

Challenges for Dalits in South Asia’s Legal Community

Chapter I: Dalit Justice Defenders in Nepal

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FOREWORD

This chapter is part one of a three-part report examining the challenges and opportunities available for the Dalit justice defenders' community across South Asia. Due to various reasons including the impact of COVID-19 on South Asia, the report will be released in three parts discussing one country at a time. This first chapter discusses the justice sector for Dalits in Nepal, the second will examine the same issue in Bangladesh, and finally the third chapter will focus on Dalits in India. The third chapter will also conclude with regional lessons learned and recommendations for policymakers, judges, bar councils, and other governmental agencies.

“Untouchability” or the segregation a certain class of people based on their lineage has persisted over centuries such that members of the “untouchable class” or “Dalits” are still subject to social, economic, and political discrimination today. While the condition for Dalits has improved in some ways over time across South Asia, Dalits still face serious challenges in entering certain professional fields. While many international organizations have examined the condition of Dalits overall, little attention has been paid to the legal profession specifically.

This report evaluates the lack of representation of Dalits in the justice sector and its impact on access to justice for the Dalit community at large, proposing both regional and country-specific recommendations to improve this situation. Each chapter in the report utilizes a similar methodology by relying on desk research as well as structured interviews with the Dalit justice defenders' community. Additionally, the report's authors are either members of the Dalit community or have worked directly with the community to assist in issues related to the justice sector.

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EXECUTIVE SUMMARY

With nearly three million Dalits in the country, Nepal has an opportunity and a legal obligation to increase the representation of Dalits in the justice sector. While certain legal provisions have been created to help the Dalit community, its members still face discriminatory challenges when pursuing jobs in the nation's civil service, including its police force. Further, with only five Dalit judges in the nation and few members of the community practicing law, Dalits are not effectively represented in the state's judicial institutions and law enforcement agencies.

The 2015 constitution of Nepal, the country's criminal code, and the Caste-Based Discrimination and Untouchability (Offense and Punishment) Act prohibit all forms of discrimination against vulnerable communities, including Dalits. Moreover, while there are agencies and commissions tasked with effectuating this prohibition on caste-based discrimination, substantive progress has not been made particularly in the justice sector. Not only does the lack of representation pose a problem in and of itself but access to justice is also impacted by this lack of representation as victims of caste-based discrimination or hate crimes are often left without effective recourse within the justice system. In many instances, both conscious and unconscious bias by policymakers, lawyers, judges, and police impede delivery of justice to members of the Dalit community.

This report finds that in order to address this problem, several stakeholders—including governmental agencies, human rights commissions, bar associations, and NGOs—will need to establish programs and build capacity towards addressing caste-based bias and facilitate representation of Dalits within the justice sector.

I. INTRODUCTION

Nepal has a federal parliamentary system as stipulated in its 2015 constitution.¹ It acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 1971 and the International Covenant on Civil and Political Rights in 1991.² Additionally, there are various domestic legal instruments addressing caste-based discrimination and specific laws that criminalize crimes against Dalits.³

Despite these laws, the practice of caste-based discrimination has persisted throughout Nepal's history as Dalits have been subject to social, economic, and political discrimination, especially when it comes to the careers they can pursue.⁴ This report focuses on the representation of Dalits in the practice of law and seeks to provide recommendations to bolster the ability of Dalits to become lawyers, police officers, prosecutors, judges and other members of the justice sector.

While the Judicial Council Act of 2016 mandates that judicial appointments be made with the goal of "inclusion" as mentioned in the constitution,⁵ Nepal's judiciary lacks representation from the Dalit community. Based on a report from the Judicial Council Secretariat in 2018, out of the 394 judges in Nepal's supreme, high, and district court levels, only 0.5% are members of the Dalit community, with no Dalits being represented from the Madheshi Dalit community even though

¹ See NEPAL CONST., Sept. 20, 2015, pmb. ("Do hereby pass and promulgate this Constitution, through the Constituent Assembly, in order to fulfil the aspirations for sustainable peace, good governance, development and prosperity through the federal, democratic, republican, system of governance.").

² *Ratification Status for Nepal*, U.N. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN (last visited Dec. 2, 2020).

³ See, e.g., NEPAL CONST., Sept. 20, 2015, arts. 18, 24, 42, 256, <http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/constitution/constitution-of-nepal>; Civil Rights (Amendment) Act, 2012 (Act No. XII of 2012), art. 4 (Nepal), <http://www.lawcommission.gov.np/en/archives/13596> (originally promulgated in 1955) (subsequently repealed and replaced); Caste Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2018 (Act No. IV of 2011), arts. 3, 4, 5, 7, 9, 13 (Nepal), <http://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Caste-Based-Discrimination-and-Untouchability-Offence-and-Punishment-Act-2068-2011.pdf>; National Human Rights Commission Act, 2012 (Act No. XIV of 2012), arts. 10, 11, 12, 13, 14, 15, 16 (Nepal), <http://www.lawcommission.gov.np/en/archives/15272>.

⁴ Gopal Sharma, *Dalit killings in Nepal spark outrage over caste discrimination*, REUTERS (June 17, 2020), <https://www.reuters.com/article/us-nepal-rights-discrimination-trfn/dalit-killings-in-nepal-spark-outrage-over-caste-discrimination-idUSKBN23O23F>; Elisha Shrestha & Aditi Aryal, *Discrimination against Dalits continues to stain Nepal's social fabric*, THE KATHMANDU POST (June 3, 2020), <https://kathmandupost.com/national/2020/06/03/discrimination-against-dalits-continues-to-stain-nepal-s-social-fabric>; Deutsche Welle, *Nepal: Deadly caste-based attacks spur outcry over social discrimination*, INDIAN EXPRESS (June 17, 2020), <https://indianexpress.com/article/world/nepal-deadly-caste-based-attacks-spur-outcry-over-social-discrimination-6463087/>; More 'can and must be done' to eradicate caste-based discrimination in Nepal, UN NEWS (May 29, 2020), <https://news.un.org/en/story/2020/05/1065102>; Nepal: Ensure Justice for Caste-Based Killings, HUMAN RIGHTS WATCH (June 1, 2020), <https://www.hrw.org/news/2020/06/01/nepal-ensure-justice-caste-based-killings>.

