

# **Challenges for Dalits in South Asia's Legal Community**

## **Chapter IV: Dalit Justice Defenders Report in Pakistan**

**December 2021**



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**DALIT JUSTICE DEFENDERS INITIATIVE**



**International Commission for Dalit Rights | [www.ICDRINTL.org](http://www.ICDRINTL.org) | Washington, D.C.**

## **ICDR INTERNATIONAL DALIT JUSTICE DEFENDERS INITIATIVE**

International Commission for Dalit Rights (ICDR International) has been working on advocacy, litigation, and public services for minorities and caste-oppressed people at community, national and international levels for 13 years.

The goal of ICDR's Dalit Justice Defender Initiative is to mobilize the global legal community to support and protect Dalit Rights Defenders, including legal professionals and rights activists, and to provide legal education, access to justice, and pro-bono legal education. This initiative is a collaborative and signature program of ICDR International. We seek a wide-range of collaboration and partnership with firms, legal aid providers, nonprofits, and international agencies to enhance and strengthen professional legal practices regardless of any prejudice, exclusion, and discrimination.

### **The Dalit Justice Defenders Initiative's Objectives:**

1. Mobilize the global legal community to support and protect Dalit Rights Defenders, and to litigate for nondiscriminatory laws and procedures in alignment with the justice enshrined in constitutional and international human rights laws;
2. Develop and strengthen the connection between communities, government entities, and Dalit legal professionals in an effort to address socio-economic and political barriers to justice and human rights.



## **ACKNOWLEDGMENTS**

This report was prepared by staff and consultants of ICDR International and reflects their own views. It has not been approved by the Board of Directors or Advisory Committee of ICDR International and therefore should not be construed as representing the policy of ICDR International as a whole. Further, nothing in this report should be considered as legal advice in a specific case.

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## FOREWORD

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, especially in the justice sector. 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.

This report is a part of our Dalit Justice Defenders Initiative 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 reports were released in four parts discussing one country at a time.

Chapter I discusses the justice sector for Dalits in Nepal, Chapter II examines the same issue in Bangladesh, Chapter III focuses on Dalits in India, and Chapter IV (this report) addresses caste discrimination in Pakistan. Each chapter starts with a description of the issues faced by defenders of Dalit human rights in the legal profession. Defenders of Dalit human rights identify discrimination, harassment, barriers to access to legal recourse, and lack of mainstreaming as key issues in the community. Dalit justice defenders report experiencing discrimination, derogatory comments, denial of professional growth opportunities and equality in bar representation, and lack of sensitization of the judiciary towards the marginalization of the community as important challenges. Legal framework issues (constitution, existing body of law, etc.) are described next, and finally each chapter concludes with lessons learned and recommendations for policymakers, judges, bar councils, and other governmental agencies.



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# The Rights of Defenders of Dalit Justice in Pakistan

## Introduction

The study draws from an assessment that finds – despite the efforts of legal frameworks in Pakistan to ensure that Dalits and indigenous peoples are protected from social or governmental discrimination – Dalit rights defenders, lawyers and judges have faced major threats. Through a well-designed questionnaire, the study seeks to identify and explain those challenges and present viable solutions for further action in Pakistan.

The research looked at three key areas:

- a) the efficacy of investigations of gross human rights violations against defenders;
- b) the effectiveness of commissions for human rights and Dalit rights in providing defenders with access to justice outside of court;
- c) the ability of Dalit and indigenous lawyers to practice law without facing discrimination from the bar and bench.

The report addresses the issue in the context of Pakistan, where the treatment of minorities, the socio-economic position of the Dalit community within the minority Hindu and Muslim-dominated society, and access of religious minorities to institutions of justice, are based on the inconsistent characteristics and challenges of the existing justice structure.

The report is organized in the following sections: a) issues and challenges faced by Dalit rights defenders, lawyers and judges; b) available constitutional protection mechanisms, role of government commissions and bar; and c) recommendations to address violations of defenders' human rights and to increase the ability of Dalit and minority lawyers to practice law without facing discrimination from the bar and bench.

## Methodology

This study is based purely on qualitative data. The availability of quantitative data and information on Dalit justice or defenders' rights in Pakistan is limited. Thirty-eight qualitative interviews were conducted, including thirteen Dalit rights activists, ten Dalit lawyers, four government officials and human rights committee members, five Bar Association members, three Dalit judges, one non-Dalit judge, and two Bar Council members. In addition, one focus group discussion was conducted with Dalit lawyers to validate the information received through interviews and to seek some additional information.



## **Background on the Dalit population in Pakistan**

Dalits in Pakistan belong mostly to the community of Hindu religious minorities. The majority live in Sindh province and the southern part of Punjab province.<sup>1</sup> Officially and unofficially, they are known as the Scheduled Caste Hindus in Pakistan.<sup>2</sup> They face dual challenges due to their status as a religious minority in a Muslim country as well as because of their caste.<sup>3</sup> The majority of Hindu Dalits live in rural areas and work as laborers in agriculture and brick kiln sectors.

The 2017 Pakistan Census reports the population of the Scheduled Caste as 849,614 (0.41 percent).<sup>4</sup> However, researchers and Dalit rights activists believe that the population of the community has deliberately been underreported and that it may be around 5 million.<sup>5</sup> In Pakistan, there is little to no data or research on people of lower caste within the Hindu or Christian communities.

## **Issues and Challenges Faced by Dalit Rights Defenders, Lawyers and Judges**

### **Dalits in Human Rights Activism and the Legal Profession**

The Dalit community in Pakistan has a rich tradition of rights activism. At present, there is a small but effective number of Dalit rights activists working in Pakistan, including both Dalits and non-Dalits. In addition, there are some volunteer networks and organizations that seek to address their issues at the national and international level, including the Pakistan Dalit Solidarity Network (PDSN), Dalit Sujaag Tahreek (DST), Haray Rama Foundation (HRF), and Bheel Intellectual Forum (BIF). All these organizations are based in Sindh except HRF, which is in South Punjab.

For the purpose of this study, dozens of senior and experienced Dalit rights activists representing the above forums were interviewed in Sindh and South Punjab Provinces. All Dalit activists interviewed shared that they faced a wide range of caste-based discrimination throughout their childhood years and professional lives, such as being forced to use separate utensils at school or being denied a job opportunity. The issues identified by activists are listed below.

### **Role of law enforcement agencies**

Most Dalit activists from Sindh and South Punjab shared that they faced challenges in the registration of first information reports (FIR) against the non-Dalit community. FIRs are used/filed to register case against offender(s) in order to process legal investigation. The role of police is

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<sup>1</sup> Yoginder Sikand, *Pakistan's Forgotten Dalit Minority*, Dalit Network Netherlands, (April 4, 2006), <http://www.dalits.nl/060404.html>.

