

## **Major Achievement for the Dalit Right Movement in Nepal in 2011: The adaptation of a national law criminalizing caste-based discrimination**

**Input to the study on political transitions by the UN Working Group on discrimination against women in law and practice**

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The most critical issue for the Dalit community is to remove caste-based discrimination from the whole society and have a dignified life. The main appeal of the whole Dalit movement is to establish a just and equitable society where all persons can live without any fear respectfully. Although the Dalit movement has started a long time ago and more acts have been passed for their protection, there is a need to focus on action now.

It is a great challenge for the whole Dalit movement to eliminate caste based discrimination. Dalits in Nepal, formerly known as 'untouchables', are routinely denied access to religious sites; they face extreme resistance to inter-caste marriages; and non-Dalits refuse to handle water touched by them, to mention some examples. Dalit women are even worse off than Dalit men. They have no control over land, housing or money; they are forced into demeaning jobs; and they are strongly under-represented at all levels of decision-making.

According to the official 2001 census, the Dalits constitute 13.05 percent of Nepal's population. Despite the fact that the Interim Constitution of Nepal states that all are equal before law and that no discrimination based on religion, caste, sex, creed, ethnicity or political inclination shall be made by the state in the course of law enforcement, there is limited participation and implementation of laws in all sectors, which can be proved by the untouchability cases published in newspaper.

The Caste-based Discrimination and Untouchability Crime Elimination and Punishment Act, which was adopted unanimously by Nepal's Interim Parliament on May 24, prohibits the practices of 'untouchability' both in the public and private sphere.<sup>1</sup> Dalit groups have advocated for two years ensuring that the law did not only extend to the public sphere, but also to the private. It is the first time that a law, which criminalizes 'untouchability' practices in the private sphere, has been introduced. This is a great achievement of the Dalit Right Based movement, which is also regarded as the first step to ensure the effective protection of Dalit Rights. This bill recommends the Government of Nepal to develop an overall framework for action, such as a National Action Plan, to eliminate caste discrimination. This would provide an institutional tool to ensure implementation of such provisions and national commitments and set an example for other countries with caste systems.

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<sup>1</sup> Download the Act:

<http://nepal.ohchr.org/en/resources/Misc/100%20Day/Substantive%20materials/Act%20in%20Eng-Nep/Book%20eng..pdf>

## **Major Legal Provisions in the Interim Constitution of Nepal to ensure the rights Dalits including Dalit Women and implementation of these rights**

The Interim Constitution of Nepal (2007) describes the rights regarding freedoms and equality, right regarding the criminal justice, and exploitation.<sup>2</sup> Some of the legal provisions highlighting the Dalit issues in Interim Constitution of Nepal can be found in Part (3) *fundamental rights* article (12) *Right to freedom* clause (1) which clearly mention that every person has Right to live dignified life; similarly article (13) *Right to Equality* clause (2) & (3) states that no discrimination shall be made against any citizen. Likewise the article (14) ***Right against Untouchability and Racial Discrimination*** under fundamental rights also highlights that no person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability of any form. A discriminating act shall be liable to punishment and the victim shall be entitled to the compensation as provided by the law and shall be punishable in accordance with law. In addition to these fundamental right, it is declared that Nepal is a secular state and free from untouchability by the reinstated House of Representatives through people's movement of 2006.

Along with these, some positive changes are seen in the country in the recent years on behalf of the Dalit Community. The State has introduced a reward for the inter-caste marriage where the couples are rewarded with NRs. 100,000. For the easy access of Dalit on education, the government has also passed different packages of scholarship programs, especially for the Dalit students from primary to higher secondary level and also at university level.

The Government has also promoted program based on the nutrition for the children (infants - 5years ) from Dalit community by providing the assist of NRs. 200 monthly and has planned a health campaign especially for ensuring good health of the community.

Article 21 of the Interim Constitution of Nepal 2007 has ensured that the economically, socially or educationally backward women, Dalit, indigenous nationalities, Madhesi communities, oppressed classes, poor farmers and workers have the right to take part in the structure of the State on the basis of the principle of *proportional inclusion*. For the proportional distribution of every developing sector, the government has also reserved seats and quotas for the Dalit community, where Dalit women are in priority on the basis of their population.

