

# Challenges for Dalits in South Asia's Legal Community

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## Chapter II: Dalit Justice Defenders in Bangladesh

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## **ACKNOWLEDGMENTS**

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## **FOREWORD**

This is part two of a three-part report that examines 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. The first chapter discusses the justice sector for Dalits in Nepal, this second chapter examines the same issue for Bangladesh, and finally the third chapter will focus on India. The third chapter will also conclude with regional lessons learned and recommendations for policymakers, judges, bar councils, and other governmental agencies.

Each chapter in the report utilizes a similar methodology by relying on desk research as well as conducting 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**

There are between 5.5 to 6.5 million Dalits in Bangladesh. The Dalit community is subject to sociopolitical discrimination and, most importantly for this report, lack proper access to justice and representation in the legal community. Dalit rights are significantly hindered by structural constraints within the legal and political system of Bangladesh, which are further exacerbated by social biases. Despite constitutional guarantees and promises from the government, Dalits and in Bangladesh lack the social, political, and economic capital to overcome these constraints and make these guarantees a reality. Furthermore, democratic deficit within the state limits the representation and upward social mobility for Dalits, and their representation in local and national government remains disproportionately low. Access to justice in Bangladesh is fraught with various issues, including restrictive laws, prohibitive costs, and delays, which disproportionately impact minorities like Dalits.

This report assesses the state of access to justice and legal institutions by Dalits in Bangladesh. This includes the general efficacy of institutional channels including courts that help remedy gross human rights violations and non-judicial remedies through bodies such as the National Human Rights Commission. The report also explores the ways in which Dalit human rights defenders mobilize the law, and the ability of Dalit lawyers to practice law.

While progress towards reform has been slow, this report highlights key roles played by Non-governmental Organizations (NGOs), civil society organizations (CSO), and rights activists who have been instrumental in securing key gains on issues of minority rights in Bangladesh, including the drafting of an Anti-Discrimination Bill, which applies to all minorities. That said, Dalits' rights, as well their representation in government and legal institutions, particularly the bar and the judiciary, still needs much improvement. Accordingly, this report makes key recommendations, including further areas of research and advocacy for determining representational data, securing the representation of Dalits in these institutions, and formulating specific interventions.

# I. Introduction: Dalits, Representation and Access to Justice in Bangladesh

Bangladesh is a Muslim-majority country, with religious minorities accounting for 11% of the population, comprised of people who profess Hindu, Christian or Buddhist faith.<sup>1</sup> Of this number, the Hindu population accounts for about 10%, out of which groups under the broad umbrella of Dalits account for 3-4%, or an estimated 5.5 to 6.5 million people.<sup>2</sup>

The term Dalit in Bangladesh is heterogenous and primarily refers to a lower caste Hindu group identity associated with occupation—which is also internally stratified and differentiated by geographical location,<sup>3</sup> as Dalits in Bangladesh are distributed across rural and urban areas.<sup>4</sup> Another category within the general group identified as Dalits consists of Muslim Dalits, who are former Dalits who have converted to Islam.<sup>5</sup>

Occupational and descent-based categories of discrimination continue in modern Bangladesh.<sup>6</sup> Caste-based discrimination in Bangladesh is predominantly evidenced through occupational, social strata, and descent-based identities as well as colorism that carry the stigma of “untouchability.”<sup>7</sup> There is a socio-historical association of Dalits with menial occupations that often transcends religious identities, making this group especially vulnerable to discrimination.<sup>8</sup> Hence, conversion from Hinduism has not resulted in social mobility to those who converted to Islam as is evidenced, for example, by the continuing reference to this group as Muslim Dalits.<sup>9</sup>

In comparison to India and Nepal, where caste differentiation is much more pronounced and Dalits fall under certain legal categories,<sup>10</sup> Dalits in Bangladesh are not separately recognized in the

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<sup>1</sup> Bangladeshi minority population comprises overlapping categories of religious minorities, indigenous people (Adibashis), and linguistic minorities. The reported numbers of population distribution by religion include 89.5% of Muslims, 10% of Hindus, and 0.9% of other faiths. See THE SOUTH ASIA COLLECTIVE, SOUTH ASIA STATE OF MINORITIES REPORT: MAPPING THE TERRAIN 95 (2016).

<sup>2</sup> *Id.*

<sup>3</sup> See THE SOUTH ASIA COLLECTIVE, SOUTH ASIA STATE OF MINORITIES REPORT: EXPLORING THE ROOTS 87-89 (2018).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 88.

<sup>6</sup> *Id.* at 87-89.

<sup>7</sup> See MAZHARUL ISLAM & ALTAF PARVEZ, DALIT INITIATIVES IN BANGLADESH 12 (Nagorik Uddyog, 1st ed., 2013).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 89.

<sup>10</sup> In both India and Pakistan, Dalits are categorized under scheduled castes. In addition, Article 17 of the Indian Constitution abolished the practice of “untouchability.” See ANUPAMA RAO, THE CASTE QUESTION: DALITS AND THE POLITICS OF MODERN INDIA (Uni of Ca. Press, 1st ed. 2009) (general overview of Dalits in India); see also Tahir Mehdi, *Dalits’ dream of Pakistan*, DAWN (May 9, 2016), <https://www.dawn.com/news/1257165>; Shaista Abdul Aziz Patel, *It is time to talk about caste in Pakistan and Pakistani diaspora*, ALJAZEERA (Dec. 15, 2020), <https://www.aljazeera.com/opinions/2020/12/15/it-is-time-to-talk-about-caste-in-pakistan-and-pakistani-diaspora> (general overview of Dalits in Pakistan).

constitution.<sup>11</sup> This absence of legal recognition renders this group institutionally invisible.<sup>12</sup> In most government interventions, census, and budgetary allocations, Dalits were traditionally lumped together under the general category of Hindu, other religious minorities, or impoverished sections of society—though some changes are gradually being introduced.<sup>13</sup>

While the government has recognized some of the unique challenges posed to Dalits over the past decade, the implementation of empowerment programs has not been effective. For example, the national Seventh Five Year Plan (2016-2020) recognized Dalits as one of the most marginalized and socially excluded groups.<sup>14</sup> Yet, the Eighth Five Year Plan acknowledges that, while the government was able to create limited social safety-net programs for Dalits, implementing those programs to empower the community have not been effective.<sup>15</sup> The efficacy of those programs is increasingly questioned by Dalit rights' organizations, who claim that the targeted beneficiaries of these programs are not receiving such benefits due to ineffective allocation and distribution at the local level.<sup>16</sup> Thus, Dalits are neither substantially visible in official data nor particularly effective in overcoming the inter and intragroup competition of accessing state resources. Moreover, affirmative action policies have been insufficient for Hindus in general and Dalits in particular (or any other minority groups), in the public sector despite that Hindus make up a substantial percentage of minority population in Bangladesh.<sup>17</sup>

The Dalit community in Bangladesh faces social, political, and economic discrimination in various forms as part of their daily life.<sup>18</sup> For example, the Dalits are barred from entering the homes of

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<sup>11</sup> See generally Constitution of the People's Republic of Bangladesh [Bangladesh] Nov. 4, 1972, <https://www.refworld.org/docid/3ae6b5684.html>.

<sup>12</sup> For example, "Although an affirmative action quota was introduced for Dalit students in public universities, the lack of legal recognition of their identity prevents them from taking this privilege." BDERM & NAGORIK UDDYOG, SITUATION OF DALITS IN BANGLADESH: JOINT NGO SUBMISSION RELATED TO THE REVIEW OF BANGLADESH AT THE 30<sup>TH</sup> UNIVERSAL PERIODIC REVIEW SESSION IN 2018, at 7 (2018), <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=5221&file=EnglishTranslation>.

<sup>13</sup> "While the GoB [government of Bangladesh] has initiated programs for the improvement of Dalit living conditions, there are few legal, policy, budgetary or programmatic interventions designed to meet the particular needs of Dalit women." BDERM & NAGORIK UDDYOG, *supra* note 12.

<sup>14</sup> BANGLADESH PLAN. COMM'N, 7<sup>TH</sup> FIVE YEAR PLAN JULY 2020-JUNE 2025: PROMOTING PROSPERITY AND FOSTERING INCLUSIVENESS (Dec. 2015), [https://erd.portal.gov.bd/sites/default/files/files/erd.portal.gov.bd/page/2f97258a\\_6f25\\_479a\\_8545\\_a498c65783f2/Dvelopment%20Planning%20FYP%20%26%20SDG.pdf](https://erd.portal.gov.bd/sites/default/files/files/erd.portal.gov.bd/page/2f97258a_6f25_479a_8545_a498c65783f2/Dvelopment%20Planning%20FYP%20%26%20SDG.pdf).