<sup>2</sup> Indian Institute of Dalit Studies, *Long Behind Schedule: A Study on the plight of Scheduled Caste Hindus in Pakistan*, 2, (2008), [https://idsn.org/wp-content/uploads/user\\_folder/pdf/Old\\_files/asia/pdf/RR\\_Pakistan.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/Old_files/asia/pdf/RR_Pakistan.pdf).

<sup>3</sup> IDSN Country Profile <https://idsn.org/countries/pakistan/>

<sup>4</sup> Pakistan Census 2017, <https://www.pbs.gov.pk/content/final-results-census-2017-0>

<sup>5</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019



usually not supportive.<sup>6</sup> In cases where a report or a case is registered, Dalit activists from the Punjab felt 90 percent of court or police level decisions go against the Dalit community due to caste bias.<sup>7</sup>

The police department of Sindh is not regarded as an autonomous body. Political appointments influenced by the area's landlords, members of the provincial and national assemblies or Senate are common. Police officials are often unable to resist orders from the local influencers who have contributed to providing them a job. Dalit defenders believe that providing autonomy to the police and appointing police based on merit may increase the effectiveness of law enforcement in fighting injustices against the Dalit population.<sup>8</sup>

Dalit defenders also feel that the absence of updates to police rules and laws dating from colonial times also perpetuates police inefficiency and damages the cases of marginalized people. Not only Dalits, but all Sindh residents refrain from turning to the police for help because of their reputation for inefficiency and corruption. Hence it is all the more important that police rules are reviewed and improved. There is also a need to motivate Dalits to join the police force in Pakistan.<sup>9</sup>

## **Harassment**

Some of the respondents shared they have received threats because of their work actively pursuing the rights violation cases of their community. Such threats come in direct or indirect form from non-Dalit individuals and groups and secret agencies of the state.<sup>10</sup>

A Dalit rights activist shared that his family has received various threats because of his activities on social media, where he actively highlighted the issues of Dalits and minorities. "My family is being harassed, and a couple of times attempts have been made to file FIR against me." He was also picked up by government agencies, and his laptop was taken from him. He was released after hours of investigation.

Most respondents shared that those who attack or threaten Dalit community activists are not punished. Another Dalit rights activist in South Punjab shared that, in 2010, a banned religious organization kidnapped him. He was recovered by police after eight hours and brought to the local police station, where he was pressured to discontinue his human rights work for minorities and Dalits for his own safety. He was again attacked in 2014, when he was following up the case of a Dalit girl abducted in Sadiqabad. Two unknown persons fired at his car. He was not injured.<sup>11</sup>

## **Restrictions on access to legal remedy**

Ms. Radha Bheel, chairperson of Dalit Sujaag Tahreek (DST), said that both Dalit and non-Dalit lawyers are reluctant to take cases of Dalit community members related to harassment, forced

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<sup>6</sup>See, Indian Institute of Dalit Studies, *Long Behind Schedule: A Study on the plight of Scheduled Caste Hindus in Pakistan*, 89, (2008), [https://idsn.org/wp-content/uploads/user\\_folder/pdf/Old\\_files/asia/pdf/RR\\_Pakistan.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/Old_files/asia/pdf/RR_Pakistan.pdf).

<sup>7</sup> Interview with Ramesh Jaipal Executive Director Haray Rama Foundation, Rahim Yar Khan Oct 17, 2019.

<sup>8</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>9</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>10</sup> Interview with Minority and Dalit rights activist, Hyderabad Sindh Oct 07, 2019.

<sup>11</sup> Interviews with Dalit Rights activists in Sindh and Punjab Oct 2019.





conversion, blasphemy or other forms of rights violations.<sup>12</sup> One reason is that Dalits are poor and they cannot pay fees. Another reason is that lawyers often experience undue pressure from the other party in these cases. Sometimes, if Dalit lawyers take the case of a Dalit, they work behind Muslim lawyers to protect themselves from any threat or conflict.<sup>13</sup>

Pakistan has a history of sectarian intimidation and violence against lawyers and judges who have taken up the cases of individuals targeted by fundamentalists. The reluctance of lawyers, judges, and Dalit lawyers to take up cases of religious discrimination needs to be viewed from this perspective.<sup>14</sup>

Dalit and minority activist Shanker Meghwar said that, in early 2019, a young adult Dalit from District Matiari was accused of blasphemy. An FIR was lodged against him under Section 298 A of the Pakistan Penal Code.<sup>15</sup> He and his family could not find lawyers who would contest their case. Mr. Meghwar said that in such cases lawyers feel more insecure and psychologically pressured.<sup>16</sup>

The absence of Dalit lawyers in South Punjab was also flagged by the community and activists. This has hampered family cases, which are rapidly increasing. The community feels that lawyers from the community could have played a vital role in resolving family disputes and matters related to property, inheritance, and marriages according to their religion.<sup>17</sup>

### **Challenges because of poor representation of Dalits at government posts**

It was collectively stated by respondents that the representation of Dalits is almost zero in higher positions in the government departments and law enforcement agencies.<sup>18</sup> There is, however, representation of the upper caste Hindu community in these posts. Due to their non-representation in influential posts, Dalits find themselves confronting non-supportive behavior from policemen and lawyers.<sup>19</sup> This also exposes them to religious intolerance and a growing trend of forced conversions targeting young females and minor girls of the community.

Dalit activists emphasize that the need to protect the Dalit community and their rights is solely the responsibility of the state.<sup>20</sup> The state therefore needs to take affirmative action to provide a special quota for Dalit representation in the police, judiciary, and criminal courts, which may lead to a solidification of their position and shield them against violence.

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<sup>12</sup> Interview with Radha Bheel Chairperson Dalit Sujaag Tahreek, Mirpurkhas Sindh Oct 12, 2019.

<sup>13</sup> Interview with Dalit Senior Civil Judge, Sindh Oct 12, 2019. – Radha Bheel

<sup>14</sup> Interview with Dalit Senior Civil Judge, Sindh Oct 12, 2019

<sup>15</sup> Interview with Shanker Meghwar minority rights activist, Hyderabad Nov 02, 2019. Section 298 A reads: “Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul-Mumudeen), or members of the family (Ahle-bait) of the Holy Prophet (peace be upon him), or any of the righteous Caliphs (Khulafa Raashideen) or companions (Sahaaba) of the Holy Prophet (peace be upon him) shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

<sup>16</sup> Interview with Shanker Meghwar minority rights activist, Hyderabad Nov 02, 2019.

