

Proceedings of Regional Conference on  
Equal Access to Justice for All:  
Using Law to Dismantle  
Caste Based Discrimination in South Asia



**August 2018, Kathmandu**

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## Background

Caste -based discrimination is a violation of international human rights law affecting more than 260 million people worldwide, mainly in South Asia. Structures of caste and the continuation of caste- based discrimination lead to poverty, violence, and caste-based slavery, economic, social and political exclusion. Dalit remains socially and economically vulnerable, politically and educationally excluded and disempowered and continue to suffer from access to justice, marginalization and economic deprivation in South Asia. Although the legal provisions in South Asian countries have prohibited discrimination based on race, caste/ethnicity and gender; in reality caste-based discrimination and untouchability practices continues to exist in society and disproportionately impact the lives of women from the Dalit communities. As more legal advocates and organizations consider what it means to apply anti-discrimination lens to their work, Dalit rights organizations are increasingly seeking out promising practices and new strategies.

## Objectives of the Conference

- To contribute the social movement and campaign at regional and international level by using law to eliminate the caste and gender-based discrimination.
- To promote legal empowerment and addressing the implementation issues in legal system.
- To develop the concrete actions by civil society organizations, national human rights institutions, women and dalit right defenders to make government responsive and accountable in equal access to justice for the Dalit community especially women.

## Themes

- Understanding and addressing the justice needs of Dalit communities.
- Legal empowerment and advancing equality: Making law work for marginalized communities.
- Social Movements for the legal empowerment of Dalit in South Asia.
- Dalit women and the struggle for justice.
- Advancing equality using justice data and legal strategies.
- Scaling up basic justice services: Institutional Reform and Role of NHRIs and other key actors.

## Organization

The three-day conference entailed one inauguration session, seven working sessions and one closing session with adoption of declaration on "Equal Access to Justice for All: Using Law to Dismantle Caste Based Discrimination in South Asia".

The details of session are given below:

### DAY ONE: 13 AUGUST 2018

#### *Inaugural Session*

Welcoming the participants of the conference, the founder of FEDO, Ms. Durga Sob stated that the event was mainly concerned with access to justice for Dalit women in South Asia. She further mentioned that the conference intended to express solidarity between state and non-state actors regionally and globally to end caste based discrimination (CBD) and untouchability. Without access to justice, democracy cannot prosper, she added. She further highlighted that the conference would focus on issues around good governance, administration of justice and formulation, amendment and effective implementation of laws to end CBD and gender based violence (GBV). She also urged the participants to come up with recommendations for concrete actions to be taken by the NHRIs, government and non-government actors to end CBD which has been affecting 260 million people worldwide.

Shedding light on the objectives of the conference, Ms. Sumaiya Islam from Open Society Justice Initiative (OSJI) stated that the conference intended to understand and advance shared vision of equality and justice for all. She pointed to the fact that the laws, institutions and policies are at times ambiguous, cumbersome and costly, thus making them inaccessible to the most marginalized populations. She further elaborated that legal empowerment is knowing the law, using the law and shaping the law. Moreover, she highlighted that the conference would try to seek answers to questions such as how we can use the power of law to achieve social justice in a way that everyone in a society has a fair chance to thrive and live a dignified life; how we can make the law more accessible to the most marginalized lives; and how we can more effectively forge transnational solidarity and connect global movements across the world to strengthen global resistance to racism, CBD and other systems of oppression.

Addressing the inaugural session of the conference, Mr. Bhakta Bishwakarma, a member of Dalit NGO Federation reflected on the movement of six decades to get CBD criminalized through a law in 2011. Despite constitutional and legal safeguards, the implementation of laws against CBD has been insufficient and ineffective, he added. He further mentioned that social reaction to and atrocities ensuing inter-caste marriages were one of the most serious forms of violence in recent days. He also stressed that cases of untouchability and caste based discrimination were illegally mediated at the communities which further aggravated the situation. He urged state and non-state actors to act towards upholding the principles of human rights, equality, dignity, justice and equal access to justice for all.

Speaking at the conference, Mr. N. Paul Diwakar, Chairperson of Asian Dalit Rights Forum (ADRF) shared that if the total population affected by discrimination based on work and descent was put together, it would make the 6th largest nation in the world. He elaborated that CBD was different than racism based on pigmentation, indigeneity, colonialism, territorial discrimination and ethnic minorities. He presented examples of various forms of discrimination exercised against people in different continents and cited two examples as distinct features of CBD - enforced endogamy and coerced occupational specialization. He

urged the participants to form a common group of people suffering from CBD or similar practices, to lobby for an international instrument at the United Nations and to agree on a declaration to that effect.