⁵ Judicial Council Act, 2016 (Act No. VIII of 2016), art. 5 (Nepal), [http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/statutes-acts/judicial-council-act-2073-2016#:~:text=\(1\)%20The%20Judicial%20Council%20shall%20assign%20any%20Justice%20of%20Supreme.Article%20153%20of%20the%20Constitution.](http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/statutes-acts/judicial-council-act-2073-2016#:~:text=(1)%20The%20Judicial%20Council%20shall%20assign%20any%20Justice%20of%20Supreme.Article%20153%20of%20the%20Constitution.)

the community has faced particular challenges in recent history.⁶ Despite a provision of Nepal's 1922 Civil Service Act that was meant to increase inclusion,⁷ very few Dalits work in Nepal's civil service.⁸ Personnel from the Dalit community only make up 0.8% of Nepal's civil service despite representing 13% of the population.⁹ Only 108 Dalit civil service personnel hold gazetted third class or higher positions, which accounts for 23% of the civil service workforce in Nepal.¹⁰ Most Dalit personnel serve in non-gazetted positions which carry limited power and authority.¹¹ According to the Joint Secretary to the Attorney General of Nepal's office, out of the nation's 519 public prosecutors, only 1.3% belong to the Dalit community.¹²

Nepal's annual census data is disaggregated by caste/ethnicity, but unfortunately, does not report on occupation or type of employment.¹³ The lack of government data on occupations leads civil society organizations in Nepal to estimate both the number of people and the representation of the Dalit community within the legal field. Currently, there are approximately 448 senior advocates, 18,091 advocates, 8,078 pleaders, and 1,105 writers (paralegals) working in the Nepalese legal field.¹⁴ None of the senior advocates are Dalits.¹⁵ Only 150-200 Dalits are advocates, and even fewer are pleaders and writers.¹⁶ Dalits, who have historically been deprived of the opportunity to attain legal education, continue to be deprived of opportunities within the legal profession despite recent trends of more Dalits obtaining law degrees.¹⁷

The chapter will examine Dalits' overall access to justice, including legal representation and the practices of law enforcement agencies. As a result, this chapter will examine social, legal, and professional challenges facing Dalit lawyers and activists working to improve Dalit rights in Nepal. This chapter uses both primary and secondary data. The primary and qualitative data was collected through a structured questionnaire completed by thirteen respondents working in the legal field. Thirteen informants were selected, including activists representing the interests of the Dalit community, Dalit lawyers, and Dalit judges. The interviewees include representatives from the Nepal Bar Association, the Attorney General's office, and the Ministry of Federal Affairs and

⁶ Raksha Ram Harijan, *Caste Apartheid in the Judiciary*, RECORD NEPAL (Apr. 23, 2019)<https://www.recordnepal.com/perspective/opinions/caste-apartheid-in-the-judiciary/>.

⁷ Civil Service Act, 1993 (Act No. II of 1993) (Nepal), chapter 3, art 7.7, <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/civil-service-act-2049-1993.pdf>.

⁸ Pradeep Pariyar, *Dalits in civil service*, THE KATHMANDU POST (May 17, 2021), <https://kathmandupost.com/sports/2017/03/28/dalits-in-civil-service>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Sarita Pariyar, *What is Similar between India and Nepal? Dalit Atrocities*, NEWSCLICK (Aug. 27, 2020), <https://www.newsclick.in/What-is-Similar-Between-India-and-Nepal-Dalit-Atrocities>.

¹³ GOVERNMENT OF NEPAL, NAT'L PLANNING COMMISSION SECRETARIAT, CENTRAL BUREAU OF STATISTICS, NAT'L POPULATION & HOUSING CENSUS (2011), <https://unstats.un.org/unsd/demographic/sources/census/wphc/Nepal/Nepal-Census-2011-Vol1.pdf>.

¹⁴ NEPAL BAR COUNCIL, <https://nepalbarcouncil.org.np/en/home-page/> (last visited Sept. 3, 2020).

¹⁵ Interview with Mohan Sashankar, Executive Committee Member, Nepal Bar Ass'n, in Kathamndu, Nepal (Dec. 19, 2019).

¹⁶ *Id.*

¹⁷ Interview with Amrit Nepali, Chairperson, Tanahu District Court Bar Association, in Butwal, Nepal (Dec. 27, 2019).

Local Development. Secondary data was collected from publications by the Nepal Bar Council, the Nepal Bar Association, and the National Human Rights Commission of Nepal.

II. DISCRIMINATION AND CHALLENGES FACED BY DALITS IN THE JUSTICE SECTOR

As will be explored in the next two sections: there is a link between the inability of Dalits to access justice in Nepal and the lack of representation of the community at various levels of the justice sector. Dalits lack the ability to access employment in governmental agencies like police services or prosecutors' offices, to practice as a private-practice lawyer, or serve as a judge. The United Nations Development Program explains that ending caste discrimination and untouchability requires sustainable policy, continuous action, and sincere commitment.¹⁸ This is particularly true for the legal profession which has not been sufficiently studied by international or Nepali analysts. While some initiatives from the government to address these issues will be discussed below, there still remains a great deal of work that needs to be done to address the gaps in representation and access to justice.

A. Challenges for Dalit Lawyers and Judges

Despite Nepal's use of reserved quotas, within education, government, and employment for marginalized citizens, members of the Dalit community face serious challenges in participating in the justice sector.¹⁹ According to Sarita Pariyar, a board member of a Dalit-led think tank, members of the community generally face discrimination and violent threats which can impact their ability to be successful members of the professional class.²⁰

Article 255 of the Constitution of Nepal established the National Dalit Commission (NDC) and its enabling Act²¹ was enacted in 2017 for protecting the human rights of the Dalit community as well as for creating programming to assist human rights activists. There were no appointments made for nearly five years, and the appointment commission did not hold any meetings for over a year.²² Some point to political infighting as a reason for these delays.²³ In February 2021, the President

¹⁸ DIPAK NEPALI ET AL., NAT'L HUMAN RIGHTS COMM'N, MONITORING REPORT ON CONDITION AGAINST THE RIGHTS OF CASTE-BASED DISCRIMINATION AND UNTOUCHABILITY 88 (2019) (Nepali), https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Monitoring_Report_on_CERD_2076_compressed-min.pdf

¹⁹ Harijan, *supra* note 6.