<sup>17</sup> Interview with Bhayya Ram Anjum and Guru Sukh Dev Ji Dalit Rights Activist, Rahim Yar Khan Oct 19, 2019.

<sup>18</sup> Interview with FGD with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>19</sup> Interview with FGD with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>20</sup> Interview with Dalit Rights Activists, Mithi, Tharparkar Oct 07, 2019.

## Poor representation of the Dalit community in the judiciary

In Pakistan, a small number of judges come from the Dalit community. They are all based in Sindh. The study has been able to identify six or seven Dalit judges in Sindh. Most of them became judges after qualifying through the provincial and federal judicial commission exams. In South Punjab, there is a Dalit community, but there is no single judge or lawyer from this community.

The 18<sup>th</sup> constitutional amendment, passed in 2010, has ushered in important reforms in the judiciary, reducing the role of the executive in the hiring of judges. Before this, it was the prerogative of the president of Pakistan to appoint judges based on recommendations from the Chief Justice of the Supreme Court.<sup>21</sup> In 2010, a new system incorporated recommendations from the judicial commission and parliamentary committee.<sup>22</sup>

There is no history of female Dalit judges in the judiciary. However, the recent appointment of Suman Kumari as the first Hindu woman civil judge in Sindh is regarded as a positive step for the Hindu community and religious minorities in Pakistan.<sup>23</sup>

All Dalit judges describe themselves as Hindu scheduled caste in Sindh.<sup>24</sup> For the research study, five Dalit judges were approached. Out of these, three agreed to be interviewed and two did not respond. Out of the three judges who agreed to be interviewed, two were reluctant to respond to all the questions. All three judges requested anonymity. In addition, one non-Dalit female judge and senior Dalit lawyers were interviewed for their feedback and to cross-check the available information.

In contrast to Dalit experiences in other areas, the judges interviewed were of the unanimous opinion that they have not found any discrimination in the rules on the appointment of judges. This also extends to promotion or other benefits related to their job. They stressed that the rules offer equal opportunities to everyone, and religion or caste does not matter in these procedures.<sup>25</sup>

All three judges said they have not faced any discrimination in the court, nor from their staff, subordinates or upper caste colleagues. One respondent, however, said that it is not uncommon to see negative body language from lawyers and petitioners. Out of three respondents, two shared that the external environment is not conducive for the people who belong to the minority faith, particularly Dalits, due to increasing religious extremism. The assassinations of Governor Punjab Salman Taseer and Minister for Minority Affairs Shahbaz Bhatti in 2011, both outspoken advocates of blasphemy law reform, is cited as a factor that created a hostile environment for minorities in Pakistan. Such acts create a sense of insecurity in society and impact

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<sup>21</sup> Syed Rizvi, *How to become A Judge in Pakistan*, <http://www.preservearticles.com/pakistan/how-to-become-a-judge-in-pakistan/20519>.

<sup>22</sup> Syed Rizvi, *How to become A Judge in Pakistan*, <http://www.preservearticles.com/pakistan/how-to-become-a-judge-in-pakistan/20519>

<sup>23</sup> The Express Tribune, Jan 28, 2019 <https://tribune.com.pk/story/1898858/1-first-pakistan-appoints-hindu-woman-civil-judge>

<sup>24</sup> Interview with Senior Civil Judge & Judicial Magistrate in Tharparkar, Mirpurkhas and Karachi, Oct 12,13 & 20, 2019.

<sup>25</sup> Interview with Senior Civil Judge & Judicial Magistrate in Tharparkar, Mirpurkhas and Karachi, Oct 12,13 & 20, 2019.



every sector and government institution. Even the majority of Muslim judges feel insecure about giving a verdict that is not acceptable to the extremists.<sup>26</sup>

Respondents noted there always is pressure to rule in favor of certain groups.<sup>27</sup> One respondent shared that, during the course of his service in several districts of Sindh, he heard cases of forced conversion and forced marriages of young/minor Dalit girls. There is no direct pressure, but people from the Muslim community use other tools to drag the trial out, so that they can change the outcome by pressuring the girls to give a statement in favor of the abductors.<sup>28</sup>

One senior lawyer who belongs to the Dalit community and now holds a good position in the government shared a peculiar incident during his law practice. While hearing a case in the local court, a defendant who belonged to the Muslim community spoke rudely and misbehaved with a Dalit judge by using derogatory words for his caste in the court room. He said such practices are uncommon in the judiciary, but the impact of the caste system is pervasive.<sup>29</sup>

The non-Dalit female judge shared that while she has not come across any discrimination against Dalit or other religious minority judges in term of their hiring or promotion in service, systemic injustices have created a culture of favoritism in hiring and offering professional growth opportunities to a select few who are close to high officials.<sup>30</sup>

### **Biased treatment against Dalit lawyers by clients and colleagues**

Dalit lawyers generally feel that the attitude of the clients and non-Dalit lawyer colleagues is biased against them.<sup>31</sup> Sometimes this bias is expressed openly and at other times it is more subtle. As an example, one Dalit lawyer shared how he finds this attitude more explicit outside the urban centers of Karachi and Hyderabad. “Being a lawyer, I started my practice in Karachi where I did not face any kind of discrimination either from Muslim or Hindu friends. However, after my marriage, when I returned to Mirpurkhas and started practicing law there, I felt discrimination from both Muslims as well as Hindu lawyers, referring derogatorily to my caste. Sometimes even my clients would talk to me very rudely. This often demoralized me.”<sup>32</sup>

Almost half of the Dalit lawyers interviewed shared that their clients and non-Dalit lawyers talk with them in a derogatory way. Not all lawyers interviewed are of the view that Dalit lawyers are spared such treatment in Karachi and Hyderabad, considered more commercial and open to assimilation as these cities house diverse population from all across Pakistan. Lawyers working in these cities feel that non-Dalit colleagues seem reluctant to give professional space to Dalit lawyers. They also feel that discrimination and disrespect by Muslim lawyers on the basis of religion and caste is particularly pronounced in the districts of Thatta and Badin. They complain about being the target of malicious talk, which they find distressing. Senior lawyers recall that as

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<sup>26</sup> Interview with Senior Civil Judge in Tharparkar, Oct 12, 2019.

<sup>27</sup> Interview with Senior Civil Judges & Judicial Magistrates in Tharparkar, Mirpurkhas and Karachi, Oct 12,13 & 20, 2019.

<sup>28</sup> Interview with Senior Civil Judge in Tharparkar, Oct 12, 2019.

<sup>29</sup> Interview with Dalit Lawyer and advisor to CM on Human Rights, Karachi Oct 10, 2019.

<sup>30</sup> Interview with Female Civil Judge, Hyderabad Nov 03, 2019.