Mr. Diwakar stated that legal empowerment of Dalit women needed a comprehensive approach based on principles of right to physical security, life and freedom from violence, right to be free from cruel, inhuman and degrading treatment, right to be free from forced bonded forms of labour, right to health, right to food, water, sanitation, clothing and housing, right to equal political participation, right to fair access to justice, right to planning, resources, public financing and targeted budget, right to land, right to religion, right to marriage of one's choice, right to education, right to equal opportunities to work, etc.

Addressing the conference, Hon. Enamul Hoque Chowdhury, member of National Human Rights Commission of Bangladesh discussed about the differences based on caste and gender in South Asian countries and requested all to eradicate them. He also stated that justice is incomplete until it is implemented.

Speaking at the event, Ms. Nira jairu, member of parliament, Nepal reminded that Dalit men and women in Nepal had contributed to the unification of Nepal in different capacities. She also mentioned that many women leaders have been elected as people's representatives at the local levels although not as key position holders. She pointed to the fact that women participation in executive and legislative functions is limited in Nepal.

Hon. Sapana Pradhan Malla, Justice at the Supreme Court of Nepal, speaking at the event, opined that Nepal has been in the process of social and political transformation. She said that exclusion caused poverty, violence, forced slavery, etc. and the legal provisions of criminalizing untouchability have not been translated into actions. She added that in a diverse society, numbers may always not make a rational meaning. Even a majority of population may be marginalized and state policies needed to be formulated looking into those dimensions beyond the size of population of a group.

She highlighted that Nepal's constitution, 2015 is victim-centric and in line with restorative justice system. There are multiple international human rights instruments addressing the discrimination, she added. She further suggested that interconnection between these national and international human rights instruments was key to overcome these barriers. She said, legal instrument is more effective than just a declaration to address caste based discrimination. Additionally, litigation is a strategic tool in South Asia for reforms in and implementation of laws, she maintained.

The Chairperson of National Human Rights Commission (NHRC) and chief guest of the conference, Hon. Anup Raj Sharma said that CBD is a common issue in most of the South Asian countries. He further stated that because of the discriminatory practices, women and children from marginalized communities are facing multiple challenges. He further referred to the constitution of Nepal 2015, which ensures the fundamental rights of Dalit, women and other marginalized communities through affirmative measures, such as provisions of forming specialized commissions for women and Dalits. Addressing CBD has been a priority of policies, laws and programmes in Nepal, he added.

Concluding the opening session, Ms. Kala Swarnakar, President of Feminist Dalit Organization thanked all participants of the conference and urged them to come up with concrete conclusions for using law to end caste and gender based discrimination. She hoped that the outcomes of the conference would be useful for government and civil society organization to address gender and caste based discrimination in South Asia.

## ***Thematic Sessions***

The Conference had the following thematic sessions and discussions:

### **Session 1: Time for Justice: Understanding and Addressing the Justice Needs of Dalit Communities**

The session was moderated by Dr. Ram Krishna Timalaena, Executive Director, National Law College (NaLW) and Dr. V. A. Ramesh Nathan from India, Tek Tamrakar from Nepal and Sono Khangharani from Pakistan made presentations.

Dr. V. A. Ramesh Nathan, General Secretary of National Dalit Movement for Justice (NDMJ) discussed constitutional and legal safeguards for Dalits in India and portrayed a vivid picture of discrimination faced by Dalit women. He further analyzed how institutions at the national, regional and global levels responded to the needs of Dalits. He recommended official recognition of CBD in Bangladesh, Sri Lanka and Pakistan and called on states to take firm measures to address CBD. Affirmative actions and cooperation among state institutions, CSO and NHRIs to end CBD are also recommended by Dr. Nathan (Paper in Annex 3.1).

Mr. Tek Tamrakar, Human Rights Advocate and Programme Analyst from UNDP Nepal made a presentation on normative frameworks on anti-discrimination, access to justice and issues and challenges and some ways forward. Mr. Tamrakar highlighted that laws are meant to control negative aspects and promote positive aspects of a society. He raised concerns regarding non-participatory law making process, misinterpretation of laws, lack of accountability, lack of public ownership and confidence. Mr. Tamrakar recommended multi-sectoral analysis of anti-discriminatory laws, analysis of law enforcement agencies, fast-track court procedures for discrimination cases, more severe penalties for discrimination, stronger oversight of law implementation and strong role of NHRIs for addressing caste based discrimination (Slides in Annex 3.2).

Mr. Sono Khangharani, a Dalit rights activist from Pakistan stated that Pakistan doesn't have Dalits but there are scheduled castes. There have been some amendments in laws, for example related with bonded labour, to address discrimination in Pakistan. Discrimination is at times manifested in the form of human rights violation or crimes, such as religious conversion, rape, kidnapping.

After the presentations from the panelists, the moderator Dr. Timalaena opened floor for questions and comments.