<sup>15</sup> "The Seventh Five Year Plan has put in place social inclusion strategy for marginalized groups such as the Dalits to eliminate discrimination, protect them from social abusive practices among other measures. However, implementation is a challenge given limited capacities at the local level. These safety net programs have made limited progress, and the full inclusion of marginalized groups in the social protection program remains a challenge." See BANGLADESH PLAN. COMM'N, 8<sup>TH</sup> FIVE YEAR PLAN JULY 2020-JUNE 2025: PROMOTING PROSPERITY AND FOSTERING INCLUSIVENESS (Dec. 2020), <https://oldweb.lged.gov.bd/UploadedDocument/UnitPublication/1/1166/8FYP.pdf>.

<sup>16</sup> SOUTH ASIA STATE OF MINORITIES REPORT: EXPLORING THE ROOTS, *supra* note 3, at 70.

<sup>17</sup> See *Quota circular issued amid protests*, THE DAILY STAR (Oct. 5, 2018), <https://www.thedailystar.net/country/quota-system-in-bangladesh-scrapped-officially-1642534> (explaining that the government of Bangladesh has recently abolished its quota system of some 56% reserved various groups such as freedom fighters' families, those with disabilities, and members of the indigenous population).

<sup>18</sup> See RABEYA ROWSHAN & RIAZ UDDIN KHAN, BRINGING DALIT WOMEN TO THE FOREFRONT: REALITIES AND CHALLENGES 10 (2016) (identifying that out of 500 Dalit women surveyed, 44% of Dalit population enroll at the

non-Dalits, from public places such as temple, shops, hotels and restaurants. They are also faced with more challenges in securing education, employment, housing (rental and for purchase), and other basic services.<sup>19</sup> They are also barred from government entitlements and from being able to engage in inter-community and inter-caste marriages.<sup>20</sup>

Dalits have traditionally held the “most menial, low-paid and dangerous jobs” and are considered one of the lowest wage earners in Bangladesh.<sup>21</sup> The poorest among the Dalit community have generally not held title to land due to inter-generational poverty and a legal land ownership system that can be challenging for Hindus generally.<sup>22</sup> Though not a legal requirement, the ability to own land can sometimes be a determining factor for establishing proof of residency.<sup>23</sup> These details, which those among the extreme poor lack, are usually necessary for securing government employment.<sup>24</sup> In 2016, two incidents were reported where two Dalit men were denied government jobs as police constables, despite their existing qualification in service examinations, because their addresses could not be verified since neither they nor their parents had ever been registered landowners.<sup>25</sup> After intervention from CSOs and other organizations in coordinated efforts with the media and the National Human Rights Commission (NHRC), these men were reinstated in the police force.<sup>26</sup> Generationally trapped, the Dalits in Bangladesh find themselves in a path-dependent state of chronic and generational poverty with structural barriers against upward social mobility.

The COVID-19 pandemic has further exacerbated the plight of Dalits as most government restrictions directly impinge upon the livelihoods and physical mobility of Dalits with the imposition of lockdowns.<sup>27</sup> One of the CSO representatives/activists interviewed stated the following:

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primary school level, 63% drop out due to caste discrimination at the secondary level, only 5.9% of Dalit girls complete their secondary education and are routinely subjected to sexual and psychological harassment).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> SOUTH ASIA STATE OF MINORITIES REPORT: EXPLORING THE ROOTS, *supra* note 3, at 65-71. “Dalit Tea Workers are paid some of the lowest wages in the labor sector. In 2016, the daily wage was negotiated and fixed at BDT 85, which was BDT 69 since 2013 and BDT 32.5 Taka since 2008.”

<sup>22</sup> See Iftexhar Uddin Chowdhury, *Caste Based Discrimination in South Asia: A Study of Bangladesh* 11-12 (Indian Inst. of Dalit Stud., New Delhi Vo.3, Working Paper No. 7, 2009); SOUTH ASIA STATE OF MINORITIES REPORT: EXPLORING THE ROOTS, *supra* note 3, at 67. “In rural and urban areas, many Dalits are landless and they therefore arrange housing on land that is owned either privately or by the government. In most cases, Dalits live in ancestral houses that they have not acquired or bought themselves.”

<sup>23</sup> Bangladesh Dalit and Excluded Rts. Movement [BDERM], Network of Non-mainstreamed and Marginalized Communities [NNMC] & Int’l Dalit Solidarity Network [IDSN], *NGO Report to the UN Hum. Rts. Comm. on Caste based discrimination in Bangladesh*, at 12 (Feb. 2017), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BGD/INT\\_CCPR\\_CSS\\_BGD\\_26524\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BGD/INT_CCPR_CSS_BGD_26524_E.pdf).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Shah Tazrian Ashrafi, *How COVID-19 Compounded Caste Discrimination in Bangladesh*, THE WIRE (Sept. 11, 2020), <https://thewire.in/south-asia/bangladesh-caste-discrimination-dalits-covid-19>.



*“When a Rickshaw puller was affected by COVID-19 in our area, Rishipara, the news spread very fast in the nearby area. Thereafter, people from nearby localities came and closed off the entirety of Rishipara with an enclosure made of bamboos. They even put up a writing on walls in areas surrounding Rishipara saying “Rishi Polli Nishhoddho” (Rishipara is banned). The writing on the walls is still visible there. The people of Rishipara could not get out for almost 14-15 days. The discriminatory practices had increased manifold in the time of Corona. We had taken up the case with the local chairman and even the [United Nations Office] (UNO), but we could get no results.”<sup>28</sup>*

Against the above context, access to justice and representation within the legal profession—which is already precarious for much of the general population—remains fraught with many obstacles for Dalits. The legal profession has historically been a gateway for social mobility in South Asia, and lawyers have been an effective medium for sociopolitical claim-making.<sup>29</sup> However, there are few studies that have seriously researched the legal profession in Bangladesh generally and the social stratification in relation to religious and other minorities within the profession in particular.

While access to justice projects have been designed and implemented by international organizations, such as the World Bank and the United Nations Development Programme, these interventions produced little publicly-available research on the legal profession or the representation within the profession.<sup>30</sup> Accordingly, the engagement of Dalits with legal institutions and their representation in the legal profession as well as legal mobilization are hitherto unexplored areas of study.

This report assesses the state of access to justice and legal institutions by Dalits. This includes the general efficacy of institutional channels that helps remedy gross human rights violations, non-judicial remedies through bodies such as the National Human Rights Commission, the ways in which Dalit human rights defenders mobilize the law, and the ability of Dalit lawyers to practice law. For the purposes of this report, the term “legal mobilization” refers to both mobilization for securing formal legal remedies as well as activism and advocacy by human rights, civil society organizations (CSO), and other groups that leverage the language of rights to articulate demands.

## II. Methodology

This is a qualitative study that has relied on interviews from eighteen individuals from ten districts, including seven members of the bar (two of whom were non-Dalit minority members from the Urdu-Speaking [Bihari] and Indigenous [Adivasi] Communities, respectively), officials from the Law Commission and the National Human Rights Commission (NHRC), civil society organizations (CSOs), and activists and human rights defenders (HRDs) who are engaged in Dalit rights protection and advocacy. Respondents from Dalit as well as the other minority communities

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<sup>28</sup> Interview with a CSO representative from Khulna District (Feb. 28, 2021).

<sup>29</sup> Cynthia Farid, *New paths to justice: a tale of social justice lawyering in Bangladesh*, 31 WIS. INT'L L. J. 421, 445 (2015).

<sup>30</sup> For a discussion of legal aid interventions and donor funded projects, see Farzana Akter, *Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox*, 4 ASIAN J. L. SOC. 257, 257-275 (2017).

were asked a number of questions on their experiences in their respective fields of work, including challenges to their social mobility, ability to access justice, discrimination faced (if any), representation and political participation, and their interaction with the State.

A number of other individuals in the Bangladesh's legal profession were contacted with requests for interviews apart from the 18 interviewees. However, apart from NGOs, who directly work with these communities, or lawyers of local bar associations of districts where there is a Dalit population, very few knew details about the structural barriers faced by this community due to the low numerical representation of Dalits in the legal profession.

Given the relatively small number of Dalit lawyers, CSOs, and HRDs, the respondents have been anonymized for safety and security reasons, and the government officers have also been anonymized in case the data has any effect on the relations between the government and the CSOs. The report uses the terms CSO, HRDs, and activists interchangeably as those representatives interviewed for this report were relatively small organizations and these individuals qualify in all three categories. The interviews were conducted by Nagorik Uddyog, a human rights NGO and CSO based in Dhaka that works, among other issues, on Dalit rights and advocacy.<sup>31</sup> Nagorik Uddyog also works to support and promote Dalit solidarity networks to facilitate civil and political participation of the community by its members.<sup>32</sup> Other than these interviews, the study also relied on secondary sources, such as academic publications, newspapers, and reports by the government, NGOs, and international organizations.

Part I of this report provides an overview of the legal framework and the landscape of access to justice with regards to Dalits in Bangladesh. Part II discusses the issue of representation in the legal profession. Part III evaluates government responses with regards to Dalit rights. Finally, the report concludes with policy recommendations and agendas for further research.

