

[ADRN Issue Briefing]

The Inadequacy of Nepal's Democracy for Marginalized Peoples

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On May 29th, 2022, the government of Nepal announced an annual budget of Rs 1.793 trillion for the 2022-23 fiscal year, highlighting the 'Make in Nepal' and 'Made in Nepal' campaigns as the rising cost of imports increases the country's economic vulnerability. During the joint session of the Parliament, Finance Minister Janardan Sharma emphasized that the main focus of the budget is to be on inclusive development, inflation control, providing adequate resources to subnational governments, and building a self-reliant economy. However, this financial arrangement does not improve the status of marginalized people—Dalits, war victims, women and girls, and sexual minority groups. This briefing discusses the current status of minority groups who do not enjoy full rights within Nepalese society.

Underrepresentation of Dalits

Nepal has undergone radical political change, particularly after its decade-long Maoist insurgency. Nepal was declared as a nation free from caste-based discrimination and untouchability (CBDU) in the year 2006. The coalition government introduced reservation policies and quotas for the Dalits and other marginalized communities in 2008. The historic CBDU Act was formulated and implemented for the first time in Nepal in 2011. The Nepalese government introduced strategic policies to emancipate Dalits from social, economic and political constructs that excluded them from fundamental human rights and further marginalized them. But the obstructions to achieving social justice and eliminating caste-based discrimination against Dalits have not been reduced as expected. Reports of Dalit students being denied rental accommodations in big cities make it to the news every other day. Dalits employed through affirmative action programs have reported daily humiliation in the workplace. Inter-caste marriages are failing. Discrimination is not as explicit as in the past, but atrocities against Dalits tacitly persist.

In the last 23 months (July/August 2020 through April/May 2022) alone, in addition to numerous cases of physical assault and verbal abuse perpetrated against Dalits, 22 Dalits were murdered, 14 Dalit girls were raped, and 9 Dalits were abetted to commit suicide (Samata Media Monitoring Report). Police belonging to so-called "higher castes" rarely investigate incidents of

caste-based discrimination seriously. Most CBD cases are diverted, or the issues are reconciled within the villages themselves.

The second local election of the Federal Democratic Republic of Nepal took place on May 13, 2022, and the results are now out. Of the 753 local levels of Nepal, Dalit candidates in 124 wards received the lowest support in the 2022 elections.

The 2017 Constitution mandated that if a man is elected as mayor, the deputy mayor must be a woman, and elected ward councils must include women and Dalit women. However, representation of the Dalit community was very poor in this most recent local election. Only three Dalit community members were elected to the position of mayor, accounting for just 1% of the 293 total local levels (Metropolitan, Sub-Metropolitan, and Municipal). This figure has decreased by half from the previous election. Similarly, the number of Dalits elected to deputy positions is also lower than in 2074 BS (2017). This year, there are only eight deputy mayors, as compared with eleven in 2074 BS, comprising only 2.73% of the total deputy chiefs elected. Dalit representation in rural municipality chairperson positions has increased from 1 in the past election to 7 this year. However, this amounts to only 1.52% of the 460 total available seats. Unlike the number of chairpersons, the number of vice chairpersons elected from the Dalit community is less than in the 2074 BS elections. This year, the number has decreased from 16 to 7, 1.52% of the total appointments. In addition, out of 6,743 wards across the country, a total of 148 ward chairpersons have been elected from the Dalit community.

Dalit women were elected to ward member positions in 98.01% of wards. The Local Election Act (2073 BS) made representation of Dalit women mandatory in every ward, but Dalit women remain underrepresented in political parties, and the constitutional mandate for Dalit women's representation has not been 100% achieved. Similarly, out of 13,486 ward member allocations, only 878 elected ward members (6.51%) were from the Dalit community.

The preamble of the 2072 BS Constitution of Nepal, as well as various other binding documents and provisions, have mandated an inclusive proportional state system based on population. These recent results indicate that the Dalit community has not been able to enjoy the rights they are entitled to; Nepali political parties have not been able to break free from old feudalistic practices. This kind of indifference on the part of political parties has called into question the validity of the democratic process and practices.

Transitional justice for war victims and survivors

The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) were established in 2015 to resolve issues of deaths, disappearances, and disabilities caused during the Maoist insurgency. Progress in this regard has been quite discouraging. Although there have been 60,000 complaints of abuses committed during the 10 years of conflict (1996-2006), most of the issues have not yet been resolved by successive governments. The Office of the UN High Commissioner for Human Rights (OHCHR) has heavily criticized the Nepalese government's failure to comply with its international legal obligations. Independence and impartiality are the major tenets of the settlement process emphasized by the OHCHR. Authorities have prevented cases of violations during the conflict from going to court hearings on the pretext that they will instead be addressed by the transitional justice process. On the contrary, however, a credible transitional justice process has yet to exist.

Rights of marginalized women and girls

Nepal is known for having one of the highest rates of child marriage in Asia. About 33% of girls are married before they turn 18, and 8% marry by age 15. In contrast, 9% of boys marry before the age of 18. Rulings such as the Citizenship Act of 2006 and the 2015 Constitution contain several discriminatory provisions against women. A draft bill to amend the Citizenship Act, first presented to parliament in 2018, retains several discriminatory provisions. A team of three UN human rights experts raised their concerns in September of 2020, writing, “the bill would continue to discriminate systematically against women, regarding their ability to transmit citizenship through marriage and to their children.” Due to these flawed citizenship laws, an estimated 5 million people are forced to live without citizenship and are at risk of statelessness. The issue of lacking national identification is most prevalent in the Madhesh province.