#### **Questions and comments:**

- People from marginalized groups undergo various atrocities due to the weakness of the judicial system. A person battles out for Justice throughout his/her life and sometimes it's pending even after their death. They are often subjugated for employment, education and other needs. If the people from marginalized group flatter the 'so-called' upper caste people, they get what they want. Isn't this ironical?
- Fourteen years ago, we organized an international conference of this nature. After fourteen years, we are still discussing the same issues that we discussed then. My view is that we must present the achievements, record gaps and propose ways forward.
- We know least about Pakistan in South Asia and it's a good news that a Dalit woman was appointed a Senator recently. What efforts have been made so far to promote Dalit women's political participation?

- The presenter from India mentioned that Dalit children in India face double discrimination. Does he think that Dalit children with disability face triple discrimination?
- Are infrastructures in Pakistan disabled friendly? Do children with disability face problems during menarche?
- Culture is more powerful than the constitution. How do we deal with it? If power of law is given in the hands of people and if legal empowerment and legal aid are provided to victims, will that be an effective approach?
- It is said that in courts, the conviction rate is quite low in cases of discrimination. How do you think we can improve this conviction rate for easy access to justice for all?
- Three tiers of governments in Nepal. Awareness at local level is suggested. Capacity building is mainly focused on physical infrastructure. Human development is given low priority. What India did it to address this - awareness and capacity building of Dalits? How can CBD be mediated?
- Nepal already has a law to address untouchability. What are challenges or loopholes in implementing the law?
- Nepal is revising 300 plus laws while implementing federalism. What role can CSOs play during the revision to make sure that Dalit rights are ensured?
- Can Dalits of India launch a strong street agitation to make special provisions regarding CBD in the constitution?

### **Responses of Panelists**

#### Nepal

- Regarding the challenges of implementation of Nepal's law against untouchability, there are structural issues related with penalties, sanctions, compensations, investigations, prosecutions and whole judicial system. Similarly, there are weak oversight mechanisms towards effective implementation of the law. National Dalit Commission is there but with limited capacity to oversee.
- CSOs should engage with the state during revision of 300 plus laws in Nepal although the government is not positive on this.
- Continuous engagement is required in a democratic society to address the challenges related with caste based discrimination and we cannot afford to stop it even if things have not happened as expected.

#### Pakistan

- In Pakistan, the issue is in recognition of Dalits. There are 42 scheduled castes but the list needs to be revisited.
- Electoral system should be amended in Pakistan to have more Dalits in the elections.
- Pakistan has strong laws related with disability although that does not segregate any specific group of population.
- In public sphere, the constitution and law is dominant to shape people's behaviour but in private space, culture and religion dominate peoples' behaviour.



## India

- In India, the judicial system is slow and cases of Dalits are no exceptions. However, we have been monitoring and strengthening human rights defenders to get justice delivered to the excluded groups.
- Similarly, interventions in the courts are made by collecting evidences for cases related with Dalits in India.
- Public prosecutors are government appointees. If victims can choose special prosecutor and if there are provisions of fast track courts, it will be easier to handle cases related with CBD.
- Since 1992, India has reservations for Dalits among others. Prior to this, Dalits and women of India went through a long struggle. Now there are exemplary Dalit leaders prepared through capacity building budget allocation, etc.
- We need to work for disabled Dalit children.
- We are seeing progresses in advancing the causes of Dalits. For example, Nepal has a constitutional Dalit Commission and the functions of parliamentarians in Nepal are strong.

## Moderator

- South Asia is progressing in addressing CBD although very slow. We have a legacy of discrimination, patriarchy, inequality. The capacity gaps in states and scarce human and financial resources are also slowing down our progress towards equality.
- The role of CSOs is also not strong enough and their institutional management has issues. Thus they have not been as effective as expected to address CBD.
- Similarly, judicial remedy has also not been effective although judicial activism is in practice. We need to train judges and shift our focus from elites to marginalized people.
- Experiences among South Asian countries need to be shared.

## **Session 2: Legal Empowerment and Advancing Equality: Making Law Work for Marginalized Communities**

The session was moderated by Ms. Sumaiya Islam, Senior Program Manager, OSJI. Crina Marina Morteauunu from Romania, Prakash Nepali from Nepal, Marbre Stahly Butts from USA and Khalid Hussain from Bangladesh made presentations.

Ms. Crina Marina Morteauunu, Roma Rights Activist from Romania shared that there are six hundred thousand Romas in Europe who came from India centuries ago and they are suffering from transgenerational discrimination.

She shared: 'According to European Commission, 12 million Romas are in Europe and for 5 hundred years, they experienced slavery in Romania. Some of key human rights challenges faced by Roma included deportation, oppression and lack of access to justice. Roma people migrated to other places and faced similar challenges and discrimination. We cannot access justice and our culture is not preserved and we are suffering from discrimination.'