### III. Legal Institutions

The Constitution of Bangladesh was adopted in December 1972.<sup>33</sup> Articles 27, 28 and 29, and 41 of the Constitution of Bangladesh guarantee equal protection of law, prohibit discrimination based on religion, race, caste, sex, or place of birth, provide equal opportunities in public employment, and guarantee religious freedom, respectively.<sup>34</sup> Furthermore, articles 14, 28, and 29 provide for the advancement of “backward sections” with respect to the mandates of those provisions, but do not define what such measures entail.<sup>35</sup> While Bangladesh's constitution mentions “caste,” it differs from other constitutions in South Asia because it fails to recognize Dalits specifically as a class needing special protection.<sup>36</sup>

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<sup>31</sup> *Who We Are*, NAGORIK UDDYOG-THE CITIZEN'S INITIATIVE, <https://nuhr.org/what-we-do/> (last visited Apr. 25, 2021).

<sup>32</sup> *Id.*

<sup>33</sup> Ridwanul, Hoque, *The Founding and Making of Bangladesh's Constitution* in: K. YL Tan & R. Hoque, *Constitutional Foundings in South Asia*, 91-120 (Hart Publishing ed., 2021).

<sup>34</sup> *Id.* at art. 27; 28; 29; 41.

<sup>35</sup> *Id.* at art. 14; 28; 29.

<sup>36</sup> *Id.* at art. 28.

Furthermore, Bangladesh has ratified several major international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>37</sup>

Despite these constitutional guarantees, many minority groups, including Hindus, Biharis, and indigenous people, have not automatically reaped benefits of these rights, outside of intervention by the courts in some cases.<sup>38</sup> There is also a long legacy of deprivation of Hindus from land ownership through legislative measures despite the constitutional guarantees of right to own property under Article 42 of the Constitution of Bangladesh.<sup>39</sup>

Dalits in Bangladesh are subject to double discrimination from the majoritarian social contract embedded in many of the nation's laws and socio-political practices, and intragroup discrimination, making them one of the most disadvantaged groups among minorities.<sup>40</sup> These disadvantages intersect with further vulnerabilities on account of gender, for example, which makes Dalit women and children among some of the most vulnerable within an already under-privileged group.<sup>41</sup>

## IV. Civil Society, Human Rights Defenders and Access to Justice

### A. Civil Society and Human Rights Defenders

Most NGOs that focus on Dalit issues tend to address service delivery aspects, such as sanitation, education, and so on, especially given that Dalits are scattered across some of the most socioeconomically disadvantaged geographies within the country. Hence, their interaction with formal legal institutions tends to be limited.<sup>42</sup>

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<sup>37</sup> UN Treaty Body Database, *View the ratification status by country or by treaty, Ratification Status for Bangladesh*, OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=EN) (last visited Jun. 8, 2021).

<sup>38</sup> For example, the Urdu-speaking population or Biharis only acquired formal citizenship as late as 2007 through judicial intervention. *See* TAM O'NEIL ET AL., *DOING LEGAL EMPOWERMENT DIFFERENTLY: LEARNING FROM PRO-POOR LITIGATION IN BANGLADESH* 10, at 13 (ODI, Mar. 31. 2015).

<sup>39</sup> The Vested Property Act 1974 in Bangladesh provided sweeping powers to the State to appropriate property from individuals it deemed to be an enemy of the state and to become custodians with the power to own and/or dispose of such property. This law was open to abuse by the State to appropriate land (mainly) from the Hindu community as well as *Adivasis* and Christians. In 2001, following years of concerted campaigns by Hindu Bouddho Oikko Parishod (Religious minority association), the government abolished this law and replaced it with the Vested Properties Return Act of 2001 in an effort to restore these properties to the original owners or rightful heirs. However, this process has been plagued with inconsistencies in the law and bureaucratic red tape. *See generally* ABUL BARKAT ET AL., *POLITICAL ECONOMY OF THE VESTED PROPERTY ACT IN RURAL BANGLADESH* (ASS'N. FOR LAND REFORM & DEV., 1997); *see also* Pranab Kumar Pandey, *Politics of land grabbing: The vested property act and the exploitation of Hindu communities in Bangladesh*, 23 *INT'L J. ON MINORITY & GROUP RTS.* 382, 382-401 (2016).

<sup>40</sup> FARZANA ISLAM, *DALIT WOMEN IN BANGLADESH: MULTIPLE EXCLUSIONS* 35 (Nagorik Uddyog, Tara Brace-John eds., Mar. 2011), <http://www.indianet.nl/pdf/DalitWomenInBangladesh.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> Most Dalits reportedly rarely register legal issues with the police or approach the formal judicial sector. BDERM, *supra* note 12, at 10.

Accordingly, the ways in which Dalits mobilize the law are both complex and dynamic. Given the plurality of organizations working on Dalit rights, which includes organizations formed by members of the Dalit community as well as larger mainstream NGOs, there is a debate about who speaks on behalf of Dalits.<sup>43</sup> Therefore, legal mobilization with regards to Dalit rights occurs primarily through civic actors and organizations who leverage the law as a legitimating tool for political claims.

The political organization of Dalits has yet to be substantially formed, though solidarity and activist networks, such as the Bangladesh Dalit and Excluded Rights Movement (BDREM), were established with support from both domestic and international NGOs.<sup>44</sup> The BDERM platform was created following a visit from the UN Special Rapporteur of the Sub-commission—entrusted to formulate UN Draft Principles and Guidelines to Eliminate All Forms of Discrimination Based on Work and Descent in 2006—and a national consultation involving people and organizations based within the community working on Dalit issues in 2008.<sup>45</sup> Since then, the movement and the platform have grown in size and scope.<sup>46</sup> BDERM’s advocacy has secured other key gains, including the inclusion of Dalit issues in the NHRC’s five-years strategic plan, active engagement with the Universal Periodic Review Forum through the Human Rights Forum Bangladesh, and connecting with the International Dalit Solidarity Network, thereby gaining visibility and recognition at both the national and international levels.<sup>47</sup>

Other organizations working on Dalit issues include: (1) Research Initiative Bangladesh (RIB), which undertakes research on specific Dalit/marginalized communities in Bangladesh;<sup>48</sup> (2) Parittran, which works on eradicating caste and untouchability and developing sustainable economic activities for Dalits through a broad range of activities, including providing legal assistance, raising awareness of Dalits at the local, national, and international level, and so on;<sup>49</sup> (3) Bangladesh Harijan Oaikko Parishod (BHOP), which organizes urban Dalit communities and negotiates with municipalities on employment issues; and (4) other women led organizations, such as Ovijaan.<sup>50</sup>

These networks of Dalit organizations tend to work within a framework of advocating for rights through institutional channels (including litigation) and participating in international forums. Many of the smaller organizations, on the other hand, usually operate in coalitions or with support from larger, mainstream NGOs. For example, Nagorik Uddyog,<sup>51</sup> which is based in the capital

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<sup>43</sup> *Id.*

<sup>44</sup> *Bangladesh Dalit and excluded rights movement*, INT’L DALIT SOLIDARITY NETWORK (Jan. 2015), <https://idsn.org/wp-content/uploads/2015/01/2009-Bangladesh.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> “Solidarity, growth and action are the keywords that characterise the work of BDERM in 2010.” *Bangladesh Dalit and excluded rights movement*, INT’L DALIT SOLIDARITY NETWORK (Jan. 2010), <https://idsn.org/wp-content/uploads/2015/01/2010-Bangladesh.pdf>.

<sup>47</sup> ISLAM & PARVEZ, *supra* note 7, at 27.

<sup>48</sup> *About RIB*, RESEARCH INITIATIVES, BANGLADESH (RIB), [https://www.rib-bangladesh.org/index.php?option=com\\_content&view=article&id=68&Itemid=53](https://www.rib-bangladesh.org/index.php?option=com_content&view=article&id=68&Itemid=53) (last visited Jun. 8, 2021).

<sup>49</sup> *Who We Are*, PARITTRAN, <http://parittran.org/who-we-are/> (last visited Jun. 8, 2021).

<sup>50</sup> Islam, *supra* note 40, at 29.

<sup>51</sup> *Who We Are*, *supra* note 31.

city, was instrumental in initiating and working alongside BDERM to host pertinent events.<sup>52</sup> Nagorik Uddyog and BDERM founded the Dalit and Excluded Women's Federation (DEWF) with member organizations across the country that work on Dalit women's leadership and skills training.<sup>53</sup> Other examples of collaborative organizational efforts include: (1) the Bangladesh Dalit Parishad, which was a network initiated by Parittran and funded by Manusher Jonno Foundation (one of the largest national NGOs) and other international donors; and (2) Friends Association for Integrated Revolution (FAIR), which began on the basis of RIB's research on sweeper communities and works on advocacy, mobilization, and research on Dalit issues.<sup>54</sup>

All of the respondents interviewed for this report acknowledged that local government officials and police offices often act as stumbling blocks to progress for the Dalit community. Yet, these same institutions have offered concessions in the past in response to protests when CSOs and rights defenders were able to organize.<sup>55</sup> One example is that through the combined advocacy of these Dalit rights organizations, the NHRC and Law Commission of Bangladesh has drafted an Anti-Discrimination bill,<sup>56</sup> which is currently under review by the government.<sup>57</sup>

Despite instances like this, organizing around a group identity to make political claims for resources or rights is fraught with tensions for minorities, including Dalits, in Bangladesh. Groups, such as Harijan and Antaj, which may be broadly categorized as Dalit, prefer different names based on their historical and political backgrounds.<sup>58</sup> There are also sub-castes within these identities and often internal discrimination is prevalent.<sup>59</sup> Nevertheless, "Dalit," as an umbrella term, is commonly used in the rights discourse in Bangladesh, partly due to the successful internationalization and mobilization of Dalit issues in India and Nepal. In addition to terminology, there are also debates about ownership of the rights movement,<sup>60</sup> highlighted by the absence of women Dalit spokespersons.<sup>61</sup>

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<sup>52</sup> *Bangladesh Dalit and excluded rights movement*, INT'L DALIT SOLIDARITY NETWORK (Jan. 2009), <https://idsn.org/wp-content/uploads/2015/01/2009-Bangladesh.pdf>.