<sup>31</sup> Interview with Dalit Lawyer, Badin Oct 10, 2019.

<sup>32</sup> Interview with Heman Das Kolhi Dalit Advocate, Mirpurkhas Oct 01, 2019.

recently as a decade ago, bar offices, courts and the canteen in the districts of Mirpurkhas and Sanghar had separate utensils for Dalit lawyers.<sup>33</sup>

Dalit lawyers feel that judges need to show greater sensitivity towards cases that characterize specific issues of the Dalit community, such as forced conversions and bonded labor. Dalits are major victims of both these practices, and the institution of justice needs to play a more proactive role and demonstrate sensitivity when dealing with such cases.<sup>34</sup>

During the discussion with Dalit lawyers, it was suggested that while a few judges are good and understand the plight of the Dalits and the marginalized, most tend to show bias particularly in cases of forced conversion of Dalit girls. In Sindh, they completely disregard the Child Marriage Restraint Act 2014, which prohibits marriage of girls younger than 18 years old.<sup>35</sup> Almost always, the forced conversion cases concern underage girls. Dalit lawyers feel that in sensitive cases such as those related to forced conversion and blasphemy, judges feel pressured and avoid giving judgement as per the law.<sup>36</sup>

These lawyers feel that a similar attitude is present in cases pertaining to bonded labor, a practice that mostly targets the Dalit community. The Bonded Labor Abolition Act is hardly used in cases of bonded labor. Instead, there are instances when judges have fined the bonded labor victims for violating the law. Dalit lawyers believe that this is because both the justice providers and the ruling community in the parliament belong to feudal landlords, who protect their own interests in the illegal and inhuman practice of forced labor.<sup>37</sup>

In the court of the district of Sanghar, a Dalit client from the Kolhi clan hired a lawyer from another Dalit clan, Bheel. However, during the hearing, the non-Dalit Muslim lawyer for the other party remarked in front of the judge that “Kolhi and Bheel are making (a) mockery (of the court). This is not a case.” The judge took the case seriously and criticized the Muslim lawyer for demoralizing the other party. This created a rift between the judge and the Muslim lawyer, who had sought to influence the judge by using disparaging language about Dalits.<sup>38</sup>

### **Discrimination against Dalit lawyers by judges**

A few Dalit lawyers noted they have never faced discriminatory behavior from any judge throughout their career. They feel that they have avoided such discrimination because they themselves have been very respectful towards judges.

One Dalit lawyer said that, a few years back, a judge in a small town issued instructions on the first day he joined the service that he would not have any Dalit staff in his office.<sup>39</sup> This created panic among the staff. However, he was soon transferred to another court. Such unfortunate incidents are very rare but cannot be ruled out. Judges’ biased attitudes in cases of forced conversions and bonded labor have already been explained in earlier sections.

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<sup>33</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>34</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>35</sup> Child Marriages Restraint Act of 2014, Sindh Code.

<sup>36</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>37</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>38</sup> Interview with Bhagwan Das Bheel Dalit Advocate, High Court Hyderabad, Oct 16, 2019.

<sup>39</sup> Interview with Dalit advocate, Naukot Oct 01, 2019.



### **Lack of sensitization by judiciary on religious cases**

Dalit justice defenders feel that in most cases there is no pressure on the judiciary. Decisions are taken on the basis of the evidence provided in the case. However, in some cases, such as blasphemy, forced conversion, and child marriages, judges need sensitization and capacity-building.

Usually in blasphemy trials, judges face immense pressure from religious extremists. In several instances, public threats were issued and mobs gathered outside courtrooms when such cases were being decided.

Defenders feel that the Child Marriage Restraint Act 2013 has been implemented poorly, particularly in cases of forced conversion of Dalit girls. One senior lawyer shared that in the prominent cases of forced conversion of Dalit and minority girls, the judges were biased and buckled under pressure.<sup>40</sup>

Based on their experience of working in the judiciary, Dalit justice defenders feel that it is the responsibility of the state to sensitize the judiciary. They believe that the government of Pakistan, human rights commissions, and the National Judicial Academy must play their role in the sensitization of judges and protection of minority and Dalit girls.<sup>41</sup>

Respondents also suggested that along with judges, there is the need to sensitize other law enforcement agencies such as the police, state-run secret agencies, etc., for cases relating to Dalits. These agencies/stakeholders need orientation about human rights, equality, and Pakistan's international commitments on human rights.<sup>42</sup>

### **Inadequate fees for cases from Dalit clients**

Dalit defenders reported that they charge most Dalit clients fees. However, the fee is waived for clients who are unable to afford them. A few respondents said that in 20 to 30 percent of the cases, they do not charge any fee because they are aware of the economic conditions of their clients.<sup>43</sup> A few lawyers said they charge minimum fees. One senior lawyer said, as a general rule, he does not charge clients who are poor.<sup>44</sup>

### **Negative response of clients to Dalit lawyers**

Dalit lawyers believe that upper caste Hindus, such as the Rajput and Brahman business class community, feel reluctant to hire their services. In the province of Sindh, Hindus are considered peaceful and principled citizens. Hence, many clients prefer the services of Hindu lawyers. However, according to Dalit lawyers, as soon as clients hear about their caste, they change their behavior. Clients question whether lawyers from the Dalit Kolhi or Bheel clans are able to win their case. They show that they distrust the competence of Dalit lawyers.<sup>45</sup>

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<sup>40</sup> Interview with Bhagwan Das Bheel Dalit Advocate, High Court Hyderabad, Oct 16, 2019.

<sup>41</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>42</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>43</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>44</sup> Bhagwan Das Bheel Dalit Advocate, High Court Hyderabad, Oct 16, 2019.

<sup>45</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.



A Dalit lawyer shared his experience of working on a case of a Muslim female client who wanted a divorce from her husband. The lawyer received threats from the husband telling him that, being a Dalit, he had no right to fight such a case. When threats continued, the lawyer finally had to withdraw from the case. He was later asked to play the role of a mediator, which he agreed to do. At mediation, he convinced the former client to withdraw her plea for a divorce.<sup>46</sup>

One senior Dalit lawyer in Hyderabad shared that several clients took back their cases when they heard about him being a Dalit. Mostly, these clients are Muslims. Most Dalit lawyers said the majority of their clients belong to the Dalit community and Dalit clients feel comfortable hiring services from their own community.<sup>47</sup>

### **Experience with administrative staff**

Dalit lawyers feel that it is common for court administrative staff to delay paperwork for their cases, due to a bias against Dalits. However, sometimes gifts and favors help to expedite the process.<sup>48</sup>

## **Available Constitutional Protection Mechanisms, Role of Government Commissions and Bar**

### **Constitutional framework**

Article 25 of the Constitution of Pakistan guarantees that all citizens are equal before law and are entitled to equal protection.<sup>49</sup> It does not provide an institutional mechanism for the implementation of standards of non-discrimination. Articles 36 and 38 in the constitution are most relevant for Scheduled Castes and their rights. Article 36 states: “The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services.”<sup>50</sup> Similarly, Article 38 says that the state shall “secure the well-being of people, irrespective of sex, caste, creed or race by raising their standard of living”.<sup>51</sup> In practice, activists encounter legal discrepancies, as these provisions contradict the provision of Islam as a state religion in the constitution of Pakistan: “Islam shall be the state religion of Pakistan, and its head must a Muslim man.”<sup>52</sup> There are human rights commissions at the federal and provincial levels for the rights of women and children, but there is no separate commission for Dalit rights.

