital, waiting for justice. These tragic outbursts of violence resulting from inter-caste marriages suggest that, while the mainstream narrative highlights social cohesion and harmony, resistance by dominant groups is strong when historical hierarchies are questioned. Although untouchability was declared illegal more than a decade ago with the adoption of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, caste-based discrimination persists across the country, with lingering prejudices continuing to cause significant violence within Nepali society.

A social science teacher murdered Laxmi Pariyar. Even elected representatives are not safe—Mana Sarki, a ward representative, was beaten to death in her home in 2018. The custodial deaths of Roshan Bishwakarma, Shambhu Sada, and Bijay Ram Chamar are but the reflection of statelessness and oppression of the vulnerable by the dominant so-called upper caste and elites. Over and over again, history continues to repeat itself.

These are just few representative stories of Dalits, who are systemically marginalized and persecuted every day through the contemporary caste hierarchy, the tragic outcome of a centuries-old caste system. And yet, many more stories remain unreported and untold.

The Pandemic, Dalits, and Democracy

The COVID-19 pandemic deepened the layers of discrimination and hardships for Dalits. With lockdown in affect, their means of earning wages were put on hold, resulting in no income and no access to remedial services. To support citizen from low-income groups, the government introduced a relief package system. However, Dalits could not benefit from those packages. The Samata Foundation conducted research across all of the provinces and published a book titled *The Impact of COVID-19 on the Dalit Community* in 2020. The book focused on the repercussions of the pandemic and lockdown on the livelihood of the Dalit community and the measures taken by the government, along with the hardships faced by elected representatives. During the research, we found that the relief packages distributed by local governments were not adequate to serve a large portion of the Dalit community. Only 1.6% of Dalits stated that the relief packages were readily available, while 52.2% claimed to not have any relief packages available. Similarly, 14.5% of Dalits indicates that the packages that were available were not sufficient to meet their needs.

Various efforts have been made by the government to exploit the democratic situation by disregarding constitutional institutions. The introduction of various undemocratic bills such as the

NHRC Act (Amendment) bill, the introduction of the media council bill, the bill on mass communication, the information technology bill, and measures proposed to register and monitor I/NGO activities, was seen as a method to suppress the voices of the public.

According to Dr. Kyungmee Kim, a visiting researcher at the Department of Peace and Conflict Research at Uppsala University, “the lack of inclusiveness and representation of diverse minorities in the country is a threat to the consolidation of democracy.” While Nepal “has made tremendous progress” with regard to democratization over the past decade, “the progress is stagnant if not under threat due to the emergence of political leaders who have autocratic tendencies.”

The social and economic impacts of COVID-19 on poor and low-income groups are higher than on other groups. The Dalit community is disproportionately affected in humanitarian responses, relief distribution, and other support programs. During the COVID-19 pandemic, most Dalits encountered difficulty in accessing income and meeting basic needs due to unequal social protection schemes. Such lack of social protection once more perpetuates the vicious cycle of poverty, exclusion, and marginalization. Amid the lockdowns, the many violations perpetrated against Dalits remained invisible, such as the massacre of 23 Dalit youths, which was a brutal display of the deeply entrenched caste-based discrimination of Nepali society.

Legal Instruments for the Protection of Dalit Rights

The new Nepali Constitution is one of the biggest achievement for Dalits and the Dalit movement. Dalit rights are provisioned as fundamental rights. In particular, Articles 24 and 40 guarantee fundamental rights including education, health, and land. Nepal enacted the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 that criminalizes all forms of caste-based discrimination. More importantly, the election system has ensured Dalit representation in all three-tiers—federal, provincial, and local governments. After the formation of the three tiers of government, the number of Dalit representatives increased, but their representation is still not proportionate compared to the Dalit population of the country. However, the increased representation is a fostering hope for the Dalits in Nepal.

However, four years after its promulgation, the Dalit community has still not enjoyed those rights on equal footing, nor felt satisfactory action has been taken by the government to ensure the rights enshrined therein. The National Dalit Commission (NDC) has been elevated to constitutional status, but the commission is not in line with the Paris Principles. Moreover, NDC commissioners have not been appointed since the Commission acquired constitutional status due to the apathy of the government.