<sup>53</sup> *Short Profile of Bangladesh Dalit and Excluded Women's Federation*, INT'L DALIT SOLIDARITY NETWORK (Jan. 29, 2015), [https://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/Bangladesh/BDEWF\\_Brochure-English.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Bangladesh/BDEWF_Brochure-English.pdf)

<sup>54</sup> ISLAM & PARVEZ, *supra* note 7, at 28.

<sup>55</sup> Habiba Sultana & D.B. Subedi, *Caste System and Resistance: The Case of Untouchable Hindu Sweepers in Bangladesh*, 29 INT'L J. OF POL., CULTURE, & SOC'Y 19, 29 (2016).

<sup>56</sup> THE SOUTH ASIA COLLECTIVE, SOUTH ASIA STATE OF MINORITIES REPORT 2020: MINORITIES AND SHRINKING CIVIC SPACE, 44 (U.S. Dep't of Just. Nov. 2020).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 33. For example, all Harijans are Dalits but not all Dalits are Harijans due to numerous sub-castes within this group. Among the Muslim Community, there is extraordinarily little acknowledgement of intragroup discrimination or practices of untouchability and many perceive it as a cultural practice related to Hinduism. It is also reported that some Christian Churches and church-oriented organizations focus on proselytization and conversion and may not always be willing to support non-Christian (converted) Dalits.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Though there are exceptions, which includes, for example, Ovijaan, which is led by Banani Biswas. *See Enact law against caste-based discrimination*, THE DAILY STAR (Dec. 5, 2009), <https://www.thedailystar.net/news-detail-116626>

## B. Access to Justice and Legal Mobilization

Access to legal institutions and legal representation in Bangladesh is generally marked by precarity and constraints.<sup>62</sup> Therefore, minority and other disadvantaged sections of the populace face significant barriers to accessing justice in Bangladesh. The formal justice system is marked by delays,<sup>63</sup> prohibitive cost of litigation, corruption, and little protection for litigants from impoverished backgrounds due to the absence of any witness protection facilities.<sup>64</sup> Few can afford to engage in litigation, and when they do, it tends to be on account of resources, wealth, and political connections.<sup>65</sup> The risks associated with costs consequently cause many to resort to unofficial control systems, such as informal justice mechanisms.<sup>66</sup>

However, the bridge between formal and informal justice systems and the decision to opt for one, other, or both, are often facilitated by Bangladesh's vibrant NGOs,<sup>67</sup> which are described above. Legal services NGOs, such as Ain O Shalish Kendra (ASK), Madaripur Legal Aid Association, and Bangladesh Legal Aid and Services Trust (BLAST), have steadily grown in Bangladesh since the seventies and cater to a variety of issues, including those affecting minority rights.<sup>68</sup>

Decisions by Dalit rights advocates to organize effectively will depend on certain factors, including resources available to them and a critical mass of such advocates from the community itself that recognizes the value of mobilizing the law. As Dalits are heterogeneous with regards to sub-caste categories or socio-economic class, some of the NGOs and these steadily growing Dalit movements may believe in the legitimacy of law and legal processes to further their rights.<sup>69</sup> Still, those from extremely marginalized communities due to social, political, and economic pressures or from the vantage-point of their lived experiences may view the law with skepticism.<sup>70</sup> For example, when asked about challenges for access to justice for Dalits, one respondent replied:

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<sup>62</sup>See SIDDIQUR RAHAMAN ET AL., FINAL REPORT: AN ETHNOGRAPHIC JOURNEY THROUGH THE LIVES OF URBAN DALITS IN BANGLADESH 4 (Jahangrinager Uni. Nov. 14, 2016) <https://bdplatform4sdgs.net/wp-content/uploads/2016/08/An-Ethnographic-Journey-Through-the-Lives-of-Urban-Dalits-in-Bangladesh.pdf> (“They have no representation in local power structure. For dispute resolution they seek justice from their own political organization named Mondol.”).

<sup>63</sup> Reportedly 3.7 million cases are pending in Bangladeshi courts. See Mizanur Rahman, *3.7 million cases in Bangladesh courts*, DHAKA TRIBUNE (Jul. 16, 2020), <https://www.dhakatribune.com/bangladesh/court/2020/07/16/bangladesh-s-courts-collectively-have-36-84-728-case-backlogs>.

<sup>64</sup> KAUNAIN RAHMAN, BANGLADESH: OVERVIEW OF CORRUPTION AND ANTI-CORRUPTION EFFORTS 10 (Transparency Int'l Feb. 15, 2019), <https://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-bangladesh-2019.pdf>.

<sup>65</sup> Marc Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95, 95 (1974).

<sup>66</sup> Rahaman, *supra* note 62. (“They have no representation in local power structure. For dispute resolution they seek justice from their own political organization named Mondol.”).

<sup>67</sup> RELIEF WEB, INFORMAL JUSTICE SYSTEMS: CHARTING A COURSE FOR HUMAN-RIGHTS BASED ENGAGEMENT (ReliefWeb, SEPT. 16, 2012), <https://reliefweb.int/report/world/informal-justice-systems-charting-course-human-rights-based-engagement>.

<sup>68</sup> Farid, *supra* note 29, at 421.

<sup>69</sup> Interview with Dalit rights CSO representative, in Barisal District, Bangl. (Mar. 7, 2021).

<sup>70</sup> Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. SOC. SCI. 323, 337 (2005).

*“I think that the biggest reason behind the Dalit not getting proper justice is their lack of awareness and initiative. Second, there are very few people who are willing to talk on behalf of the Dalit. Third, the people who are against the Dalit are all powerful and/or influential and a part of the majority. Fourth, the Dalit neither have the time nor the financial independence to run cases in our legal system.”<sup>71</sup>*

Many of these organizations, activists and human rights defenders are not always effectively trained in the law.<sup>72</sup> All the CSOs and activists interviewed for this report acknowledged the importance of further training to address limits for Dalits to access justice. The respondents also asserted that collaboration with lawyers in local bar associations would also help address this issue.

The choice to opt for legal mobilization (construed broadly to include advocacy, lobbying, and litigation) is usually strategic, though its efficacy is not always guaranteed.<sup>73</sup> Yet there are organizations committed to strategic litigation to protect the rights of the Dalit community. Strategic litigation by legal services and land rights organizations, such as BLAST and the Association for Land Reform and Development, have resulted in interim remedies with regards to vested properties for Hindus in general. This resulted in disallowing the government from imposing a time limit on Hindus claiming properties for themselves, as many among the historically disadvantaged minority population may not be able to claim the property within the stipulated time.<sup>74</sup> The case, however, is pending final decision, and while a positive outcome will secure gains for Hindu minority communities in general, it may not translate to remedies for Dalits, as few Dalits have historically owned properties.

In most cases, people avoid the formal justice system and opt for local justice systems, which take a number of forms.<sup>75</sup> One may approach the village courts, which are authorized by statute to deal with petty offences and disputes and, over which the chairperson of the local administrative unit, known as the union, presides.<sup>76</sup> The parties typically represent themselves and there are no lawyers involved in the process.<sup>77</sup> In some cases, local government representatives, other than at the union level, local influential persons, or elders, and/or NGO representatives, may informally mediate through what is known as *Shalish*.<sup>78</sup> Many Dalit communities also subscribe to an internal

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<sup>71</sup> Interview with Dalit rights CSO representative, in Dhaka District, Bangl. (Mar. 4, 2021).

<sup>72</sup> Interview with Dalit rights CSO representative, in Kurigram District, Bangl. (Mar. 11, 2021).

<sup>73</sup> See generally Cynthia Farid, Tam O’Neil, Craig Valters, *supra* note 38.

<sup>74</sup> *Property Right of Religious Minorities*, BANGLADESH LEGAL AID AND SERVICES TR., <https://www.blast.org.bd/issues/justice/489> (last visited Apr. 30, 2021).