²⁰ See Pariyar, *supra* note 8 (“Even after the promulgation of this constitution and its further implementation, there have been many incidents of caste discrimination, murder, repression and heinous crimes of untouchability... Prosperity cannot mean economic prosperity alone. Equality, justice, building a non-discriminatory society, proportional inclusion, etc. are needed.”) (unofficial translation).

²¹ National Dalit Commission Act, 2017, No. 2074, Acts of Parliament, 2017 (Nepal) <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/National-Dalit-Commission-Act-2074-2017.pdf>.

²² Nepal: *Ensure Justice for Caste-Based Killings*, *supra* note 4; Kamal Subedi, *How many positions are vacant at constitutional bodies?*, MYREPUBLICA (Dec. 15, 2020), <https://myrepublica.nagariknetwork.com/news/how-many-positions-are-vacant-at-constitutional-bodies/>.

²³ Binod Ghimire, *With Over Three Dozen Positions to Fill Oli and Deuba Want to Share the Spoils*, KATHMANDU POST (July 26, 2020), <https://kathmandupost.com/national/2020/07/26/with-over-three-dozen-positions-to-fill-oli-deuba-want-to-share-spoils>.

made four appointments to the NDC, but the President and his political party were criticized for failing to follow the appointment process set out by the nation's constitution and laws.²⁴

With respect to the legal profession, Mohan Sashankar, an executive committee member of the Nepal Bar Association, says that lawyers across Nepal are predominantly from non-Dalit communities.²⁵ He added that from the start of their careers, lawyers from the Dalit community lack equal opportunities to work in the legal field even though many are qualified.²⁶ Moreover, lawyers from the Dalit community are sometimes humiliated by judges on the bench and, on some occasions, their clients are also discriminated against.²⁷

Furthermore, one of the challenges faced by lawyers and legal rights activists is low representation of Dalits in governmental agencies related to justice like the police services, the prosecutor's offices, and as judges.²⁸ Without representation in the government or protection by the state, activists and lawyers often fear retaliation against their families and communities for taking cases on behalf of Dalits from the perpetrators of the caste-based crimes.²⁹

For judges, there has been historically low representation of the Dalit community in judges on the bench.³⁰ One respondent, who was a judge from the Dalit community, explained that despite the lack of historical Dalit representation on the bench, he personally did not feel discriminated against by the judiciary or his fellow judges.³¹ Yet, in some instances, Dalit judges have been known to experience discrimination over the course of their legal careers, which impacts their professional development.³²

Following recent constitutional and legal changes, once a Dalit community member attains a judicial appointment, they should be provided equal opportunities for attending conferences, meetings, and presentations.³³ Despite being given these opportunities, Dalit judges are often expected to attend events specifically on issues that affect the Dalit community, while their non-Dalit colleagues on the bench could benefit from attending these events to learn more about issues confronting the community but are not required to do so.³⁴

²⁴ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), NEPAL: UN EXPERTS EXPRESS CONCERNS FOR INDEPENDENCE AND INTEGRITY OF THE NHRC (April 27, 2021), https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf

²⁵ Interview with Mohan Sashankar, *supra* note 15.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Mom Bishwakarma, *Democratic politics in Nepal: Dalit political inequality and representation*, 2 ASIAN J. COMP. POL. 261, 268-271(2016).

²⁹ *The Dalits of Nepal and a New Constitution*, UNDP 7-8 (Sept. 2008), https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/DalitsOfNepalAndTheNewConstitution.pdf.

³⁰ Interview with [redacted], Judge of the [redacted] Court, Nepal (Dec. 27, 2019).

³¹ *Id.*

³² Interview conducted by an ABA consultant in Nepal (2019-2020) (unofficial translation). Names of interviewees were kept anonymous for the protection of the interviewees.

³³ Interview with [redacted], Judge of the [redacted] Court, Nepal (Dec. 27, 2019).

³⁴ *Id.*

B. Capacity-building Opportunities for Dalit Rights Activists and Lawyers

While there are several legal and policy provisions calling for the empowerment of Dalits, the legal profession still requires more attention. The federal government in Nepal currently lacks a specific program or policy to increase the number of Dalit lawyers and rights activists. The Bar Council has not conducted specific programs or created specific plans for enhancing the capacity of lawyers from the Dalit community. The Nepal Bar Association has expressed interest during discussions with the interviewer in facilitating capacity-enhancement training for lawyers representing the community.³⁵

The National Human Rights Commission in Nepal (Commission) has conducted programs with multiple organizations to foster awareness of human rights generally.³⁶ However, the Commission has not conducted programs for enhancing the capacity of lawyers and rights activists from the Dalit community specifically.³⁷

Various international and local NGOs have conducted programs targeting the enhancement of the capacity of right activists.³⁸ Despite these efforts, these programs do not address the narrower specialized concerns of Dalits and Dalit rights defenders in the legal field.

C. Long-term Government Plans to Ensure Dalit Rights

In 2002, the Government of Nepal passed an executive order establishing the National Dalit Commission (NDC).³⁹ The NDC aims to protect and promote the rights of the Dalit community through long-term advocacy activities and programs.⁴⁰ The 2011 Untouchability Act gives NDC a critical role in ensuring access to justice for caste-based discrimination.⁴¹ The Act authorizes the NDC to intervene when the police fail to register a report of caste-based discrimination.⁴² Additionally, the NDC conducts activities to bring awareness to constitutional and legal rights for local Dalit communities. In 2010, the Office of the High Commissioner for Human Rights and NDC coordinated a 100-day advocacy campaign to end caste-based discrimination.⁴³

³⁵ Interview with Lilamani Poudel, Secretary General, Nepal Bar Ass'n, in Kathmandu, Nepal (Jan. 2, 2020).