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<sup>46</sup> Interview with Saleem Shahutra advocate Hyderabad Oct 07, 2019.

<sup>47</sup> Bhagwan Das Bheel Dalit Advocate, High Court Hyderabad, Oct 16, 2019.

<sup>48</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>49</sup> Pakistan Const. Art. 25.

<sup>50</sup> Pakistan Const. Art. 36.

<sup>51</sup> Pakistan Const. Art. 38.

<sup>52</sup> Pakistan Const. Art. 1.

## **Adequacy of current constitutional and legal protections for the community**

The constitution declares Pakistan as an “Islamic Republic,” granting equality with a general statement that “all citizens are equal before law and are entitled to equal protection.” It does not mention protection of rights of the scheduled castes (Dalits). Hence, the Dalit community feels insecure and unprotected, as many believe laws only protect the majority population or those who are rich.

Dalit legal defenders feel that general protection laws passed by the national and provincial assemblies have been unable to provide justice to the Dalit community. Usually in courts, it is the prerogative of the judges to decide how they want to proceed in the cases. Their practice of referring to Islamic laws in cases of forced conversion and forced marriages of minor Dalit girls creates a sense of insecurity among the Dalit community.<sup>53</sup>

Many Dalit lawyers also believe that the absence of specific provisions for the scheduled caste in Pakistan’s laws and the constitution reinforces injustices towards the community. Scheduled castes (Dalits) are the poorest segment of the society and live in far-flung rural areas. Most are low-paid family workers in the agriculture sector. Women of the community are not safe and remain under the threat of abduction and forced conversion, both in Sindh and South Punjab. As there is no law against forced conversions and kidnappings, the state has failed to prosecute many of the incidents in the past.<sup>54</sup>

Recently, one judge condemned caste-based discrimination in his public remarks after a news item on social media went viral. The item showed that an influential political leader was sitting on a cot in the premises of school whilst people from the Dalit community were seen sitting on the floor. In a focus group discussion, Dalit lawyers said they would like more judges to condemn caste discrimination.<sup>55</sup>

## **Government’s position on the improvement of legal rights for Dalits**

To understand the question of legal rights for Dalits, it is important to understand the post-devolution scenario that led to a major redistribution of responsibilities between the federal government and the federating units. The 18<sup>th</sup> amendment in the Constitution, unanimously passed by the Parliament in 2010, redefined the structural contours of the state by giving more power to the provinces.<sup>56</sup> As a result of the 18<sup>th</sup> Amendment, the Minority Affairs Department was separated from the Religious Affairs Ministry.<sup>57</sup>

In Sindh, this Department was headed by a Dalit leader, Dr. Khatu Mal Jewan, advisor to the Chief Minister in the Government from 2012–2017. The role of the Government of the Punjab Human Rights and Minority Affairs Department is facilitation and formulation of overall policy for the rights and protection of religious minorities, including Dalits.<sup>58</sup> Mr. Kanji Ram, a Member of the Provincial Assembly, belongs to the Dalit community in the South Punjab and was a member of the Human Rights and Minority Affairs Department in the last tenure of cabinet.

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<sup>53</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>54</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>55</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>56</sup> Pakistan Const. Art. 18.

<sup>57</sup> Pakistan Const. Art. 18.

<sup>58</sup> Human Rights & Minorities Affairs Department, <https://hrma.punjab.gov.pk/functions>.

While the Sindh and Punjab departments were unable to carry out policy legislation for the rights of Dalits, decentralization of responsibility helped build trust among the Dalit population and was seen as a gesture of goodwill at the national and international levels regarding the representation of the Dalit community in mainstream politics.

In Pakistan, some national and provincial autonomous institutions work for the protection and promotion of human rights. As a part of their functions, they also cover minorities and Dalit rights. The federal government has established the National Commission for Human Rights (NCHR) under the National Commission for Human Rights Act, 2012.<sup>59</sup> NCHR has powers to take *suo moto* action on cases of human rights violation.<sup>60</sup> *Suo moto* is a Latin legal term which means “on its own motion” and implies that an action was taken by a group or person on their own.<sup>61</sup> The NCHR conducts investigations into allegations of human rights abuse(s), either on petitions filed by individuals or institutions, or through *suo moto* action; reviews existing and proposed legislation in relation to human rights principles; and exercises a powerful mandate to protect and promote human rights.<sup>62</sup>

The Sindh Human Rights Commission (SHRC) has similar functions in the provincial domain of Sindh. The National Commission on the Status of Women (NCSW) and the National Commission on Child Welfare and Development (NCCWD) are other actively working structures. NCHR and NCSW also have provincial offices. However, SHRC and the Sindh Commission on the Status of Women have different thematic committees which cover minority rights and also include members from Dalit community.<sup>63</sup>

On June 19, 2014, the Supreme Court of Pakistan gave clear directions in its landmark judgment to establish the National Commission for Minorities for the protection and rights of minorities, but so far the Supreme Court has not complied.<sup>64</sup> Further, the demand for the creation of a National Commission for Dalit Rights needs great effort and advocacy to bring it into the country’s mainstream discourse.

The Government of Pakistan has passed several laws covering general human rights and Dalit issues; however, all these laws are devoid of implementing mechanisms and resources.<sup>65</sup> Many do not even have rules of business yet.

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<sup>59</sup> National Commission for Human Rights, Pakistan, <https://nchr.gov.pk/>.

<sup>60</sup> National Commission for Human Rights, Pakistan, <https://nchr.gov.pk/>.

<sup>61</sup> Practice Panther Legal Dictionary, <https://www.practicepanther.com/legal-dictionary/suo-moto-definition/>

<sup>62</sup> National Commission for Human Rights, Pakistan, <https://nchr.gov.pk/>.