Mr. Khalid Hussain from Bangladesh stated that Biharis in Bangladesh are victimized inside and out of camps. He added: 'They are Urdu speaking and they have no citizenship. There are 116 camps in

Bangladesh with Biharis. They don't have equal rights despite they were ensured by the high court in 2008. Now, 300,000 Urdu speaking Bangladeshi people have been registered in the voter list. Based on the court verdict of 2008, Urdu speaking Bangladeshis are claiming citizenship certificates, birth certificates, passport, license, national identity card and civil documentation. community based paralegal programmes are helpful in securing them civil documentation, statelessness and other human rights violations. Group meetings and community forums are important tools to help those communities. Importance and process of civil documentation is discussed in those group meetings. NHRC Bangladesh intervened but had no concrete results. From 1947 till date, there are ups and downs but advocacy on draft citizenship bill continues and the suggestions are submitted to government ministries.'

Ms. Marbre Stahly-Butts from US-based law for black lives is an advocate for fight of black people for freedom. In response to police killing of black people almost every day, the organization was established. She shared: 'The principle is that legal infrastructures needed to address those atrocities to protect the rights of black people, to conduct researches, to support jail facilities and to engage in legal field. Democratizing the laws, training people on law, addressing symptoms and underlying causes of killings are also the objectives of the organization. There is systemic subjugation of black people and they are deprived of health facilities, discriminated in education. Deep-rooted white supremacy and capitalism are the fundamentals of oppression against the blacks in the USA. We are concerned less about legal reforms but more about transformation, less about access but more about self-determination. We want to expose hypocrisy, white hegemony. We want to achieve legal and cultural changes, reparation of past harms.'

Mr. Prakash Nepali, a practicing lawyer with Samata Foundation in Nepal gave an introduction of marginalized communities, historical, legal and constitutional framework, implementation status and ways forward for identity, recognition, representation, equality, non-discrimination, access to justice, distribution of natural resources, citizenship and language. He stated: 'Historically, caste hierarchy was introduced in 1854 but in past constitutions and penal code of 1963, there was restricted untouchability. Only in 1971, when CERD was ratified, caste based discrimination was removed. Now, there is a fundamental right against CBD, reservation of 9% of civil service seats for dalits and proportional electoral system. Thus a good number of Dalit women have been elected at the local level. Implementation status of CBDU, 2011 law, reservation and election related laws have been negligible. Mainly inter-caste marriages are pressing challenges of the hour and there are nominal successes on this.'

After the presentations from the panelists, the moderator Ms. Islam opened floor for questions and comments.

#### **Questions and comments:**

- There is law and we can use the law to address discrimination. But when the law implementation is twisted by the state authorities, how can we deal with it?
- Roma went to Europe in 12th century from India, Are they Dalits of Indian origin in Europe? Are they nomadic? If they have no citizenship, can they claim human rights with a particular state?
- How do you deal with the white supremacy and discrimination in the US?
- What discrimination Roma communities face?
- Data about condition of Dalits in Nepal?
- What rights do we intend to set in the amendment of untouchability law in Nepal?

#### **Responses of Panelists:**

### Bangladesh

- Dalit issue and issues of Urdu speaking people in Bangladesh are similar. They do low type of work such as rickshaw pulling, butcher, barber, making and selling handicrafts.
- Anti-discrimination law is being drafted but lot of politics going on, implementation is also uncertain.

### USA

- Patriarchy, hegemony and white supremacy are not exclusive to the USA. We need to see root causes.

### Nepal

- Amendment of CBDU Act is not to the expectation. It is in parliament, fine and compensation increased, but the level of imprisonment is as it was before. We need to have the burden of proof on defendant, 5 year imprisonment above, principle of zero tolerance.

### Romania

- Systematic oppression on Romas from generations. Roma racism exists in Europe. In schools, stores, there is discrimination. Marginalization, patriarchy exists but positive measures for Roma are taken. They are not enough though.
- I am not confident to give data to anyone about Roma. That may be misused.
- Stories of Roma women's experiences will be collected as story telling.

### Moderator

- Organize communities and educate them about laws, how to use them and systems
- Laws will not solve everything.

## **Session 3: Social Movements for the Legal Empowerment of Dalit in South Asia**

The session was moderated by Mr. N. Paul Diwakar, Chairperson of Asian Dalit Rights Forum (ADRF). Bhakta Bishwakarma from Nepal and Sono Khangharani from Pakistan made presentations as panelists. Mr. Diwakar introduced the theme of the session by stating that the South Asian countries have discrimination. He highlighted that the recognition of Dalits has not been harijans. Use of the word Dalits is banned in India. Naming is derogatory and done by dominant classes. For example, Harijans are children of Deva dashis, who are servants of gods and goddesses. Dalit women are brought to courts with talent, but they are sexually exploited, not allowed to marry. The word Harijan is given to Dalits. Instances of 'flight', leaving original caste and taking a new surname is very common these days. Self-denial of background is a recent phenomenon, especially during conversion from one faith to another. Legal empowerment cannot be achieved just from litigation but visualizing the problem in a broader spectrum.