³⁶ See NAT'L HUMAN RIGHTS COMMISSION, NEPAL (NHRCN), ANNUAL REPORT (SYNOPSIS) F.Y. (2017-2018) (2019) 12-15, <https://www.satp.org/Docs/Document/1046.pdf>.

³⁷ *Id.*

³⁸ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), OPENING THE DOOR TO EQUALITY: ACCESS TO JUSTICE FOR DALITS IN NEPAL 80 n.196 (2011), https://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf [hereinafter OHCHR REPORT].

³⁹ NEPAL CONST., Sept. 20, 2015, art. 255; OHCHR REPORT, *supra* note 38, at 72.

⁴⁰ OHCHR REPORT, *supra* note 38, at 72.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Despite their authority under the Untouchability Act, the NDC lacks adequate funding and human resources to properly execute its mandate.⁴⁴ Complaints of caste-based discrimination are not being efficiently addressed as constraints on budgets and personnel prevent the NDC from conducting proper investigations.⁴⁵ With this in mind, many have called on the state to schedule, organize, and implement long-term programs to fulfill the constitutional goals of increasing representation from disenfranchised communities particularly in the legal sector.

The Dalit community within Province No. 2 is particularly vulnerable to caste-based discrimination and untouchability.⁴⁶ In 2020, 62 caste-based killings and 168 rape cases of Dalit women took place within the province with many of the perpetrators never being criminally charged.⁴⁷

In response to the high level of discrimination and violence directed towards the Dalit community, the province has drafted a Dalit Empowerment Bill which focuses on increasing access to state resources for Dalit residents.⁴⁸ The bill outlines recommended actions for addressing caste-based discrimination and untouchability: forming a Caste Discrimination and Monitoring Committee, creating a Caste Discrimination Control Unit within the police force, informing the public about Dalit rights, and offering scholarships to cover higher studies costs for Dalit students.⁴⁹ By providing free education and increased accessibility to employment, the bill should remove development and career hurdles for many Dalit children within the province.⁵⁰ To specifically alleviate justice barriers for Dalit lawyers and promote legal empowerment, the bill should be expanded to include free legal education in conjunction with other initiatives could increase the representation of the Dalit community within the legal field.

III. ACCESS TO JUSTICE AND LEGAL REPRESENTATION BY DALITS

A. Barriers to Justice by Police, Prosecutors, and Judges

Members of the Dalit community often face barriers to justice in criminal cases. Significant “institutional problems with investigation and prosecution in the regular criminal justice system” exist.⁵¹ Police commonly view incidents of caste-based discrimination as social issues and fail to effectively address such incidents.⁵²

⁴⁴ *Id.*; Tika R Pradhan, *Government’s apathy renders constitutional commissions ineffective*, THE KATHMANDU POST (July 2, 2019), <https://kathmandupost.com/national/2019/07/06/governments-apaty-renders-constitutional-commissions-ineffective>.

⁴⁵ *Id.*

⁴⁶ Interview with Prakash Wasti, Commissioner, National Human Rights Commission, Lalitpur, Nepal (Jan. 6, 2020).

⁴⁷ Ajay Anuragi, *Province Two has become a hellhole for Dalits*, CENTRE FOR INVESTIGATIVE JOURNALISM, NEPAL (Dec. 18, 2020), <https://cijnepal.org.np/province-two-has-become-a-hellhole-for-dalits/>.

⁴⁸ Ram Kumar Kamat, *Scholarships, ration cards, health benefits to poor Dalits proposed*, HIMALAYAN TIMES (Sept. 08, 2019), <https://thehimalayantimes.com/nepal/scholarships-ration-cards-health-benefits-to-poor-dalits-proposed>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ INT’L COMM’N OF JURISTS (ICJ), *ACHIEVING JUSTICE FOR GROSS HUMAN RIGHTS VIOLATIONS IN NEPAL* 11 (2017), <https://www.refworld.org/pdfid/5a212fa04.pdf>.

⁵² See DALIT NGO FEDERATION NEPAL ET. AL., *NEPAL CIVIL SOCIETY’S ALTERNATIVE REPORT TO THE UN COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION IN ADDITION TO THE GOVERNMENT OF*

Specifically, police are often reluctant to record such matters and instead attempt to refer such cases to community mediation in an impromptu manner.⁵³ This referral to mediation is inherently problematic as it “fails to recognize the nature of caste-based discrimination and untouchability as a crime and undermines efforts to reinforce the seriousness of this crime.”⁵⁴ Furthermore, the police often abdicate their duties to initiate criminal investigations by pressuring Dalit victims to pursue mediation,⁵⁵ rendering the victim without access to justice. Additionally, the informal community mediation structure puts victims of caste-based discrimination at a disadvantage as many are in a weak negotiating position which results in victims receiving an inadequate remedy.⁵⁶

In one example examined by the OHCHR from 2006, after thirty-five Dalit women were assaulted and prohibited from praying at a temple, government officials including police and prosecutors pressured the victims to pursue mediation instead of filing criminal charges under the prohibition of caste-based discrimination law.⁵⁷ While temple officials and the perpetrators avoided criminal punishment, the temple’s leadership vowed to allow Dalits to pray at the temple; yet, when a group of Dalit women tried to enter the temple after the mediation, they were once again assaulted and attacked despite the presence of twenty police officers.⁵⁸ When government officials who have the power to initiate criminal investigations instead pressure victims to pursue mediation, their actions lead to the recurrence of violence against the community and encourage a culture of impunity.

Perhaps most significantly, the Office of the High Commissioner on Human Rights found that without assistance from local human rights defenders, victims of discrimination or violence were unable to file police reports against the perpetrators involved in their treatment.⁵⁹ This finding demonstrates the importance of having well-trained lawyers within the Dalit community who can assist victims in pursuing redress from the legal system.