<sup>75</sup> One of the CSO representatives interviewed specifically made this claim in relation to Dalits. See Interview with CSO in Kurigram District, Bangl. (Mar. 11, 2021); see also Mohammad Tarikul Islam, *Rural dispute resolution in Bangladesh: how do village courts safeguard justice?*, 27 CONTEMP. S. ASIA 58, 58 (Jan. 26, 2019).

<sup>76</sup> Bangladesh Code, The Village Courts Act, 2006 (Act no. IXX of 2006).

<sup>77</sup> “The fee associated with Village Courts is extremely low, and parties are not allowed to be legally represented.” Christopher Finnigan, *Rural law courts: Local justice in Bangladesh*, SOUTH ASIA BLOG LSE, (Feb. 26, 2019) <https://blogs.lse.ac.uk/southasia/2019/02/26/rural-law-courts-local-justice-in-bangladesh/>.

<sup>78</sup> Stephen Golub, *The Political Economy of Improving Traditional Justice Systems: A Case Study of NGO Engagement with Shalish in Bangladesh*, 4 WORLD BANK LEGAL REV. 67, 81 (2013).

*Panchayat* system, which allows a group of elders (usually men) to make decisions on behalf of the whole community.<sup>79</sup>

These informal processes, however, replicate social and local power structures, and can reinforce biases against underprivileged groups such as Dalits, and Dalit women in particular.<sup>80</sup> Women may not always be able to voice their concerns or are silenced.<sup>81</sup> Women are especially vulnerable when it comes to their right to property, reproductive health, the possibility of early marriage, dowry, and the lack of financial independence.<sup>82</sup> In cases of gender-based violence, it is common that “law enforcement agencies often fail to seriously consider cases,” and in one example nearly no action was taken for two years in response to a 12 year old Dalit girl being raped and murdered despite the victim’s family promptly lodging a complaint with the police.<sup>83</sup> Additionally, in that case, the victim’s family reported experiencing “continuous threats from the accused which were intensified by the fact that the perpetrator is the relative of a local influential political leader.”<sup>84</sup> Addressing these issues require not only overcoming constraints with regards to access to justice but also overcoming patriarchy. Legal intervention may occasionally address some of these problems when reported but in many cases, incidents of violation of women’s rights, early marriage, and dowry are normalized and accepted.<sup>85</sup> These problems are compounded by Bangladesh’s personal laws governing inheritance, marriage, separation, and divorce, which set out separate rules for Muslims, Hindus, and Christians.<sup>86</sup> These laws are in need of reform as they continue to perpetuate various types of discrimination including, for example, limited rights of divorce in some cases under Hindu Law.<sup>87</sup>

Some groups of Dalits, such as tea workers, lack access to both formal and informal systems of justice.<sup>88</sup> Tea workers, who are predominantly Dalits, are especially vulnerable as tea estates where they are employed tend to be not only cut off from the formal justice system due to tea estates’ distance and remote locations, but also the fact that workers are at the mercy of the corporate administration that employs them.<sup>89</sup> Any grievance related to wages, employment, or living

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<sup>79</sup> ISLAM & PARVEZ, *supra* note 7, at 25.

<sup>80</sup> Kristina Lugo & Elizabeth A.M. Seering, *The impact of situational factors on forum choice and criminal justice system development in Bangladesh*, 29 EMORY INT’L L. REV. 327, 335 (2014).

<sup>81</sup> *Id.*

<sup>82</sup> Afsana Binte Amin et al., *Dalit Women in Bangladesh: Access to Economic Rights, Focus on Land, Higher Education and Employable Skills for Livelihood Bangladesh Country Report*, NAGORIK UDDYOG 12 (Dec. 2017), [https://idsn.org/wp-content/uploads/2018/12/Country-Report\\_Dalit-Women-in-Bangladesh2938.pdf](https://idsn.org/wp-content/uploads/2018/12/Country-Report_Dalit-Women-in-Bangladesh2938.pdf).

<sup>83</sup> BANGLADESH DALIT AND EXCLUDED RIGHTS MOVEMENT AND INTERNATIONAL DALIT SOLIDARITY NETWORK, *Discrimination Against Dalit Women in Bangladesh*, Alternative Report to the 65th session of the U.N. Commission on the Elimination of Discrimination Against Women, Oct. 2016, at 9,

[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BGD/INT\\_CEDAW\\_NGO\\_BGD\\_25431\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BGD/INT_CEDAW_NGO_BGD_25431_E.pdf).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Bangladesh: Discriminatory Family Laws Fuel Female Poverty*, HUMAN RIGHTS WATCH (Sept. 16, 2012, 11:50 PM EDT) <https://www.hrw.org/news/2012/09/16/bangladesh-discriminatory-family-laws-fuel-female-poverty#>.

<sup>87</sup> *See generally* FAUSTINA PEREIRA ET AL., *REVISITING PERSONAL LAWS IN BANGLADESH: PROPOSALS FOR REFORM* (Leiden et al. 2019).

<sup>88</sup> Interview with CSO representative and Activist in Mouovibazar District, Bengl. (Mar. 9, 2021).

<sup>89</sup> *Id.*



conditions are frequently ignored and often brutally repressed, though collective action and protests have secured marginal gains in recent years.<sup>90</sup>

With regards to the formal justice system, all 9 CSO and activist group representatives that were interviewed identified the police as one of the primary hurdles in accessing legal institutions.<sup>91</sup> Issues that typically generate violence or criminal offences against Dalits requiring recourse to the criminal justice system include untouchability, violence against Dalit women and girls, land-grabbing, torture, and destruction of livelihood (usually by powerful vested interests).<sup>92</sup> As explained by Professor Khan Ferdousour Rahman, Dalits “generally do not get equal treatment and legal protection when a crime is committed against them, as most cases are settled or negotiated through informal authorities often arbitrarily or on a discriminatory basis.”<sup>93</sup> In most instances, the police refuse to take cases seriously if they come from marginalized populations, including Dalits.<sup>94</sup> The cases which do make it to the formal justice system are often settled out of court through mediation by local leaders, influential persons, and even the police.<sup>95</sup> Sometimes, these cases are buried by providing compensation or other socially sanctioned “redress” for the victims, even though this compensation process is prohibited for non-compoundable, or serious, criminal offences, such as grievous hurt.<sup>96</sup>

If and when a case is initiated, Dalit clients—who lack legal literacy—can be perplexed by the complexity of the legal process.<sup>97</sup> Many Dalits also have trouble trusting lawyers due to a combination of factors. For instance, the life cycle of a case from the time a complaint is filed to the time the case is actually resolved can be long and expensive. Additionally, members of the Dalit community may, due to their legal illiteracy and inability to afford costs associated with litigation, fall prey to middlemen and others who take undue advantage of their unfamiliarity with court processes.<sup>98</sup> In rural areas, the distance between villages and the courts compounded with the lack of adequate and affordable transportation systems also add another layer of complexity and set of expenses to the already high litigation costs.<sup>99</sup>

In most cases, Dalits would prefer not to pursue formal legal avenues; when they do take formal legal action, they are often supported by an NGO or another legal aid organization.<sup>100</sup> Even with

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<sup>90</sup> Chaumtoli Huq, *Charting Global Economic Inequalities And Emancipatory Human Rights Responses From the Ground Up: The Tea Workers' Movement of Bangladesh*, 52 COLUM. HUM. RTS. L. REV. 372, 394 (2020).

<sup>91</sup> Interviews with CSOs, in Jessore, Khulna, Jessore, Dhaka, Satkhira, Barisal, Moulvibazar, Kurigram, and Dhaka, Bangl. (Feb. 18, 28; Mar. 1, 4, 6, 7, 9, 11, 12, 2021).

<sup>92</sup> Bangladesh Dalit and Excluded Rts. Movement, *supra* note 23, at 9.

<sup>93</sup> Khan Ferdousour Rahman, *The Dalits in Bangladesh*, DAILY STAR (Jan. 19, 2016, 12:00 AM) <https://www.thedailystar.net/law-our-rights/rights-advocacy/the-dalits-bangladesh-203845>.

<sup>94</sup> Interview with a [redacted] lawyer, in [redacted] district, Bangl. (Mar. 11, 2021).

<sup>95</sup> Interview with CSO representative from Dhaka District, Bangl. (Mar. 4, 2021).

<sup>96</sup> See The Code of Criminal Procedure (Act No. V/1898) (Bangl.) (enumerating a list of compoundable offences); see also Taqbir Huda & Abdullah Anbar Titir, *Conference Report: Rape Law Reform In Bangladesh*, BANGL. LEGAL AID & SERV. TR., 19 (Dec. 8, 2019), <https://www.blast.org.bd/content/publications/BLAST-RLR-Conference-Report.pdf>.

<sup>97</sup> Interview with Dalit Lawyer from Chittagong District, Bangl. (Feb. 24, 2021).

<sup>98</sup> *Id.*

<sup>99</sup> SHAHDEEN MALIK, *Access to Justice in Bangladesh: A Truncated View from Bangladesh*, in COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: TOWARD AN AGENDA FOR A JUST AND EQUITABLE SOCIETY IN THE 21ST CENTURY 93 (Rudolf V. Van Puymbroeck ed., The World Bank 2001).