Mr. Bhakta Bishwakarma, a member of Dalit NGO Federation in Nepal made a presentation on social movements for legal empowerment of Dalits in South Asia. He stated: 'Nepal's Dalit movement started as a social movement but not as a legal or political one although the social, legal and political movements can reinforce each other. In civil code, 1852, caste system and untouchability are codified. In 1940, Bhagat Sarbajit Bishwakarma from Baglung started Dalit's fight against caste based discrimination. After

1990, it became easier to conduct social movements together with political movements and to align national policies with the international instruments of equality. Litigation against CBD started by Mana Bahadur Bishwakarma who filed a writ petition in the Supreme Court against discrimination. Legal aid, awareness and litigation are key instruments to social movements and legal empowerment.' (Slides presented as Annex 3.3)

Mr. Sono Khangharani from Pakistan presented Pakistan's situation related with discrimination. He explained, 'we do not recognize Dalit but as scheduled castes. In 1906, Congress party appointed a Dalit as a primary teacher and it was the start of social movement in Pakistan. There were schools built for Harijans. After 1932, a movement was launched to fill schools with boys and girls, which included enrolling children from disadvantaged communities. Yogendra Nath Mandal promoted legal rights and constitutional protection of people from the scheduled castes. Organizations of and for scheduled caste groups were created which gave a boost to the movement. In 1970s, active movement of scheduled caste groups started and in 1980s, under army dictatorship, 10 seats were reserved for scheduled caste (non-Muslims) in national assembly. That can be taken as the beginning of political participation of scheduled caste in Pakistan. Now, scheduled castes are said to be from mainstream. Community based movements have lately started. Some challenges of current Pakistan are violation of human rights, political exclusion and poverty. Forty-eight people from scheduled caste were fielded in the last elections although none were elected. We are optimistic about changes.'

After the presentations from the panelists, the moderator Mr. Diwakar opened floor for questions and comments.

#### **Questions and comments:**

- Still untouchability exists. Mediation on such cases is done and complaint are not registered. How do we go about it? Best practices are useful, if any.
- We need to recognize the contribution of social movements to the election of Dalit men and women in Nepal.
- Why do we only name a few Dalit leaders and not the others who have contributed to state building?
- Nepal's constitution has given rights to Dalits and Nepal has signed international treaties related with anti-discrimination and there are laws formulated but how can we improve the level of implementation of these legal instruments?
- Shrinking space of social society in South Asia - how to deal with it?
- Madheshi Dalits not recognized. Why?
- Gender dimension is neglected while discussing CBD.
- Integrated approach to empowerment is needed in addition to legal empowerment.
- Globalization of discrimination based on caste is necessary. How to get this done?
- How to do Dalitization of Dalits. Since many Dalits are changing their castes while migrating, this needs to be addressed.

#### **Responses of Panelists:**

##### Nepal

- FIR registration is a challenge in cases of CBD. Despite constitutional and legislative safeguards, the law enforcement agencies are not responsive. CSOs must continue advocating for the full implementation of constitution and laws.
- Implementation of laws is a great challenge. CSOs have a role here.
- Shrinking space for CSOs is a challenge in South Asia including in Nepal and in India. Collective actions as per constitution are required.
- Dalit women's involvement in politics - limited participation of locally elected Dalits women leaders is a challenge and we need to act.
- SDGs have given social, economic, political, budgetary support with a motto of 'leave no one behind'.
- Diversity - we need to do justice - Madhesi Dalits and others should be included.
- Capacity development and legal empowerment needed for justice.

#### Pakistan

- Pakistan has judicial activism.
- Religious minorities and scheduled castes are in the radar of NCHR.
- Caste has a stronger notion than that of religion. That is taken as an identity.
- Segmentation and fragmentation of social movements, sometimes politically and sometimes socially are weakening the movement. NGOs movements are negatively portrayed.
- Political party-led movements are taken positively in comparison to social movements. Movements through social media are gaining currency.
- Pakistan's constitution is human rights friendly but no mention of castes.
- Movements are community-based and they protect human rights and networks are working for vulnerable groups.

#### Moderator

- There is a need of international framework for caste based discrimination. Networking and strengthening the networks globally are important. Social movement is for legitimizing the human rights concerns.
- 230 out of 260 million Dalits are from South Asia and we need to take initiatives.

## **DAY TWO: 14 AUGUST 2018**

### **Session 4: Dalit Women and the Struggle for Justice to All**

The session was moderated by Honorable Member of Parliament Dr. Bimala Rai Poudyal and panelists for the session were Mr. Zakir Hussain from Bangladesh, Ms. Manjula Pradeep from India, Durga Sob from Nepal and Ms. Anis Bibi Memon from Pakistan.