<sup>63</sup> Interview with Nuzhat Shirin Chairperson Sindh Commission on the Status of Women, Karachi Oct 10, 2019 <https://scsw.sindh.gov.pk/> and with Majida Rizvi Retired Justice and Chairperson Sindh Human Rights Commission, Karachi Oct 07, 2019 <http://www.shrc.org.pk/>

<sup>64</sup> See, Umair Jamal, *How Effective is Pakistan’s Newly Established National Commission for Minorities?*, The Diplomat, (May 13, 2020), <https://thediplomat.com/2020/05/how-effective-is-pakistans-newly-established-national-commission-for-minorities/>.

<sup>65</sup> See, Umair Jamal, *How Effective is Pakistan’s Newly Established National Commission for Minorities?*, The Diplomat, (May 13, 2020), <https://thediplomat.com/2020/05/how-effective-is-pakistans-newly-established-national-commission-for-minorities/>.



## A separate commission for Dalit rights

In Pakistan, there is no separate commission exclusively for Dalit rights. However, in an interview with the heads of other commissions, including the Minister of Human Rights in Sindh, government officials expressed disagreement over the idea of establishing a distinct commission for Dalit Rights.

In the opinion of Justice (Retd) Majida Razvi, the chairperson of the Sindh Human Rights Commission, given that the constitution of Pakistan already guarantees equality and the protection of minorities, amendments in the fundamental rights provision of the constitution are a more viable route to address the issue of discrimination, rather than a separate law for the protection of the Dalit community. She also noted that this approach could add to other efforts for mainstreaming of the Dalit community, which can be ensured by giving them jobs in the government sector and increasing the percentage of the job quota. Based on her experience of working with the Sindh Government, she said there are some challenges in terms of funds at the government level, but the provincial government is committed to address all such issues. She suggests that establishing local offices of the Sindh Human Rights Commission at the divisional level may enable the Commission to make use of its vast mandate and play a more effective role in addressing deficits in access to human rights and justice for the Dalit community.<sup>66</sup>

The Special Assistant to the Chief Minister of Sindh on Human Rights, Mr. Veerji Kolhi, who belongs to the Dalit community and has faced caste discrimination himself, says his ministry is striving to set up mechanisms so that rights protection laws can be implemented in their true spirit.<sup>67</sup> Similarly, Nuzhat Shireen, chairperson of the Sindh Commission on the Status of Women, states that Dalit issues cannot be addressed in isolation. “The government should prioritize and include it in the development agenda of the country.”<sup>68</sup>

The majority of the respondents had a similar response, suggesting Dalit issues can be addressed under the umbrella of the Ministry of Human Rights or Human Rights Commission with effective participation of Dalit activists as members in thematic committees. It was suggested that the *suo moto* and complaint mechanism of SHRC and the Ombudsperson could be used to enable access to human rights for Dalit victims of rights violations.

Ms. Pushpa Kumari, a Dalit activist, and Dr. Sono Khangharani, a senior development professional and activist, are current members of the Sindh Human Rights Commission (SHRC) and Minority Rights Committee of the Commission. Dr. Khangharani disagrees with the suggestion for general human rights institutions to be used for addressing deficits in Dalit rights. He stresses that the issue of Dalit rights is being diluted with minority issues in Pakistan without recognizing that Dalits are a separate entity and are battling with unique challenges. In his view, the step to revoke the separate provision in the constitution for scheduled castes’ well-being and reserved service quota has further marginalized the Dalit community in Pakistan. Moreover, considering the low rate of conviction in cases pertaining to discrimination against Dalits in Pakistan, Dr. Khangharani asserts there is law or policy already in place to ensure access to justice for Dalits and human rights defenders.<sup>69</sup>

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<sup>66</sup> Interview with Majida Rizvi Retired Justice and Chairperson Sindh Human Rights Commission, Karachi Oct 07, 2019

<sup>67</sup> Interview with Veerji Kolhi Special Assistant to CM Sindh, Karachi Oct 10, 2019

<sup>68</sup> Nuzhat Shirin Chairperson Sindh Commission on Status on Women, Karachi, Oct 10, 2019

<sup>69</sup> Interview with Dr. Khangharani, member Pakistan Dalit Solidarity Network, in Hyderabad (Oct 17, 2019)



Hence, Dr. Khangharani says that the creation of the Dalit Rights Commission is long overdue and should be followed without delay. This may also be in line with the government's obligation to fulfil its commitment to implement UN conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and constitutional guarantees to ensure legal rights to Dalit defenders.

A majority of Dalit activists who have worked for years for the Dalit cause expressed understanding of the legislation on other issues such as protection of minorities, women, and children. Almost everyone shared that the community at the grassroots level faces much discrimination and atrocities by non-Dalits. Thus, implementation of existing legal mechanisms (national and international) is necessary in order to ensure justice, equality and inclusion of Dalit populations.

### **Discrimination at Bar Councils**

Dalit lawyers feel that acquiring bar membership, particularly in small cities and districts, is hard for them. Responses are slower to applications of Dalit than non-Dalit lawyers. Narrating his own story, one Dalit lawyer shared how after two years, he is yet to get a license for his transfer from Hyderabad to Mithi from the Bar President, who belongs to the upper caste Hindu community.<sup>70</sup> Another lawyer complained he was being ignored and disrespected by the president and elected office-bearers of the Bar Council. He stated: "I remain silent and say no words regarding such behavior."<sup>71</sup> Dalit lawyers who are active in the bar office feel that they are sidelined in competition for higher offices. In the Hyderabad High Court, one representative who was elected as vice president of a minority community feels his hard work and dedication in the bar office was ignored because of his minority status.<sup>72</sup>

At the time of bar elections, some interviewed Dalit lawyers also believe that Muslim lawyers tend to play on religious sentiments of the members. In one of the elections, a Muslim contestant distributed souvenirs from holy cities of Makkah and Madina to seek support from bar members. Dalit lawyers believe such actions compromise the fairness of the process for non-Muslim contestants. A Dalit contestant for bar elections also shared how he heard negative remarks from his colleagues about his participation in the polls. "We commonly hear remarks such as 'What does it say for the fate of the judiciary when low-caste Kolhi, Bheel, Meghwar join this field?'"<sup>73</sup>

Dalit lawyers also complain of unfair treatment from their Hindu upper caste colleagues who take advantage of the special seats for minorities allocated in bar councils and bar associations and deny Dalit members access to these seats.<sup>74</sup>

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<sup>70</sup> Interview with Nandlal Dalit Advocate, Mithi Tharparkar Oct 02, 2019.

<sup>71</sup> Interview with Dalit Lawyer, Mirpurkhas Oct 01, 2019.