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 is the main law which has criminalized CBDU. Criminal (Code) Act 2074 (2017) has also further strengthened actions against it. To date, the Dalit Empowerment Act has only been enacted by the provincial government of Province 2. The Constitution of Nepal, mainly the preamble and Articles 18 and 42 (Right to Equality and Right to Social Justice), provide that the socially backward and indigent KhasArya shall have the right to participate in the state bodies on the principle of proportional inclusion. However, Article 84 of the Constitution has guaranteed KhasAryas, the major dominant caste group in Nepal, will have more than full proportional representation, as per their population. Accordingly, the electoral law of Nepal has prioritized KhasArya compulsory in the first

rank, while nominating members for the House of Representatives under a proportional electoral system. Therefore, it is inconsistent with the spirit of Constitution's preamble and fundamental rights, which aims to provide for affirmative action to the groups who have endured historical injustices. Article 40(1) of the Constitution ensures that the Dalit community shall have the right to political participation in every state body according to the principle of proportional inclusion.

The local level election law has guaranteed Dalit women a place as members of ward committees at the local level. A large number of women from the Dalit community are represented at the local level, and 6,567 are ward members. However, such representation is merely formal and has not led to the effective participation of Dalit women in local decision-making processes.

Conclusion

After the promulgation of the Constitution, the country became a federal system where the principle of inclusion needs to be considered. In order to implement the principle of inclusivity, a reservations policy was put in place in 2007 by the Public Service Commission for Dalits and marginalized communities, providing that 45% of positions in the federal civil service should go to specific disadvantaged groups as now identified in the Constitution. This policy was effective to some extent. Women's representation in civil service, for instance, increased from 11% in 2007 to more than 20% a decade later, a remarkable achievement in such a short period of time. However, progress was slower for other groups.

Unfortunately, these quotas are not in compliance with the proportional system, as the Dalit community has only 9% reserved seats in classified (allocation for marginalized groups is 45% of total vacancy and is considered 100%) vacancies. *Dalit* representation in the civil service was below 1% prior to the introduction of the reservations policy, but it remained around 2% by 2018, which is significantly below the aims set by the policy. In contrast, KhasArya representation is approximately 62%.

Similarly, not every mechanism of the state has proportional representation. For example, the Federal Cabinet of Nepal does not have proportional representation of women and Dalits. The House of Representatives of Nepal only includes 6.91% representation of Dalits. Not a single provincial parliament has proportional representation of Dalits. Among the 753 mayoral positions at local level, only six (2.05%) individuals have been elected as mayors in municipalities and one (0.22%) in a rural municipality. Twelve (4.10%) have been elected as deputy-mayors in municipalities and 15 as vice-chairs (3.26%) in rural municipalities.

The representation of the Dalit community in the judicial mechanisms is also insignificant, as there have never been any Dalit judges in the Supreme Court. There have only been three Dalit judges in all seven high courts, and one Dalit district judge out of 77 district courts. Representation in high-ranking positions in the police force is also negligible.

To address all these challenges, there is a need to amend the present constitution to ensure Dalit rights. Additionally, the recent verdict of the Supreme Court on a writ petition by advocate Prakash Nepali needs to be properly implemented. The structure, budget, and plans, as well as the review, revision, and implementation of the laws should be ensured. Additionally, there needs to be proportional representation of Dalits and minorities in the state bodies, especially the bureaucracy and law enforcement agencies like the Nepal police force. In a nutshell, awareness needs to be

enhanced to enable the Dalits and minorities to claim their rights. Nepal is a diverse country with more than 125 ethnic groups and 123 vernacular languages, and its social foundation stands in the caste system propounded and protected by the Hindu varna system. Caste is everybody's concern and hence should be on everybody's agenda. ■

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This series of reports was compiled as a part of Asia Democracy Research Network's joint research project on protection of minority rights in Asia. The research for these reports was conducted entirely by EAI and its partner think tanks in Asia, including Observer Research Foundation, Manusher Jonno Foundation, Academy of Political Education, Samata Foundation, and Institute of Asian Studies at Chulalongkorn University. This program was funded in part by the National Endowment for Democracy (NED).

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"The Protection of Dalit Rights in Nepal: Status and Way Forward"
979-11-6617-431-5 95340 Date of Issue: 23 June 2022

Typeset by Jinkyung Baek

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