Reported cases of rape have increased sharply. The Nepal police dealt with 2,534 cases of rape in 2020-21, versus 2,144 the previous year, an increase of 18.19%. Similarly, as many as 735 incidents of attempted rape were reported in 2020-21, compared to 687 in 2019-20. This amounts to an increase of 6.99% (The Himalayan News Service, 2021).

Women in Nepal are back-warded, religious, have high regards for family values, and interface with Nepalese society’s traditional patriarchal cultural values and norms. The society is also stratified by a deep-rooted caste system, which was introduced 300 years ago. The economic, cultural, social and political conditions of the women in Nepal are also influenced by this caste system. The issues of Dalit women can be compared to the issues faced by black women in Europe and America and their stories of discriminations. But when a unique component, "caste," is added, the plight of Dalit women is much more severe.

In Nepal, Dalit women have face unique human rights issues when compared with other Nepalese women. Dalit women face multi-pronged discrimination, based on caste, gender, race and poverty. Whereas general women’s issues in Nepal can be understood through the lens of feminism, a special lens is necessary to understand the plight of Dalit women.

Sundar Harijan, a 20-year-old Dalit youth, was found hanging in a bathroom at the Rolpa District Prison on May 18, 2022. He was 17 years old when he was arrested for alleged mobile phone theft on September 2, 2019. The court sentenced him to one year in prison. . His death leaves behind a trail of mystery. Police records show that he was prison time for someone else's crime. His identity was swapped with Bijay Bikram Shah, who was arrested in Nepalgunj on March 7, 2018 on charges of extortion and illegal arms possession. The police caught him with a pistol, five mobile phones, and 15 SIM cards, and he was sentenced to five years in prison. Sundar Harijan’s death in prison raises serious questions about human rights violations in Nepal, particularly for Dalits, one of the most marginalized and excluded communities. According to the Act Relating to Children 2075 (2018), while detained as a minor, Harijan had the right to juvenile prosecution procedure. The court’s verdict to imprison him is unlawful and violates existing legal provisions. The court originally ordered Harijan’s imprisonment through September 3, 2020, with an additional one-month imprisonment if he failed to pay a NPR 10,000 fine. Suspiciously, Sundar Harijan and Bijay Bikram Shah were transferred to Rolpa district prison on November 23, 2020, where their identities were exchanged. The Rolpa district prison received Sundar Harijan as Bijay Bikram Shah. Consequently, Harijane had to spend two more years in the district jail, whereas Shah was released from prison under the false

identity of Sundar Harijan on January 12, 2021. Article 36(4) of The Act Relating to Children, 2075 (2018) clearly states, “If a child of sixteen years of age or above but below eighteen years of age commits an offense, the child shall be punished with two-thirds of the punishment that is imposable on the person of legal age pursuant to the prevailing law.”

LGBTQI+ issues

The bill to amend the Citizenship Act also contains a clause that would require transgender people to provide “proof” of their transition to access citizenship documents corresponding to their gender identity. This violates international human rights law and a 2007 Nepal Supreme Court judgment mandating that gender identity be recognized based on “self-feeling” (Nepal Events of 2021, 2022). Though Nepal is one of the forerunners in LGBTQI+ rights in Asia, there is still more needing to be done for the advancement of political and social rights.

Conclusions

We had hoped that with the new constitution, Dalit and marginalized communities could feel ownership not only of the country, but the state. Unfortunately, this did not happen. Sundar Harijan, at 20 years old, was found hanging a few days ago. He was 17 years and three months old when he was arrested for mobile theft. He was sent to prison instead of a juvenile correction center. A month before release, he was sent to another prison, in another district, where he was received as another prisoner from the upper caste, serving jail time for extortion and illegal arms possession. How is this possible?

His story is an example of how the state deliberately mistreats Dalits who already suffer from systemic exclusion. It is an example of impunity deeply rooted in the Nepali justice system. A few days earlier before his death, Sundar Harijan was excited. He called his brother and asked for some money, telling him he would be released soon. But he is no more, and his dreams have been slain by caste supremacy and flaws in our judicial system.

His mother asks some questions – and I have come here to seek their answers:

1. Why was a minor sent to prison instead of the juvenile correction system?
2. Why was the family not informed about his transfer to another prison?
3. Is it just that the destitute Dalits are forced to serve jail time for other upper caste convicts? Why was Sundar Harijan, a minor, imprisoned for mobile theft, then later swapped with a convict who had been charged with serious crimes?

Over the last two years, I have met many mothers of children who have been killed after being raped, murdered in police custody, and or lynched by mobs. Thousands of mothers who are forced to suffer the ill fate of their children have one question: are Dalits born just to die? Are they not allowed to live with dignity? Killed on the drop of a hat. Killed with the smallest excuse.

The faces of discrimination have changed. But they have not disappeared. Six years ago, Ajit Mijar from Panchkhal in Kavre was murdered because of inter-caste marriage. His body is still in the Teaching Hospital, waiting for justice. Sometimes I wonder – how low is the price of a Dalit life? ■

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