Ms. Rai Poudyal introduced the panelists and stated that despite the CBD is illegal, it is taking place in every day life.

Ms. Manjula Pradeep, a human rights activist stated that justice issues were related with vulnerability and less access to justice based on gender, caste and economic status. She stated: 'Dalit women are not seen as special category, we don't have quantitative and qualitative data. Implementation of laws is a challenge. Disaggregated data is required when cases are registered at police and justice is delivered. Subjugation is experienced at the family level and that hinders their access to justice. There is no protection from parents and family. When someone's rights are violated, they become more vulnerable to discrimination. More than 50% of cases take place within families. Justice is not just getting someone convicted but it's more than that. Legal framework is just one element and legal action is a weapon. Dalit women lack literacy therefore they are prone to discrimination and they are dependent on others. Family members and male members in a household take decisions on behalf of Dalit women. Physical violence and temple prostitution are not opposed by the Dalit families. Dalit women cannot assert their rights as they are unemployed and disempowered. Capacity building should include legal awareness, legal aid and building Dalit women lawyers' network as done in India. Challenges of Dalit women include lack of rule of law - safety nets, accountability of justice mechanisms, documentation and action beyond conviction.'

Ms. Durga Sob, founder of FEDO from Nepal stated: 'We understand justice as legal procedures and physical violence only but to me, access to justice in education, in participation, in economy, in health and everywhere is important. Dalit women are facing CBD, gender based discrimination and violence and extreme poverty, no legal, social, economic and political protection. Inter-caste marriage is creating problems for Dalit women, children born from such marriages are also facing challenges. Trafficking, witchcraft, dowry related violence, child marriage, GBV, domestic violence among Dalit women are other challenges faced by Dalit women in access to justice. Mostly, Dalit women are illiterate, they lack information, they are economically disempowered, dependent and resource scarce. Lack of confidence, insufficient legal aid and services, no trust on police and justice system, lack of coordination among service providers, strategies to empower them, need of paralegal training and orientation are existing difficulties. We need to prepare frontline leaders in each district and train them on empowerment. They can be the source of information, they can bridge between Dalit women and justice system. Collective efforts are required to address those issues.' (Slides presented as Annex 3.4)

Mr. Zakir Hussain, human rights and environmental rights activist from Bangladesh presented on how discrimination is being addressed practically in Bangladesh. He stated: 'Law is not sufficient to address discrimination but multiple actions are required. We don't have legal or institutional framework or legal protection in Bangladesh to address discrimination. NHRC has recently adapted an initiative to address caste based discrimination. Constitution is good but fundamental rights do not include anti-discrimination provisions. There are 6.5 million Dalits, however, the government says there are only 6.3 million. Identity and recognition are lacking and there is no data. Dalit people live in isolated places and they have their own traditional system of 'Panchayat'. Women are not elected in community organizations, Panchayats and political parties. Families also discriminate against Dalit women and they don't allow to share violence committed on them. Political violence and forced eviction are also human rights challenges in Bangladesh. Political empowerment is nominal. Recognition of Dalits as human being and anti-discriminatory laws are non-existent. Civil society is active now and 12 Dalit women led organizations exist in Bangladesh at the moment. However, we have hopes.'

Ms. Anis Bibi Memon from Pakistan spoke on role of paralegals for access to justice. She said: 'In Pakistan, 96.3% are Muslims, 1.6% Hindu and 0.2% scheduled castes. Hindu minorities and low caste and untouchables are in Muslim society also but in different names. During and after conversion, people suffer discrimination and occupational discrimination also exists. People from scheduled castes suffer

from residential segregation and they are not allowed to mingle up with other communities. Denial of access of public services, discriminatory restrictions, political discrimination, bonded laborers, sexual harassment, domestic violence, unequal wages, inequality in education are some of many challenges faced by scheduled caste people. Hatred from Muslims and upper caste Hindus, harsh treatment, discrimination against women are also existent. Civil society organizations and media are highlighting such cases. Still there is more room to improve the situation. Some networks are being formed with paralegal assistance. Data collection is needed.'

After the presentations from the panelists, the moderator Ms. Rai Poudyal opened floor for questions and comments.

#### **Questions and comments:**

- Caste is based on descent, culture and it's existent in all religions and faiths. The nomenclature is different but the discrimination based on descent is the problem.
- Dalit children with mental disability have no parental care as their parents have to go to work for livelihood. What can be done?
- Madheshi Dalits are at the bottom of Nepal's caste system but they are not present in the conference. Why is this?

#### **Responses of Panelists:**

##### Bangladesh

- Migration from India and Pakistan to Bangladesh created many problems for Dalit people. Inter-community marriage is not a problem and that is taking place.
- Muslim and non-Muslim discrimination is there.
- Training and capacity building on paralegal is crucial.