The lack of legal representation accounts for police failures to adequately investigate caste-based discrimination cases, which are closely linked to prosecutorial failures since inadequate investigations of caste-based discrimination cases produce charge sheets that lack substantive evidence.⁶⁰ In the few instances that a charge sheet is filed with the court, judges also often fail to seriously consider the shortcomings of the police investigation as described above.⁶¹ As reported

NEPAL PERIODIC REPORTS 17 TO 23, TO BE REVIEWED AT THE 95TH SESSION, 23 APRIL -11 MAY 2018: CASTE-BASED DISCRIMINATION AND UNTOUCHABILITY AGAINST DALIT IN NEPAL 8 (2018), <https://idsn.org/wp-content/uploads/2018/07/CERD-Nepal-2018-alternative-report-Dalit-situation-.pdf> [hereinafter NEPAL CIVIL SOCIETY REPORT] (“[I]n Nepal, access to justice for victims of CBD [caste-based discrimination] is significantly hindered, often perceived [by police] as a social rather than a criminal issue.”); INT’L COMM’N OF JURISTS, *supra* note 51, at 4 (“Police investigations into human rights violations and prosecutions by the Attorney General’s Office continue to be selective, politically motivated and lacking the independence and impartiality required under international standards.”).

⁵³ See NEPAL CIVIL SOCIETY REPORT, *supra* note 52, at 7-8; OHCHR REPORT, *supra* note 38, at 55.

⁵⁴ OHCHR REPORT, *supra* note 38, at 11.

⁵⁵ *Id.* at 55.

⁵⁶ *Id.* at 57.

⁵⁷ *Id.* at 47.

⁵⁸ *Id.*

⁵⁹ *Id.* at 50.

⁶⁰ *Id.* at 71.

⁶¹ *Id.* at 58.

by the Lawyers' National Campaign for the Elimination of Caste Discrimination [hereinafter LANCAU] through a workshop the organization hosted for government attorneys:

judges in lower courts have the opportunity to hear untouchability cases brought under the Civil Code of 1963, [and] they generally ask those found guilty of caste-based discrimination to pay only a minimal fine. While the civil code allows punishment by imprisonment for up to one year, it appears that **no perpetrator** has ever been jailed for practicing untouchability or other caste-based discrimination to date. (*Emphasis Added*)⁶²

However, the problems are not exclusively limited to police, as there are limitations to the work done by public prosecutors in pursuit of justice for victims of caste-based discrimination or crime. The International Commission of Jurists found that:

prosecutors have routinely disregarded their duty to investigate credible allegations of crimes, including crimes under international law; prosecutors do not exercise their functions with the objective of protecting human rights and promoting the rule of law; and prosecutors have not been able to function independently or impartially because of political and other influences.⁶³

Of the 270 judges in Nepal in 2011, only one was from the Dalit community.⁶⁴ As of July 2020, Dalit representation remains notably low as there are only five Dalit judges in the seven high courts and one Dalit district judge in the 77 districts.⁶⁵ The Dalit community is also underrepresented within Nepal's police force as Dalit officers make up approximately 7% of the force.⁶⁶

The inadequate knowledge and training of judges on Dalit rights prevents them from fully implementing antidiscrimination laws and constitutional protections.⁶⁷ Further, this gap in access to justice for Dalits has been recognized by various Dalit NGOs,⁶⁸ the OHCHR,⁶⁹ and even Nepal's Judicial Academy who have suggested that this gap could be filled by "sensitizing judges to the gravity of caste-based discrimination and the significance of their decisions."⁷⁰ The biased training

⁶² See *Recasting Justice: Securing Dalit Rights In Nepal's New Constitution*, New York University School of Law's Center for Human Rights and Global Justice, <https://chrgj.org/wp-content/uploads/2016/09/recastingjustice.pdf> (August 2016) [hereinafter *Recasting Justice Report*], at 87 citing to LANCAU, Workshop on the Role of Government Attorneys to Establish Social Justice, Awareness Against Untouchability Newsletter, Issue 8 (2007).

⁶³ INT'L COMM'N OF JURISTS (ICJ), *supra* note 51, at 24.

⁶⁴ *Id.* at 71.

⁶⁵ JOINT STAKEHOLDER SUBMISSION OF NON-GOVERNMENTAL ORGANIZATION ON UNIVERSAL PERIODIC REVIEW (UPR) SUBMITTED TO UN HUMAN RIGHTS COUNCIL 7, DALIT NGO FEDERATION (Oct. 2020), <https://idsn.org/wp-content/uploads/2021/01/Dalit-NGO-Federation-and-IDSN-UPR-Report-2020.pdf>.

⁶⁶ OHCHR REPORT, *supra* note 38, at 71.

⁶⁷ *The Dalits of Nepal and a New Constitution*, *supra* note 29, at 15.

⁶⁸ NEPAL CIVIL SOCIETY REPORT, *supra* note 52, at 20. ("Provide Dalit rights-based trainings to police, judges, courts at all levels on the Anti-Untouchability Act and CBD Act and CERD [Convention on the Elimination of Racial Discrimination].").

⁶⁹ OHCHR REPORT, *supra* note 38, at 89. ("Provide adequate training to judges of the district and appellate courts on the 2011 Untouchability Act as well as on the relevant national and international standards regarding caste-based discrimination and untouchability.")

⁷⁰ *Recasting Justice Report*, *supra* note 66, at 87 citing to Interview with Agni Prasad Thapaliya, National Judicial Academy Registrar, Kathmandu, Nepal, Nov. 12, 2007; Interview with LANCAU, Kathmandu, Nepal (Nov. 12, 2007).

for judges and representation on the bench of the Dalit community is particularly important because judges have a great deal of discretion when hearing cases involving caste-based crimes:

Victims of [caste-based discrimination] (CBD) and untouchability face a number of legal and non-legal barriers in accessing justice. It includes the lack of legal provisions on specific punishments corresponding to the seriousness of an offence. The penalties stipulated in the law range from 1000 NPR to 25000 [NPR] (or approximately 10 to 250 US dollars) and an imprisonment from three months to three years, leaving it to the judge's discretion to decide on the punishment without comprehensive guidelines. In a number of cases, where sentences have been pronounced, only a minimum fine was imposed against the perpetrators.⁷¹