<sup>100</sup> See Lugo, *supra* note 80, at 327; see also Farid, *supra* note 29.

such support, most members of the Dalit community lack the confidence to deal with local elites, such as government officials, police officers, lawyers, court staff, and judges.<sup>101</sup> In most cases, the relationship between the poor and local power-holders and influential actors is likely to be one defined by hierarchy and subordination.<sup>102</sup> Depending on the type of case in question, there is generally a confluence of political and powerful interests that affect the outcome of cases as well.

The eight lawyers who have been interviewed pointed to similar problems regarding access to justice. According to one assessment, indigent clients typically turn to the formal legal system after exhausting all other informal avenues.<sup>103</sup> Moreover, by the time these clients find a lawyer willing to fight for them, it may already be too late if the initial police investigation was flawed or if the client already acted upon poor legal advice.<sup>104</sup> Additionally, the slow speed of the court system often frustrates clients, and many give up on chasing cases through the formal system.<sup>105</sup> Six lawyers from the Dalit community that were interviewed confirmed that they charge nominal fees (court fees and essential costs) to clients from their own communities. This also appears to be the standard practice for clients from other minority communities.<sup>106</sup> In some cases, especially in criminal matters, lawyers refer clients to legal services NGOs such as BLAST or ASK. The government legal aid service in districts is slow and cumbersome. Thus, on many occasions, NGOs or socially inclined lawyers ultimately assist clients in these types of cases.<sup>107</sup>

## V. Representation in the Legal Profession

The legal profession in Bangladesh consists of approximately 44,704 lawyers, 1,700 judicial officers in subordinate courts, and 100 judges in the Supreme Court.<sup>108</sup> The Bangladesh Bar Council is a statutory body that is responsible for regulating various aspects of the legal profession, including the enrollment and discipline of lawyers, among other things.<sup>109</sup> Local Bar Associations hold annual elections for their governing members, while all enrolled and registered lawyers nationwide are invited to vote for Bar Council members every three years.<sup>110</sup> The Attorney General is the *ex officio* Chairman of the Bar Council, but all the Council's other posts (such as the Vice-Chairman) are elected positions.<sup>111</sup>

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<sup>101</sup> Interview with a Dalit Lawyer, in Khulna District, Bangladesh (Mar. 12, 2021).

<sup>102</sup> See *Generally* DAVID LEWIS & ABUL HOSSAIN, REVISITING THE LOCAL POWER STRUCTURE IN BANGLADESH: ECONOMIC GAIN, POLITICAL PAIN? (Sida/LSE, 2017).

<sup>103</sup> Interview with a Dalit Lawyer, in Khulna District, Bangl. (Mar. 12, 2021).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Interview with a lawyer from the Urdu-speaking Community, in Dhaka District, Bangl. (Mar. 11, 2021); Interviews with lawyers from the Adivasi Community, in Rangamati District, Bangl. (Apr. 11, 2021).

<sup>107</sup> Farid, *supra* note 29, at 421.

<sup>108</sup> Information collected from the Bangladesh Bar Council through Advocate Z.I. Khan, former member of the Human Rights Committee, Bangladesh Bar Council and Sohel Ahmed, District Judge, VAT & Customs Tribunal, Dhaka on 04.07.21. This information was not readily available or published and therefore, needed to be collected through key contacts.

<sup>109</sup> BANGLADESH BAR COUNCIL, <https://www.barcouncil.gov.bd/> (last visited June 8, 2021).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

There is currently no published disaggregated data reflecting what percentage of lawyers and judges in Bangladesh are from a minority population, let alone the further stratification within this group. Bangladesh appointed its first and only Hindu Chief Justice in 2015 and does have some representation of Hindu judges in the judiciary.<sup>112</sup> Similarly, the bar has members belonging to the Hindu community, but there is no disaggregated data available to understand what percentage of lawyers belong to the Hindu community.

Eight out of the nine CSO representatives, activists and human rights defenders emphatically suggested that the Dalit community is inadequately served by the local government on services related to the justice sector,<sup>113</sup> as described above. Therefore, political representation of Dalits at the local level and in the parliament are important as such representation would inculcate a deeper understanding of and advocacy for minority issues.<sup>114</sup> All the respondents from the bar and the CSOs identified the lack of representation of Dalits in local government and in the legal profession as some of the obstacles to legal empowerment and access to justice. One lawyer who also practices in the Supreme Court specifically suggested:

*“If there was a reserved quota for Dalit and marginalized communities in the Bar Council rules and regulations for becoming lawyers, it would benefit the community greatly.”<sup>115</sup>*

The national Bar Council and local Bar Associations also do not have any quotas for Dalits or other minorities.<sup>116</sup> However, the legal profession appears to have been a source of social mobility for some of the respondents. One of the respondents, a Dalit lawyer, in a rural district shared his story of joining the legal profession:

*“My father was a cobbler by profession—he used to repair shoes. I am the first in family to have joined this profession and the first and only lawyer from the Dalit community...”<sup>117</sup>*

All eight lawyer-respondents reported facing no institutional barriers to entry into the profession from the Bar Council or their local bar association. However, some respondents did point out incidents of microaggression at the Bar from colleagues as well as discrimination in the viva voce

<sup>112</sup> See 2018 JUDGES OF THE SUPREME COURT OF BANGLADESH APPELLATE DIVISION, <http://supremecourt.gov.bd/scdoc/#page/270> (last visited June 8, 2011) (providing a list of Supreme Court judges); see also BANGLADESH APPOINTS SURENDRA KUMAR SINHA AS NEW CHIEF JUSTICE, <https://economictimes.indiatimes.com/news/international/world-news/bangladesh-appoints-surendra-kumar-sinha-as-new-chief-justice/articleshow/45852712.cms?from=mdr> (last updated Jan, 2015, 5:09 PM).

<sup>113</sup> For example, one lawyer suggested that local government officials typically do not cooperate when citizens seek their services. See Interview with Dalit rights representative, in Kurigram District, Bangl. (Mar. 11, 2021); see also Interviews with CSOs on Feb. 18 and 28, Mar. 1, 4, 6, 7, 9, 11 and 12, 2021, *supra* note 91.

<sup>114</sup> Interview with Dalit lawyer, in Dhaka District, Bengl. (Feb. 26, 2021).

<sup>115</sup> *Id.*

<sup>116</sup> There are no official rules or regulations of the Bar Council that refer to any such measures. See BANGLADESH BAR COUNCIL, *The Bangladesh Legal Practitioners and Bar Council Order and Rules, 1972 as Amended Up-to October 2013*, <https://www.barcouncil.gov.bd/bar-council-order-rules/> (last visited Jun. 23, 2021).

<sup>117</sup> Interview with Dalit lawyer, from a district court [identity anonymized] (Feb. 27, 2021).

examinations at the local bar association.<sup>118</sup> Other respondents also claimed to have experienced intragroup discrimination from Hindu colleagues from upper castes.<sup>119</sup> Additionally, others showed little confidence about their prospects for running and succeeding in local bar association or Bar Council elections.<sup>120</sup>

The initial years of working with a senior lawyer as an apprentice, as is required under the Bar Council regulations until one is properly enrolled in both trial courts and the High Court Division of the Supreme Court, is generally costly.<sup>121</sup> For any lawyer coming from historically disadvantaged community, it is difficult to sustain him or herself without family or other financial support. As a result, some Dalits opt out of the profession after earning their law degree or return to enroll as a lawyer if and when they can afford to be in the law profession.<sup>122</sup> Regardless of these difficulties, there was a general recognition among all the respondents that the law and the legal profession were useful to marginalized communities such as Dalits because the profession offers Dalits necessary tools to assert their rights and to facilitate their social mobility. However, representation in the legal community alone would be insufficient to fully address the discrimination Dalits face, which would also require both political will and the implementation of anti-discrimination measures from the state.

## VI. Government Response and Anti-Discrimination Measures

While equal rights are constitutionally guaranteed in Bangladesh, this right does not automatically translate into greater access for Dalits.<sup>123</sup> Bangladesh has a reasonably dynamic rights discourse and a fairly responsive and an often activist Supreme Court on social justice issues.<sup>124</sup> However, there is no reserved quota for Hindus in the Bangladeshi civil service; though in recent years, Hindu representation has increased in some posts.<sup>125</sup> Some public universities have also recently initiated affirmative action policies in recent years.<sup>126</sup>

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<sup>118</sup> Interview with Dalit lawyer, in Chittagong District, Bangl. (Feb. 24, 2021).

<sup>119</sup> Interviews with Dalit lawyers, in Khulna District, Bengl. (Mar. 7, 2021; Mar. 12, 2021); Interviews with Dalit lawyers, in Chittagong District, Bengl. (Feb. 24, 2021).

<sup>120</sup> Interviews with Dalit lawyers, in Chittagong District, Bangl. (Feb. 24, 2021); Interviews with Dalit lawyers, in Rangpur District, Bangl. (Feb. 27, 2021); Interviews with Dalit lawyers, in Khulna District, Bangl. (Mar. 12, 2021).