<sup>72</sup> Interview with Bhagwan Das Bheel Dalit Advocate, High Court Hyderabad, Oct 16, 2019.

<sup>73</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

<sup>74</sup> Focus group discussion with Dalit Lawyers, Hyderabad Oct 10, 2019.

## Views of Bar associations

The President of the Sindh High Court (SHC) Bar, Mr. Nisar Ahmed Durrani, said that on the surface there exists no discrimination against the Dalits. However, the possibility of such cases cannot be denied as discrimination against this community is a common practice in society. He said that the SHC Bar strives to support and provide protection to all lawyers who approach them for security.<sup>75</sup>

Mr. Durrani referred to a Dalit lawyer against whom an inappropriate First Instance Report was lodged, due to his participation in a road accident case. The Sindh High Court Bar intervened, provided input, and pleaded to let the law take its course. Mr. Durrani rejected the claims that there is discrimination against Dalit members of the bar or any person. He believes that since the Dalit lawyers come from poor and low-income families, they might face greater challenges than others in adapting to the legal and court environment. However, he is confident that they can address these barriers by arming themselves with knowledge of the law and the constitution.<sup>76</sup>

Mr. Bashir Ahmed Almani, an advocate of the Supreme Court of Pakistan and Finance Secretary Sindh High Court Bar Association, said that there is no discrimination against any members of the SHC Bar on the basis of religion. Members of the bar belonging to any sect or religion are treated equally. The bar also provides scholarships for higher education to competent and hardworking lawyers on the basis of merit. The lawyers are also given medical cover in certain cases. All lawyers can use the library without any hindrance.<sup>77</sup>

Advocate Almani said that the SHC Bar has a disciplinary committee which regularly monitors court activities. Anyone found discriminating against or violating the rights of the any member is dealt with on the basis of legal grounds. He said that all lawyers have the opportunity to be candidates in bar elections, since the law is equal for all.<sup>78</sup>

President of the Bar Association Mithi, Tharparkar Mr. Behru Mal, who himself belongs to the upper caste Hindu community, denied any discrimination on the basis of caste. According to him, there is a sizeable presence of lawyers belonging to the Dalit community, and all of them are treated equally. No one is barred from contesting the bar elections. He further stated that his predecessor as Bar Association President, Bhoro Kolhi, belongs to the Dalit community.<sup>79</sup> It is pertinent to point out that in Mithi, the capital of the Tharparkar District, the majority of the population belongs to the Dalit community.<sup>80</sup> In Tharparkar, 40 percent of the population is Hindu. Discrimination is therefore less pronounced in the region.

The researcher also reached out to bar members for their views on the subject. Sawan Menghwar, member of the Bar Association in Karachi and who is from the Dalit community,

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<sup>75</sup>Nisar Ahmed Durrani, Advocate Supreme Court and President SHC Bar, Hyderabad, Oct 24, 2019. – Nisar Durrani

<sup>76</sup> Nisar Ahmed Durrani, Advocate Supreme Court and President SHC Bar, Hyderabad, Oct 24, 2019. – Nisar Durrani

<sup>77</sup> Bashir Ahmed Almani, Advocate Supreme Court of Pakistan and Finance Secretary Sindh High Court Bar Association, Hyderabad, Oct 24, 2019. – Bashir Almani

<sup>78</sup> Bashir Ahmed Almani, Advocate Supreme Court of Pakistan and Finance Secretary Sindh High Court Bar Association, Hyderabad, Oct 24, 2019. – Bashir Almani

<sup>79</sup> Behru Mal, President Bar Association Mithi, Nov 05, 2019.

<sup>80</sup> Amar Guriro “Caste and captivity: Dalit suffering in Sindh” Dawn Newspaper March 13, 2016  
<https://www.dawn.com/news/1244684/caste-and-captivity-dalit-suffering-in-sindh>



shared that the cold and negative environment in the lower court of Tharparkar, where he initially started out as a lawyer, compelled him to move to Karachi.<sup>81</sup>

Menghwar shared that he experienced fair treatment and equal opportunities in Karachi, which led him to encourage budding lawyers from the Dalit community in his hometown to come to Karachi for practice. He said that he has also contested the Bar Association's elections and remained behind the winner by only 150 votes. According to Menghwar, the Dalits and Muslims are treated equally, and complaint mechanisms are also the same. In high-profile cases such as forced conversions, all Hindu lawyers show solidarity to the lawyer who has taken up the case. In a question about the appointment of Dalit judges, he said that due to the non-implementation of a five per cent job quota for minorities, very few lawyers from the religious minority community get this opportunity. Giving his own example, he said that he had cleared the test twice, but he was declared unsuccessful in the interview.<sup>82</sup>

### **Observations from interviews with Bar Council members**

For the purpose of this study, two interviews were conducted with existing and former members of the Sindh Bar Council. The secretary of the Bar Council in Sindh was also interviewed.

In Sindh, 33 members of Bar Councils are further divided in groups, covering nine districts of Sindh. In Hyderabad, there are five members. Sindh Bar Council Rules are equally applicable to all. The Bar Council website is updated and also provides an online complaint system. Bar Council officials say that in case of discrimination or any other problem, an application can be filed online. Besides, there are 18 different committees in the Bar Council, and human rights is one of them. The issue of any violation or discrimination can be raised with the committee. There are no separate provisions in rules for Dalits or religious minorities.

While interviewing both former and current members of the Bar Council, quite diverging points of view on Dalits or minorities issues appeared. The existing member who was interviewed made rather sweeping remarks about human rights issues, declaring them as a project of liberal and progressive forces. He insisted that it is not the mandate of the Bar Council to tackle cases of discrimination. He, however, said that the Bar has a good complaint system and different thematic committees to address varied issues. In his opinion, discrimination and inequality exists in society at large, and it is not preventable. "Bar Council members, however, should not indulge in it."<sup>83</sup>

On the other hand, one former member and secretary of the Bar Council shared that he believed in diversity and equality. He said he knows several Dalits and minority lawyers and has always encouraged them to contest Bar Council elections, so that they can be a part of the decision-making process. In Pakistan and even in Sindh, no complaints regarding discriminatory practices against Dalit lawyers by non-Dalits have been received; if any complaint is proved, action needs to be taken against the accused person according to the law and the rules of the Bar Council. He recalled that a few years ago, a Dalit lawyer, Mr. Aaron Prasad, was a member of the Bar Council. However, no minority or Dalit has contested elections of the Bar Council since.<sup>84</sup>

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<sup>81</sup> Interview with Sawan Meghwar, member Bar Association Karachi Oct 22, 2019

<sup>82</sup> Interview with Sawan Meghwar, member Bar Association Karachi Oct 22, 2019

<sup>83</sup> Sachal Aiwan, member Bar Council Dadu, Oct 26, 2019.