B. Caste-based Discrimination Faced by Lawyers and Legal Rights Activists Representing Dalits

Lawyers and victim's rights activists representing targets of caste-based discrimination face numerous obstacles when trying to attain justice. Many from the Dalit community lack the legal knowledge and resources to engage lawyers in order to seek a remedy.⁷² Victims who do decide to engage with the legal system meet resistance from the very beginning of the criminal procedure process.⁷³

In many instances, local level representatives and police officers stand by the perpetrator rather than the victim.⁷⁴ Filing a complaint against the perpetrators of caste discrimination and untouchability was made a very difficult task for the victims.⁷⁵ Police officers are reluctant to complete a First Information Report which registers a criminal case.⁷⁶ Instead of following their legal obligation to register the case, officers will persuade a victim to resolve the case through community mediation.⁷⁷ Officers often push victims towards mediation by citing the preservation of social harmony and neglecting to provide information on available judicial recourse.⁷⁸ Police officers have even detained and beaten Dalit rights activists who accompany victims to file a complaint.⁷⁹ For example, in August 2020, when the father of a victim of caste-based violence went to submit a complaint to the police, the Dalit advocates accompanying him were beaten and held in custody for four hours.⁸⁰ These instances of intimidation demonstrate why many victims of caste-based discrimination abandon their cases after struggling just to file the complaint.⁸¹

⁷¹ NEPAL CIVIL SOCIETY REPORT, *supra* note 52 at 17.

⁷² *Id.* at 9.

⁷³ *Id.* at 40-41.

⁷⁴ *Id.* at 54.

⁷⁵ *Id.*

⁷⁶ *Id.* at 40, 53.

⁷⁷ *Id.* at 55.

⁷⁸ *Id.* at 57-58.

⁷⁹ Anuragi, *supra* note 47.

⁸⁰ *Id.*

⁸¹ Sunita Pariyar, *How Possible to make happy Nepali in the existence of untouchability*, NAYA PATRIKA DAILY (Oct. 22, 2019), <https://www.nayapatrikadaily.com/news-details/27597/2019-10-22> (Nepali).

Lawyers' ability to adequately represent the victim is often hindered in cases with registered First Information Reports, because police officers are often negligent during the process of evidence collection, which then results in low conviction rates in court.⁸² Aside from procedural obstacles, victims also face social obstacles as many are harassed or threatened by their community for registering a discrimination case.⁸³ In these instances, the police often fail to provide adequate protection for victims during and after the prosecution of a caste-based discrimination case.⁸⁴

In addition, District Government Attorneys often neglect their duties in prosecuting caste-based discrimination cases. Low conviction rates for caste-based discrimination cases are exacerbated by the lack of direction provided by Government District Attorneys on how police officers should be conducting their investigations.⁸⁵ In addition to not providing direction, prosecutors rarely amend or alter the recommendations made in police investigation reports despite sufficient evidence of case-based discrimination and violence.⁸⁶ This compounded effect has deterred the victims of caste-based discrimination from seeking justice and accountability.

IV. PROGRAMS IMPLEMENTED BY THE NHRC, NEPAL BAR ASSOCIATION, NEPAL BAR COUNCIL, AND NGO'S

The NHRC, the Nepal Bar Association, and the Nepal Bar Council have conducted programs targeting stakeholders relating to justice overall. However, each group has failed to implement a program specifically aimed at capacity-building and empowering lawyers specifically from the Dalit community or representing Dalit rights. Programs more specifically directed at these issues could greatly improve the inadequate representation of Dalits in the legal profession.

A. Programs Conducted by NHRC

The NHRC has conducted observations and outreach in all seven provinces of Nepal and has also organized conferences with different professionals and stakeholders concerning the problem of Dalit rights.⁸⁷ These programs have identified Dalit communities in Provinces No. 2 and No. 7 as the most vulnerable to the practice of caste-based discrimination and untouchability.⁸⁸ The NHRC further identified that the practice of caste-based discrimination and untouchability is prevalent among the well-educated youths of Province No. 2.⁸⁹ In order to formulate concrete programs that protect the human rights of the Dalit community, efforts to do so must be taken through all tiers of government—federal, provincial, and local.⁹⁰

⁸² OHCHR REPORT, *supra* note 38, at 58.

⁸³ *Id.* at 59-60.

⁸⁴ *Id.*

⁸⁵ *Id.* at 61.

⁸⁶ *Id.*

⁸⁷ Interview with Prakash Wasti, *supra* note 46.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Himalayan News Service, *NHRC urges govt to end caste-based discrimination*, THE HIMALAYAN (July 24, 2019), <https://thehimalayantimes.com/kathmandu/national-human-rights-commission-urges-government-to-end-caste-based-discrimination>.

In July 2019, the National Human Rights Commission (NHRC) released a monitoring report, “Status of Rights against Caste-based Discrimination and Untouchability”, which stated that caste-based discrimination deprived the citizens of basic human rights.⁹¹ The report outlined six recommendations to federal, provincial, and local governments to end caste-based discrimination and untouchability.⁹² The recommendations also extended to political parties as the NHRC advocated for parties to assist in creating an environment where provisions in the constitution could be effectively implemented to prevent caste-based discrimination.⁹³ Following the NHRC report, the Ministry of Federal Affairs and General Administration directed local governments to incorporate the recommendations, which included providing training to local enforcement agencies and conducting awareness campaigns in conjunction with provincial and federal governments.⁹⁴

B. Programs Conducted by the Nepal Bar Association

The Nepal Bar Association has initiated an internship program to enhance professional capacity for new lawyers.⁹⁵ With this program, the Nepal Bar Association attempts to integrate lawyers from various social groups including women, Dalits, indigenous, marginalized, and impoverished communities.⁹⁶ The number of lawyers representing the Dalit community remains low (around 150-200); thus, programs must be built with the internships as the first part of many.⁹⁷ It is necessary, then, to promote a scholarship program and job assurance after completion of law school to effectively boost the number of Dalits in the legal community. Providing guaranteed internships at the offices of senior advocates and incorporating mandatory provisions of the Bar Council Act can also help meet this goal.⁹⁸ These efforts will highlight the importance of the legal education in an effort to establish a non-discriminatory society that fosters representation of all groups in its professional legal class.⁹⁹

Additionally, the Nepal Bar Association in collaboration with the Norwegian Bar Association has created a program to provide legal assistance to vulnerable communities including the Dalits.¹⁰⁰ This is an important effort, especially if it can incorporate empowering members within the Dalit community to join the legal profession and offer legal aid to their own communities.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Himalayan News Service, *MoFAGA for ending caste-based discrimination*, THE HIMALAYAN (Aug. 08, <https://thehimalayantimes.com/kathmandu/mofaga-for-ending-caste-based-discrimination>).