##### Nepal

- Disability is being addressed and more work is yet to be done.
- Madheshi Dalits need more attention.
- Paralegal - FEDO has paralegal programmes, other paralegal service providers are not providing services to Dalit women. Therefore, it's necessary to train more Dalit women as paralegals.

##### Pakistan

- Pakistan is improving its situation slowly and we have good practices as well.
- In rural areas, there are a lot of issues in terms of religion, caste and tribe based discrimination.

##### India

- Social disability is as important as physical disability.
- Critical caste theory is relevant in South Asia. In Universities also, this should be advocated for, produce authentic data and generate knowledge.

##### Moderator

- Summarized the points presented by the panelists and participants. Disaggregated data is a must. Dalit women are not homogenous. Disability needs to be taken into account.
- Family support, education, income generation, capacity building and confidence building from legal framework are necessary actions.
- Legal aid centres are needed.
- Dalit women networks are needed to address patriarchy.
- Inter-caste marriages need more attention.
- Denial of legal identity related to citizenship, rape, trafficking is a challenge.
- Protection is needed for education, participation, economic empowerment beyond legal empowerment.
- Political representation is key to empowerment.
- Map out different religions and situation of Dalits.
- Media can be activist but sometimes dominated by higher castes, their role cannot be ignored. Need of agency among Dalit women - it comes from education, economic empowerment, family support, social support.

## **Session 5.1: Sustaining Basic Justice Services: Exploring Public and Private Financing Models**

The session was moderated by Mr. Yagya Prasad Adhikari, Director of NHRC Nepal. The panelists included Matthew Burnett from OSJI, Prof. Dr. Govinda Nepal from Institute for Strategic and Socio-Economic Research (ISSR), Sumaiya Islam from OSJI and Hristina Vasilevska Dimchevska from Macedonia.

Mr. Matthew Burnett started his presentation with a question on how much would justice cost the state and communities have to bear. He added: 'The lack of access to justice due to the cost is challenging. We have rich ecosystem of data in relation to the costs for justice gathered through court system, projects, etc. Some key questions include why measure the costs of justice and reduce costs and increase efficiency and what the benefits are. Access costs for individuals and delivery costs for the government are two major dimensions of cost analysis in access to justice. Legal fees, transportation, court fees, materials, children's education are direct costs in access to justice. Delivery costs include costs of civil society, government and justice delivery mechanisms. Other costs include financial hardship, personal stress, performance at work, unresolved costs and meaningful access to justice. Social enterprises, cooperatives and legal insurance, can be ways of funding access to justice. Results-based financing are some options for funding access to justice costs.' (slides presented as Annex 3.7)

Prof. Dr. Govinda Nepal discussed about the cost of social infrastructure for access to justice and the government's focus on physical infrastructure. He highlighted that the government investment in the justice sector is negligible. He added: 'Most of the development partners are channeling their support through the government. Therefore, there is a possibility to foster partnership between public and private sector in providing funding support to access to justice. Private sector has to set aside 1% of their annual net profit for corporate social responsibility. So far, most of the private institutions are not funding access to justice initiatives. The local governments may also collaborate in the access to justice initiatives. The monitoring and supervision efforts are also important.' (slides presented as Annex 3.8)



Ms. Sumaiya Islam stressed that the traditional approach to analyze costs of access to justice which is focused on courts and legal system is incomplete. She said: 'Beyond that, we have to think resolving cases which do not go to the formal legal system. For example, if you have some problem with your neighbor, you don't go to the court or police but you seek other options. The costs involved in such cases are not recorded in the traditional cost analysis for access to justice. That should form a part of the access to justice system. Justice should be understood not only from the criminal justice perspective but from civil justice point of view. Access to civil justice system should be prioritized by addressing communities' needs. Referral and legal aid can be provided through schools or health facilities. Flexibility of funding at the sub-national level can be utilized to support access to justice initiatives. Legal empowerment agencies have public financing. How do we retain quality of services? Independence of such agencies should be ensured. Quality of services to the community should be ensured.'

Ms. Hristina Vasilevska Dimchevska shared Macedonian experiences on public financing on access to justice. She discussed: 'Paralegal support and litigation support are practiced in Macedonia. Roma people are deprived of many of the social services and paralegal services and legal aid need funding support. Partnership with government and international organizations is ongoing. CSOs are exploring support from the communities for access to justice services.'

After the presentations from the panelists, the moderator Mr. Adhikari opened floor for questions and comments.

#### **Questions and comments:**

- Shrinking space of CSOs in South Asia.
- How can we tap Corporate Social Responsibility budget in access to justice initiatives? What incentives do they have so that they spend their funds in access to justice?
- How are paralegal services mobilized and organized?
- What can be effective strategies to encourage appropriate measures to increase investment for Dalit women and terai Dalits?