<sup>121</sup> Farid, *supra* note 29, at 421; *see also* Cynthia Farid, *Legal Scholactivists in the Third World: Between Ambition, Altruism and Access*, 33 THE WINDSOR YEARBOOK ACCESS TO JUST. 57, 78 (2016).

<sup>122</sup> Interview with Dalit lawyer, in Chittagong District, Bangl. (Feb. 24, 2021); Interview with an *Adivasi* lawyer, in Rangamati District, Bengl. (Apr. 11, 2021).

<sup>123</sup> *See* Articles 14, 27-29 and 41 of the Constitution of Bangladesh, which promote equal protection of law and advancement of “backward” communities. The Constitution also includes certain affirmative action policies, such as those of reserved seats for women in Parliament (Article 65), though no specific measures are targeted specifically at assisting Dalits and/or minorities. *See* the Constitution of the People’s Republic of Bangladesh, *supra* note 11.

<sup>124</sup> RIDWANUL HOQUE, JUDICIAL ACTIVISM IN BANGLADESH: A GOLDEN MEAN APPROACH, 102 (2011).

<sup>125</sup> Barisal-Comilla dominance in public administration (*Bangla*), PROTHOMALO (Mar. 9, 2014, 9:10 AM), <https://www.prothomalo.com/bangladesh/%E0%A6%9C%E0%A6%A8%E0%A6%AA%E0%A7%8D%E0%A6%B0%E0%A6%B6%E0%A6%BE%E0%A6%B8%E0%A6%A8%E0%A7%87-%E0%A6%AC%E0%A6%B0%E0%A6%BF%E0%A6%B6%E0%A6%BE%E0%A6%B2-%E0%A6%95%E0%A7%81%E0%A6%AE%E0%A6%BF%E0%A6%B2%E0%A7%8D%E0%A6%B2%E0%A6%BE%E0%A6%B0-%E0%A6%AA%E0%A7%8D%E0%A6%B0%E0%A6%BE%E0%A6%A7%E0%A6%BE%E0%A6%A8%E0%A7%8D%E0%A6%AF>.

<sup>126</sup> BDERM & NAGORIK UDDYOG, *supra* note 12.

As it relates to the justice sector, the government of Bangladesh has developed agendas with partners such as the World Bank and the United Nations Development Programme (UNDP) since at least 2008, which have put in place technical solutions in the form of legal aid architecture, but these are lacking in several respects. A centralized National Legal Aid Services Organization and District Legal Aid Committees (DLAC) have been created, which are responsible for disbursing government-allocated funds for legal aid.<sup>127</sup> However, these DLACs are under-utilized and the criterion for appointing lawyers has been argued to be generally ineffective for securing competent practitioners.<sup>128</sup> The scheme uses lawyers in private practice, who are paid for their services according to stipulated and fairly low tariffs, which inevitably means that only the less experienced or less successful lawyers are available and willing to work for such levels of compensation, though NGO linkages often make up for the deficit in state legal aid services.<sup>129</sup>

Additionally, the National Human Rights Commission has been entrusted with the oversight of, among other things, minority rights including that of Dalits.<sup>130</sup> Interviews with two representatives in key senior positions in the Law Commission and the National Human Rights Commission reveal, however, that a rights framework within an institution alone is seldom sufficient to actualize its mandate.<sup>131</sup> Both official respondents state that institutional measures like formal committees to oversee Dalit rights and the allocation of funds for Dalit communities would be necessary to address the lack of access to justice for Dalits and other aspects of minority rights.<sup>132</sup> These respondents also thought that setting up a separate commission or tribunal for Dalits was unnecessary in Bangladesh as the NHRC was already mandated to oversee these issues.<sup>133</sup> However, the NHRC does not have the requisite autonomy with regards to operation and budget to independently challenge human rights violations by the state.<sup>134</sup>

There has been little progress in enacting an Anti-Discrimination Bill that has been submitted to the Ministry of Law by the Law Commission in 2015.<sup>135</sup> This law, if enacted, will address discrimination against any individual and community and prohibit discrimination on grounds of religion, race, culture, occupation, sexual orientation, or ethnicity.<sup>136</sup> The draft Bill was reportedly sent to the NHRC for revisions in 2018, which was then sent back to the Law Ministry without any response to date.<sup>137</sup> Rights groups have claimed that anti-discrimination legislation is essential

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<sup>127</sup> Akter, *supra* note 30, at 257-275.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> NAT'L HUM. RTS. COMM'N, *Bangladesh Report to the UN Committee on Economic, Social and Cultural Rights*, 7 (Feb. 2018), <https://www.ecoi.net/en/document/1428144.html>.

<sup>131</sup> Interview with [redacted] official from the [redacted] Commission (Mar. 1, 2021); Interview with a [redacted] official from the [redacted] Commission (Feb. 27, 2021).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *The Belief that NHRC Carries the Voice of the Masses Has Been Shaken*, THE DAILY STAR (Dec. 9, 2020 12:52 PM), <https://www.thedailystar.net/law-our-rights/news/the-belief-nhrc-carries-the-voice-the-masses-has-been-shaken-2007725>.

<sup>135</sup> THE SOUTH ASIA COLLECTIVE, *supra* note 56.

<sup>136</sup> Naimul Karim, *How Effective Will the Anti-Discrimination Law Be?*, THE DAILY STAR (Oct. 20, 2017 2:12 PM), <https://www.thedailystar.net/star-weekend/human-rights/how-effective-will-the-anti-discrimination-law-be-1478878>.

<sup>137</sup> *Id.*

for asserting the rights and to enhance institutional access of the Dalit community.<sup>138</sup> Though a copy of the bill could not be obtained for the purposes of this report, all non-official respondents as well as secondary sources such as NGO reports consulted have emphasized the importance and utility of this bill for the protection of Dalit rights.

The general landscape of politics and governance in Bangladesh poses further obstacles to the realization of minority rights. Politics in Bangladesh is often confrontational and state-society relations are marked by patron-client relations.<sup>139</sup> Power has generally alternated between two parties, the Awami League and the Bangladesh Nationalist Party. In recent years, Bangladesh has been operating under the control of the Awami League, which some scholars have classified as a hybrid regime.<sup>140</sup> Although the number of electoral candidates<sup>141</sup> as well as representation of minorities in the civil service have increased under the current Awami League government, it is unclear whether Dalits have specifically benefitted from these initiatives.

As Dalits are one of the most disadvantaged groups among minorities, they are generally affected by single-party governance, which in turn, adversely impacts political participation and engenders political favoritism. The issue with property rights of minorities is a case in point. In general, human rights organizations and CSOs continue to report “property and land ownership disputes and forced evictions, including by the government.”<sup>142</sup> Local police, civil authorities, and political leaders are known to enable property appropriation for financial gain or shield such appropriators from prosecution.<sup>143</sup> Government officials tasked with reviewing claims for the return of vested properties reportedly denied around 70% of those claims “even when required documentation was in order, or were classifying properties as state-owned and therefore not eligible for return.”<sup>144</sup> While the government may not have disfavored minorities or may have even pledged improvements to their conditions, structural conditions such as an inefficient and allegedly discriminatory police, judicial and land registry system as well as democratic deficits in local power structures are barriers to accessing justice for minorities who lack the requisite political and financial clout to overcome them.<sup>145</sup>

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<sup>138</sup> BDERM & NAGORIK UDDYOG, *supra* note 12, at 4.

<sup>139</sup> David Lewis & Abul Hossain, *Local Political Consolidation in Bangladesh: Power, Informality and Patronage*, DEV. & CHANGE, 1; 3 (2019).

<sup>140</sup> ALI RIAZ, VOTING IN A HYBRID REGIME: EXPLAINING THE 2018 BANGLADESHI ELECTION 5 (2019).

<sup>141</sup> এবার সবচেয়ে বেশি সংখ্যালঘু প্রার্থী, PROTHOMALO, (Dec. 26, 2017),

<https://www.prothomalo.com/bangladesh/%E0%A6%8F%E0%A6%AC%E0%A6%BE%E0%A6%B0-%E0%A6%B8%E0%A6%AC%E0%A6%9A%E0%A7%87%E0%A7%9F%E0%A7%87-%E0%A6%AC%E0%A7%87%E0%A6%B6%E0%A6%BF-%E0%A6%B8%E0%A6%82%E0%A6%96%E0%A7%8D%E0%A6%AF%E0%A6%BE%E0%A6%B2%E0%A6%98%E0%A7%81-%E0%A6%AA%E0%A7%8D%E0%A6%B0%E0%A6%BE%E0%A6%B0%E0%A7%8D%E0%A6%A5%E0%A7%80>

<sup>142</sup> U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *2019 Report on International Religious Freedom: Bangladesh*, 8-9 (2019).

<sup>143</sup> *Id.*

<sup>144</sup> Australian Gov’t, Dep’t of Foreign Affs. & Trade, *DFAT Country Information Report Bangladesh*, 22 (2019), <https://www.dfat.gov.au/sites/default/files/country-information-report-bangladesh.pdf>.