⁹⁵ See Periodic Progress Report for Professional Capacity Building – Legal Internship Program (Batch II) (For the Lawyers Representing Vulnerable & Marginalized Communities), NEPAL BAR ASS’N (2015), <http://nepalbar.org.np/wp-content/uploads/2020/05/2.-Report-Batch-II.pdf> [hereinafter 2015 Nepal Bar Ass’n Progress Report].

⁹⁶ *Id.* at 3.

⁹⁷ Interview with Mohan Sashankar, *supra* note 15.

⁹⁸ See 2015 Nepal Bar Ass’n Progress Report, *supra* note 95, at 5.

⁹⁹ Periodic Progress Report for Professional Capacity Building – Legal Internship Program (Batch V), *supra* note 82, at 3.

¹⁰⁰ Bimal Prasad Lamichhane, *Legal Aid: Existing Law, Policies and Practices in Nepal*, TRIBHUVAN UNIVERSITY JOURNAL OF POLITICAL SCIENCE, 21, 33 (2019), <https://doi.org/10.3126/jps.v19i0.26697>.

C. Programs Conducted by the Nepal Bar Council

The Bar Council has not conducted any specific programs nor are they intending to follow a specific plan for increasing the number of lawyers from the Dalit community at the time of the research for this report.¹⁰¹ However, they anticipate the initiation of such a plan by lawyers from the Dalit community and have expressed willingness to assist in any such potential programs during conversations with the report-writer.¹⁰²

D. Programs Conducted by Lawyers National Campaign Against Untouchability (LANCAU), Nepal

LANCAU is a non-governmental organization that is dedicated to uprooting systems of caste-based discrimination and untouchability in Nepal.¹⁰³ The organization engages in legal research, advocacy, and training to advance the implementation of existing anti-discrimination laws.¹⁰⁴ Primarily, LANCAU engages with community-based paralegals to inform communities in the Western region of Nepal on pressing issues, such as caste-based discrimination, family law, and rights and services available to the Dalit community from government agencies.¹⁰⁵ The paralegals address justice and development challenges that affect the Dalit community and work to combat public discrimination outlawed under the Untouchability Act.¹⁰⁶

The LANCAU paralegals have helped communities pressure local governments and school administrations to allocate funds and resources for members of the Dalit community.¹⁰⁷ For example, in 2013 a LANCAU paralegal assisted a Dalit community in the Dadeldhura district to ensure that a school properly dispersed scholarship funds allocated for Dalit students.¹⁰⁸ Many in the community were unaware that the funds existed as the school was using the money for general administrative purposes.¹⁰⁹ During their regular meetings, the paralegal informed the community about the funds and visited school officials on several occasions to discuss the scholarship money. Eventually, with the help of LANCAU's legal assistance and know-how, the community was able to secure the money for Dalit students after discussions with school administration.¹¹⁰

¹⁰¹ Interview with an employee of the Nepal Bar Council in Lalitpur, Nepal (Dec. 30, 2019).

¹⁰² Interview conducted by ABA consultant, in Lalitpur, Nepal (Dec. 30, 2019) (unofficial translation). Names of interviewees were kept anonymous for the protection of the interviewees.

¹⁰³ LAWYERS NATIONAL CAMPAIGN AGAINST UNTOUCHABILITY (LANCAU), NEPAL, <https://lancaunepal.wordpress.com/> (last visited May 15, 2021).

¹⁰⁴ Center for Human Rights and Global Justice, *Recasting Justice Report*, *supra* note 66.

¹⁰⁵ Peter Chapman & Ananda Koirala, *Bringing Justice to Education and Development in Nepal*, OPEN SOCIETY JUSTICE INITIATIVE (Apr. 29, 2014), <https://www.justiceinitiative.org/voices/bringing-justice-education-and-development-nepal>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

E. Future Plans of NHRC and Nepal Bar Association

The NHRC is planning to host a conference comprising professionals from different sectors including lawyers and rights activists.¹¹¹ The NHRC is planning to broadcast content to raise public awareness regarding eradication of caste-based discrimination and sensitizing Nepalis to the issues faced by Dalits.¹¹² They are also planning to perform street plays in local languages focused on the issues impacting vulnerable communities including Dalits.¹¹³ The Nepal Bar Association is planning to conduct a national conference for lawyers from the Dalit community and has planned to continue the internship program that gives preference to lawyers from the Dalit community.¹¹⁴

IV. CONCLUSION AND RECOMENDATIONS

The measures undertaken by the government and organizations described in Section IV do not create an enabling environment to completely address caste-based discrimination and untouchability practices, despite Nepal's constitutional and legal provisions for protecting and promoting the rights of Dalits.¹¹⁵ The state mechanisms have failed to effectively combat these issues due to the prevalent bias (both conscious and unconscious) shared by government officials and law enforcement agencies.¹¹⁶ Additionally, the prevalent societal biases regarding untouchability are another obstacle to overcome.¹¹⁷

The current legal mechanisms in Nepal have often failed to end the crimes committed against Dalits, and thus, must be changed both in law and practice.¹¹⁸ Sensitization, capacity enhancement programs, trainings for government officials, including police, prosecutors, and judges, and also lawyers, are clearly needed.¹¹⁹ The poor conviction rate in cases of discrimination or crimes against members of the Dalit community can be attributed to both the lack of awareness by state officials of Dalit issues and the lack of representation of the Dalit community in the justice sector.