<sup>84</sup> Muhammad Fahim Zia, Former Secretary of Bar Council, Karachi Oct, 22, 2019.



## Case Studies: Documentation of experiences of Dalit justice defenders

### 1. Ms. Ramesha Oad, the first female Dalit Deputy District Prosecutor

Ramesha Oad is from the Dalit community. She is the first Dalit woman to make her way up to the position of Deputy District Prosecutor in Hyderabad Sindh. Her journey to the office was riddled with challenges as she struggled to complete her education following her father's death and the subsequent financial crunch. She completed her education by drawing support from her part-time work as a teacher.

Sharing her struggles, she said she faced biased attitudes and offensive questions about her caste and religion during the course of her job interviews. "I had to courageously defend my stance." After being inducted in the lower court, while she received appreciation from senior judges for her convincing presentations and arguments, she faced a particularly hostile attitude from a fellow lawyer, an upper-class Hindu. He passed very disrespectful remarks about her before a full court, using derogatory words for her Dalit status. He then went to the extreme of lodging a complaint against her at the SHC bar to get her license cancelled. He also approached the SHC president with a complaint against her.<sup>85</sup>

### 2. Dealing with ghost workers to defend Dalit rights

In 2017, a judge from the Hindu religious minority in the Dadu district of Sindh defended the rights of Dalit sanitary workers by taking action against a ghost sanitary worker for abdicating his duties. The video of him instructing the sanitary worker to clean the sewage went viral. The ghost employee was the nephew of a local Member of the Provincial Assembly, who, in a typical practice of ghost employment, had been drawing a salary without serving.

It is a common practice in Pakistan's sanitary work sector, run mostly by the public sector, to have ghost workers installed on a political basis. The ghost workers, mostly Muslims, refuse to carry out the cleaning job on the pretext that doing so would violate their religious purity and hygiene. The burden of extra work is then placed on the shoulders of the non-Muslim workers, mostly Dalit Hindus in Sindh and Christians in the Punjab.

After the video of the dialogue between the judge and the ghost employee went viral, the judge was disciplined, his portfolio was removed, and he was transferred to the judicial academy.

## Recommendations

These recommendations have been drawn from the interviews of the study respondents as well as earlier consultations on the subject of Dalit marginalization and mainstreaming.

### Policy legislation and affirmative action:

1. Create affirmative action programs in Pakistan to increase Dalit mainstreaming and incentivize Dalit inclusion in the economy and society. For example, the Government of

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<sup>85</sup>Ramesha Oad, Deputy District Prosecutor Hyderabad, Oct 24, 2019.





Pakistan should restore a six percent job quota for the scheduled castes (Dalits) and an age relaxation (extra time to apply for positions) to create space for Dalits in civil services, law and judiciary in Pakistan.

2. Make untouchability and discriminatory practices a punishable crime, so that the lack of sensitivity towards excluded sectors such as the scheduled castes is addressed.
3. The Government of Pakistan should establish an impartial and independent Dalit Rights Commission with a broad and overarching mandate for the protection and well-being of the Dalit community in Pakistan. The Commission needs to be vigilant and have monitoring committees at the district level and a complaint cell at the central level, so that the Dalit population has access to a recourse mechanism in case of rights violation.
4. Until a Dalit Rights Commission is established, the existing human rights commissions in Sindh and Punjab should notify thematic committees to take proactive action for the protection of the rights of the Dalits.
5. As it is well documented that the majority of the victims are Dalits, especially bonded labor, early forced marriage, and forced conversion in Sindh, the government should strictly ensure implementation of laws such as the Sindh Bonded Labor System Abolition Act, 2015 and Child Marriage Restraint Act, 2013.
6. The Government should introduce scholarships for Dalit students in law colleges across the country. These scholarships would facilitate the access of the community to capacity-building opportunities in law and law-making, which may help in struggles for rights.

#### **Police, courts and government departments:**

1. Create laws and accountability mechanisms to protect Dalit rights defenders against abuses by non-state and non-Dalit actors.
2. Build independence and capacity for the police to better process rights violations cases for Dalits. Police officers and staff should be trained on the importance of first response, fair inquiry and speedy process in cases of violation of the rights of the Dalits.
3. Improve the police system so that citizens have easy access to check the status of their first instance reports and complaints, such as an open access and online database. Further mechanisms to improve police accountability would help the marginalized to seek recourse in case of corruption and ill practices by individuals in the police force.
4. Build the capacity of district courts and provincial high courts to understand Dalit issues, marginalization and discrimination and exploitation in Pakistan. Increased awareness of these issues would lead to better-informed and fairer judgements on crimes against the Dalit community.



## **Development/awareness Programs and role of the Bar**

1. The government should take affirmative action to encourage educated youth in the Dalit community to pursue legal education and serve the community.
2. To improve access of Dalits to justice, the Bar Association and bar councils in Sindh should make special efforts to increase the number of Dalit lawyers. They should also encourage existing Dalit lawyers to assume key positions in these bodies.
3. The government should also arrange legal awareness programs for the Dalit community at the grassroots level.
4. Because a majority of the Dalit community is poor and unable to afford expensive lawyers, the Government and the NGO sector should provide free legal aid to victims from the Dalit community.

## **Conclusion**

This study seeks to contribute to an understanding of the barriers to effective legal remedies faced by Dalit and Indigenous people's defenders in the South Asia region, and to propose some solutions.

The Dalit community in Pakistan, largely settled in Sindh and South Punjab, is marginalized. Its members primarily work in low-paid and exploitative work and struggle for mainstreaming and equality. The earlier special provision for a 6 per cent job quota for the community in the government services was revoked in 1998, and the existing range of human rights laws, including discouraging forced marriage and the prohibition of bonded labor (largely targeting the Dalit population) have been ineffectual. The minority committees in Pakistan's human rights institutions may offer spaces to Dalits, but this is a small opening in a very long journey for equality and justice for the Dalit community.

Defenders of Dalit human rights identify discrimination, harassment, barriers to access to legal recourse, and lack of mainstreaming as key issues in the community. Dalit justice defenders report experiencing discrimination, derogatory comments, denial of professional growth opportunities and equality in bar representation, and lack of sensitization of the judiciary towards the marginalization of the community as important challenges.

We recommend that a set of strongly developed affirmative action plans be initiated, with the objective of mainstreaming the Dalit community through a quota system in government jobs, scholarships for Dalit students, and other means of Dalit inclusion. Moreover, a Dalit Rights Commission, protection of Dalit human rights defenders and reforms in police and justice institutions are critical to redressing violations of Dalit rights.



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