<sup>145</sup> See Chowdhury, *supra* note 22.

An additional challenge for Dalits has been the introduction of restrictive and stringent legal measures. These include changes to the regulatory landscape of NGOs that have significantly curtailed their autonomy; and the Digital Security Act of 2018 that provides sweeping powers to the government to restrict free speech, including the right to arrest without warrant in some cases.<sup>146</sup> Under the Foreign Donations (Voluntary Activities) Regulation Act 2016, the NGO Affairs Bureau (which is the regulatory authority for NGOs) has been granted broad powers to regulate NGO activities, including requiring prior approval for all activities including international travel; requiring that NGOs submit to inspections; and prohibiting NGOs from engaging in anti-state activities, including criticizing the constitution or constitutional institutions.<sup>147</sup> Noncompliance with these requirements could lead to tough sanctions including fines, disciplinary action, and cancellation of registration.<sup>148</sup>

These laws can potentially affect the activities of human rights organizations that require independence from the state and put the Dalit rights NGOs at an even greater risk. NGO networks and alliances have been central to the advocacy and mobilization on Dalit rights in Bangladesh. As mentioned earlier, Dalit solidarity networks have yet to take substantial organizational form and operate independently without support from coalitions or NGOs. Tightening the regulatory regime for NGOs will impact existing forms of action with regards to Dalit rights and serve as barriers to entry for the formation of new organizational forms that may seek to address Dalit issues.

In addition, with its sweeping powers, the Digital Security Act, 2018 is a significant barrier to the exercise of freedom of thought and expression by all citizens, which is a constitutionally guaranteed right (subject to reasonable restrictions under Article 39 of the Constitution).<sup>149</sup> The Act also enumerates an offence in section 28 of “hurting religious values or sentiments” through publication or broadcast in electronic format.<sup>150</sup> Religious values and sentiments are not defined and cases may be filed by any police officer or individual. This offence carries a sentence of between five to ten years. This law has been used in some cases against members of minority communities including Hindus.<sup>151</sup>

Such repressive measures, which inhibit free speech from members of minority communities speaking out against injustices, could provide an avenue for backlash from the state and other quarters.<sup>152</sup> Taken together, these legal measures that limit civic freedoms significantly reduce the opportunities of all minority population for engaging in a rights discourse through political action and participation.

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<sup>146</sup> Digital Security Act, Act No. XLVI (2018), <https://www.cirt.gov.bd/wp-content/uploads/2020/02/Digital-Security-Act-2020.pdf>.

<sup>147</sup> Hum. Rts. Watch, *Bangladesh: New Law Will Choke Civil Society* (Oct. 19, 2016, 5:30 PM), <https://www.hrw.org/news/2016/10/19/bangladesh-new-law-will-choke-civil-society>.

<sup>148</sup> Foreign Donations (Voluntary Activities) Regulation Act §§ 8, 10, 14 (2016), <http://bdlaws.minlaw.gov.bd/act-details-1197.html>.

<sup>149</sup> Digital Security Act, *supra* note 146.

<sup>150</sup> *Id.* at § 28.

<sup>151</sup> Bangladesh Foreign Grants (Voluntary Activities) Regulation Act, Law No. 43 of 2017 (2017), <https://www.dhakatribune.com/bangladesh/nation/2020/05/16/man-arrested-in-bhola-for-hurting-religious-sentiments>.

<sup>152</sup> SM Najmus Sakib, *Sedition Cases Against Bangladeshi Minority Leader*, AA (July 21, 2019) <https://www.aa.com.tr/en/asia-pacific/sedition-cases-against-bangladeshi-minority-leader/1537491>.

## VII. Conclusion and Recommendations

This report has found that Dalit rights are significantly hindered by structural constraints within the legal and political system of Bangladesh and are further exacerbated by social biases. Despite constitutional guarantees and promising pledges from the government, Dalits and other minorities lack the social, political, and economic capital to overcome those constraints. Furthermore, democratic deficit within the state limits representation and upward social mobility for Dalits. Dalit representation remains inadequate in local government, parliament, the legal profession, and the judiciary.

These issues notwithstanding, successes in the mobilization of Dalit rights have a promising record, especially considering the ways in which the NGO and CSO alliances have been able to come together on Dalit issues through platforms such as BDERM. These alliances have paved the way for the drafting of an Anti-Discrimination Bill that, when enacted, will potentially serve the minority community as a whole.

Studying the ways in which this marginalized community mobilizes and asserts political claims on the state also raises interesting research questions for legal mobilization, empowerment and law and development studies. For example, it sheds light on the importance of affirmative action and formal legal rights for minorities, specifically for Dalits and other minorities (as is the case in India). However, formal rights alone can also be insufficient to address the plights of Dalits when addressing institutional biases, which may be latent and can only be adequately addressed through anti-discrimination measures.

Studying legal mobilization of Dalits also, to some extent, provides new insights into the practice of employing private practitioners to provide pro bono services—an agenda that is frequently pushed by donor agencies and deployed by legal services agencies.<sup>153</sup> While doing so helps cut down costs of hiring legal staff or representation, the lawyers interviewed for this report from the Dalit community and other minority groups already appear to be providing those services to their respective communities. One of the CSO representatives and rights activists interviewed stated that:

*“Dalit lawyers put in their heart and soul into legal battles. It is easier to explain the problems of the Dalit community to a Dalit lawyers rather than non-Dalit lawyers.”<sup>154</sup>*

Further research on changing pro bono strategies to support and promote these lawyers from minority groups may inform future interventions that could address legal aid and representation. Additionally, regional comparative research on Dalits and affirmative action policies may also illuminate shared lessons for CSOs, activists and policymakers.

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<sup>153</sup> Akhila Kolishetty, *Examining the Effectiveness of Legal Empowerment as a Pathway out of Poverty: A Case Study of BRAC* (Just. & Dev. Working Paper Series, Paper No. 84662, 2014). BLAST has implemented similar programs addressing issues of access to justice for minority communities. See *Our Projects*, BANGLADESH LEGAL AID & SERVS. TR. (last visited Jun. 23, 2021), <https://www.blast.org.bd/whatwedo/ourprojects>.

<sup>154</sup> Interview with CSO representative and rights activist from Jessore (Feb. 18, 2021).



In light of the above, this report makes the following recommendations:

### **For the Government of Bangladesh:**

1. Understand the numerical representation of Dalits in key institutions like parliament, local government, and the judiciary. To this end, the government should include disaggregated data on caste in the next census and other data collection measures and ensure categorization of affected communities in all data collection.<sup>[1]</sup>
2. With the assistance and guidance of CSOs, take concrete steps for enacting the Anti-Discrimination Bill currently under consideration. The proposed law should specifically address colorism and “untouchability practices,” discrimination by public officials and private persons, indirect/intersectional discrimination, and put in place remedies for discrimination.
3. Develop and implement a “national action plan to eliminate work and descent based discrimination, with a particular emphasis on Dalit women and children and other severely marginalized groups, seeking guidance from the draft UN Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent as a guiding framework for such an action plan.”<sup>155</sup>
4. Introduce affirmative action policies for Dalits, with a particular focus on women, children and sexual minorities, and allocate disaggregated budget for the advancement of the Dalit community
5. Strengthen the National Human Rights Commission (NHRC) and allow its independent operation to address minority rights, including that of Dalits.
6. Undertake concrete steps to protect property rights of Dalits and ensure their right to adequate housing and protection from eviction.
7. The government should pay special attention to Dalit communities when taking measures such as economic stimulus packages to combat the Covid-19 pandemic.
8. Conduct anti-bias training for judges, prosecutors, and police, sensitizing them to issues confronting the Dalit community in the justice system.

### **For Bar Councils and Associations:**

1. Collect and publish disaggregated data regarding the representation of Dalits in the legal profession and conduct further research on lack of access to justice for victims of anti-Dalit discrimination and crime.
2. Take steps to introduce affirmative action policies and other schemes, including early career stipends, to prepare young law graduates from Dalit and other minority communities for the job market.
3. Leaders in the Councils and Associations should encourage representation and participation of the Dalit legal community in Council and Association elections.
4. Encourage members of the Bar to include and mentor young Dalit lawyers in their chambers.

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<sup>155</sup> Int’l Dalit Solidarity Network, *United Nations Principles and Guidelines for the Effective Elimination of Discrimination Based on Work and Descent: A Comprehensive Legal Framework to Eliminate Caste Discrimination Globally*, 3 [http://idsn.org/uploads/media/UN\\_Principles\\_And\\_Guidelines\\_-\\_IDSN.pdf](http://idsn.org/uploads/media/UN_Principles_And_Guidelines_-_IDSN.pdf) (last visited Jun. 23, 2021).

**For Law Schools in Bangladesh:**

1. Law Departments in both public and private universities must be encouraged and incentivized to adopt diversity and affirmative action policies in their admissions and hiring processes.
2. Law schools, Bar Councils and Bar Associations should coordinate efforts to introduce grievance procedures for disciplinary action against discrimination towards members of the Dalit Community.



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