Along with conducting bias prevention training for all governmental officials, increasing the representation of Dalits in governmental positions can increase the access to justice for the community. Representation from the Dalit community must be significantly increased in order to further bring attention to Dalit-specific issues and ensure the implementation of antidiscrimination laws and constitutional provisions.¹²⁰ Substantive representation will allow for the changing of

¹¹¹ DIPAK NEPALI ET AL., NAT'L HUMAN RIGHTS COMM'N, MONITORING REPORT ON CONDITION AGAINST THE RIGHTS OF CASTE-BASED DISCRIMINATION AND UNTOUCHABILITY 2 (2019) (Nepali), https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Monitoring_Report_on_CERD_2076_compressed-min.pdf.

¹¹² Interview with Prakash Wasti, *supra* note 46.

¹¹³ *Id.*

¹¹⁴ Interview with Lilamani Poudel, *supra* note 35.

¹¹⁵ NEPAL CONST., Sept. 20, 2015, arts. 18, 24.

¹¹⁶ Interview with Mohan Sashankar, *supra* note 15.

¹¹⁷ *Untouchability is not only a problem of Dalits*, NEPALI TIMES (May 24, 2002), <http://archive.nepalitimes.com/news.php?id=6427#.YF3yR11KjAM>.

¹¹⁸ See KRISHNA BHATTACHAN ET. AL., U.N. DEVELOPMENT PROGRAMME, THE DALITS OF NEPAL AND A NEW CONSTITUTION 40-43 (2008), https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/DalitsOfNepalAndTheNewConstitution.pdf.

¹¹⁹ *NHRC urges govt to end caste-based discrimination*, *supra* note 90.

¹²⁰ *The Dalits of Nepal and a New Constitution*, *supra* note 29, at 15.

systems as increased political influence will bring awareness to barriers to Dalit's access to justice.¹²¹

Efforts of concerned institutions such as NHRC, the Nepal Bar Association, and the Nepal Bar Council will need to be expanded and properly funded in order to address caste-based discrimination within the legal field.¹²² For the national budget of fiscal year 2020/2021, the allocation of funds to the National Dalit Commission was 0.002% of the overall budget with the National Human Rights Commission only being allocated 0.017%.¹²³ The budget does not allocate any funds specifically for Dalit empowerment and therefore limits the capacity of Commissions dedicated to advancing the rights of the Dalit community.¹²⁴ National budgets, especially during a pandemic, should be Dalit-friendly and allocate funds for the implementation of antidiscrimination and untouchability provisions within the constitution.¹²⁵

RECOMMENDATIONS

For proper implementation of laws combatting caste-based discrimination and crimes against Dalits, it is necessary to enhance professional skills of lawyers and legal right activists representing the community and to sensitize government officials towards those issues. It is clear that such trainings, plans, programs, and policies would create progress towards achieving justice and equality for Dalits in Nepal.

The following recommendations propose a comprehensive process that the government of Nepal, in collaboration with other relevant stakeholders, should undertake to effectively increase its adherence with international legal obligations to protect all individuals from all forms of discrimination and violence.

For the government of Nepal

- Amend current laws to ensure effective remedies and strengthen protections for victims, witnesses, and lawyers prosecuting caste-based crimes or discrimination.
- Appoint highly qualified and apolitical members of the National Dalit Commission (NDC) and the National Human Rights Commission according to the constitutional rules relating to appointments.
- End interference and pressure exerted by the police and prosecutors on victims of caste-based discrimination or crimes to settle their disputes outside of the judicial processes and courts and take disciplinary measures against police and prosecutors who are involved in such actions.
- Create specialized units in all police departments to handle caste-based crimes with special authority to investigate and submit reports to prosecutorial offices, ensure rehabilitation of victims, and the avoidance of undue delays in the prosecutorial process.

¹²¹ OHCHR REPORT, *supra* note 38, at 65.

¹²² GOVERNMENT OF NEPAL, MINISTRY OF FINANCE, BUDGET SPEECH OF FISCAL YEAR 2020/21 13, https://www.mof.gov.np/uploads/document/file/Budget%20Speech%202020_20201118033431.pdf.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ OHCHR REPORT, *supra* note 38, at 69-70.

- Sensitize and conduct training programs for police, prosecutors and staff, judges, and the public to increase awareness of caste-based discrimination and untouchability and its effects on the rights of Dalits.¹²⁶
- Allocate sufficient funds to the NHRC, NDC, and police services in the national budget to carry out the programs to uphold the rights of victims.¹²⁷
- Conduct legal orientation programs for local level officials, especially targeting the Dalit women ward members, which empower them to recommend how to access legal remedies to the victims of crimes.

For the Nepal Bar Association, Nepal Bar Council

- Provide anti-bias training to its members in order to ensure that caste-based discrimination no longer inhibits the protection and participation of historically marginalized groups like the Dalits from the practice of law; and
- Introduce scholarship, internships, career enhancement programs and trainings in order to increase the number of lawyers and human rights activists.

For governmental commissions, like the NHRC and NDC

- Ensure that there is an independent and functional mechanism for investigating caste-based discrimination or crimes. This mechanism must allow for members of the community to effectively bring claims before the commission in a timely manner.

For the International Community

- Emphasize the need to enhance the representation of Dalits in the justice sector as an end unto itself, but also as a means to procure access to justice to disenfranchised communities who are underrepresented and often underserved by Nepal’s justice sector, more specifically:
 - the United Nations Office of the High Commission for Human Rights should pursue outcomes from their report *Opening the Door To Equality: Access to Justice for Dalits in Nepal* released a decade ago as many of the issues raised in the report continue to impact the Dalit rights defenders; and
 - the U.S. Department of Justice Office of Overseas Prosecutorial Development, Assistance, and Training should utilize its robust relationship with the Nepal Judicial Academy to provide anti-bias training to judges, prosecutors, and lawyers concerning caste-based issues.

¹²⁶ NHRC urges govt to end caste-based discrimination, *supra* note 90.

¹²⁷ OHCHR REPORT, *supra* note 38, at 73.