Different international conventions such as the Universal Declaration of Human Right; International Convention on the Elimination of all kinds of Racial Discrimination (ICERD); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of all kinds of Discrimination against Women (CEDAW)

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<sup>2</sup> Interim Constitution of Nepal, 2063 (2007): <http://www.nic.gov.np/download/interim-constitution.pdf>

etc. are ratified by Nepal. Nepal has also established some institutions and initiated some specific plans and programs especially for Dalits.

In spite of all these positive promoting and preserving provisions, the rights of so-called lower caste people are not as much enjoyed by them. To a wide extent, their problems and lifestyles remain the same as before. Traditional caste-based practices, such as the practice of accusing Dalit women as witch and torturing them, Inter-caste marriage, problems in obtaining citizenship certificate etc. are burning issues felt in the community. They are seen because of lack of effective investigation and consideration of cases at the grassroots level. In addition to this, the general lack of awareness, a feeling of insecurity and lower economic condition of the Dalit community has kept them for reporting their cases in the respective sectors and to appeal for justice.

### **Role of the National Dalit Commission**

The National Dalit Commission is one of the governmental bodies, which has been especially established for the ensuring and enhancing the rights of the Dalit Community. No doubt, it is the historical pronouncement of the past government to establish such a special institution, and a landmark achievement in the metamorphosis of Dalit movement. It mainly works for the protection and promotion of Dalit rights, adopting special steps to bring out the Dalit citizens in the mainstream and forwarding special recommendations to concerned authorities.

In spite of different activities of the National Dalit Commission and various provisions in the current laws, inhumane assaults and atrocities are regularly seen in society. Although the commission can play the vital role to adopt the strategies for fortifying the socio-economic position of Dalit community and Dalit women, its effectiveness in the implementation of laws is rarely seen, because the Commission is not a statutory body, and the body itself cannot work independently. However the Commission plays the role of Watch-dog for promulgating the acts passed by the government by monitoring and suspecting the cases related to Dalits and safeguarding their rights. It too can set up inquiry and investigation in the cases of caste discrimination according to the process of law. The commission has established a special section which watches out for complaints on the basis of caste discrimination, which can really help to ensure real justice to whole Dalit community, especially Dalit women.

### **Challenges for the Dalit Women at Present Time for the meaningful Participation**

The Dalit women are in the most vulnerable condition. Different conventions, laws and special provisions have been passed to secure their rights; and on this basis we feel that the present status of Dalit is far better than that of past times. In comparison to the past, Dalit women's confidence level and involvement in social activities are slowly increasing in proportion. But these sorts of positive developments are mostly seen in town areas rather than at the local district level. Although the State's policies have tried to cover these issues, many challenges are still pertaining. This is stopping Dalit women from experiencing a just and equitable society. The main can be summarized as follows:

- I. Patriarchal Society: - The Nepalese society follows the patriarchal system where males are kept in first priority. Due to this, the women's needs and necessities are thought of as less than their families and the community. This hinders their self-development.
- II. Elimination of Caste based discrimination: - Discrimination is rooted deeply in the society and it has prevailed for many years in society. Thus, unless it is eliminated, we cannot think a bit about equity and equality.
- III. Economic conditions, lack of education, and opportunities: - The economic conditions of Dalit women is worse than men. This makes women particularly vulnerable in society. In addition to this, the education system and its provisions include less Dalit Women, which is also one of the big challenges for Dalit women.

### **Recommendation & Conclusion**

As there is very limited participation of Dalit women in decision making posts, Dalit women in our society imagine being far from their rights when they are discriminated and are set aside from each and every developing sector. Due to this, they are compelled to search a way through which they can secure their rights and reach to the point of justice. At the present situation, the country is facing political disorder and there is lack of Dalit women leaders who can voice the concerns of all Dalit women.

Despite various laws and policies prohibiting "untouchability" and discrimination, implementation remains weak. The practice of making a bulk of scattered laws and policies does not lead to dynamic change and welfare of the country. Instead, the State should focus on the implementation and enforcement of the generated policies, guaranteed rights and generating the positive feelings to the Dalit as well as so called higher caste people towards human rights for all.