#### **Responses of Panelists:**

##### US

- Benefit for business is strong rule of law.
- Distribute costs between public and private actors.
- Crowd funding is an option for raising funds for access to justice initiatives.

##### Nepal

- Incentive for CSR is valid. Benefits of providing support qualitatively can be an initiative.
- No rule for CSR, we must develop some basket funding as a pilot and develop operational guidelines to use the funds. Set priorities, start with banks then go to industries.

##### OSJI

- Income threshold for legal support.
- Education, paralegal services through legal aid budget.

### Macedonia

- Paralegals are recruited locally and based in the communities and they are mobilized locally. Offices of local CSOs are used.
- Paralegals work closely with bar associations.

### Moderator

- Local governments are also responsible for delivering justice. We need to utilize this to take justice to the doorstep of people.

## **Session 5.2: Making the Case for Basic Justice Services: Strengthening and Leveraging Evidence on the legal needs of Dalit and Marginalized communities**

The session was moderated by Mr. Kamran Arif from Pakistan and discussants of the session included Deepak Thapa, Executive Director, Social Science Baha, Nepal on legal needs of Dalit communities in Nepal; Alexis Johara Hoag from USA on using data and legal advocacy to advance rights of marginalized communities; Natalia Camburian from Moldova on investing in justice needs study to scale up services for marginalized communities in Moldova and Ms. Anita Thapaliya, LACC on strengthening the use of case data to advance rights of women in Nepal.

Mr. Arif explained the purpose of the data collection and use for addressing discrimination. In order to identify the justice sector needs, data collection is important, Mr. Arif stated.

Mr. Deepak Thapa discussed about the legal needs survey (slides presented as Annex 3.5) which tried to identify obstacles for the citizenry to access the justice system. He also stated that the deep-seated values and discriminatory attitudes often lead to poor implementation of laws. The study revealed that the prevalence of justice problems is more or less equal across the researched 6 categories of people. They seemed to have good physical access to the justice institutions and some of them preferred to use informal systems in justice delivery system.

Ms. Alexis Johara Hoag from the USA made a presentation on using data and legal advocacy to advance the rights of marginalized communities (slides presented as Annex 3.6). She presented how the state entities used data to oppress black population. She also stated that historically the discrimination against the blacks in the US was in schools, health facilities, etc. The law was used to control the blacks and suppress them.

Ms. Natalia Camburian from Moldova shared her experiences. As a new and a small country, we have a huge backlog of cases. She stated that some legislation to deal with discrimination are present. Paralegal networks are available and availability of data is an advantage but it doesn't guarantee access to justice, she stated. 'Data is necessary for right decision making. People's legal needs are explored. Paralegals are helpful to address local disputes. Advocacy is based on data', she added.

Ms. Anita Thapaliya from Nepal shared her experiences with LACC. She shared that advocacy for property rights was based on data and the advocacy was successful. Similarly, citizenship in the name of a mother was another case advocated for on the basis of data. She stated that data is helpful to identify people's needs. Through paralegals, data has been collected and LACC has set up a database.

After the presentations from the panelists, the moderator Mr. Arif opened floor for questions and comments.

### **Questions and comments:**

- Legal recognition of paralegals is important but that has not happened.
- Data has been misused therefore we are afraid to be recognized.

### **Responses of Panelists:**

#### Nepal (LACC)

- In coordination with local governments and federal governments, recognition of paralegal services will be negotiated.

#### Moldova

- Institutionalization of paralegals is done.
- No engagement of local authorities to ensure neutrality.
- Independence of paralegals is crucial and it must be contextualized in each country separately.

#### Nepal (Social Science Baha)

- Whether the discrimination was based on caste or other factors, we looked at it.

#### US

- Many people do not have citizenship status and face multiple challenges.

#### Moderator

- Collecting data is good but who has access to those data is also sensitive and controversial.

## **Session 6: Scaling Up Basic Justice Services: Institutional Reform and Role of NHRIs and Other Key Actors**

The session was moderated by Dr. Bipin Adhikari, Dean of School of Law, Kathmandu University and panelists included Hon. Mohana Ansari, Member of NHRC Nepal, Hon. Enamul Hoque Chowdhury, Member of NHRC Bangladesh and Mr. Aftab Alam, Director General of National Commission for Human Rights (NCHR) Pakistan.

Mr. Aftab Alam from NCHR Pakistan shared that it has extensive mandate from awareness to policy recommendation, monitoring, promotion and protection. He shared that NCHR monitored the cases of Kalasha community, which is a minority group and recommended some actions to the government. Apart from this, the Commission also investigated into cases of transgender, bonded labour and other marginalized groups, he added.

Hon. Enamul Hoque Chowdhury from Bangladesh stated that poverty was the main cause of vulnerability and that is true across many countries and cultures. He stated that every one as a human being, they are equal. Bangladesh is also not an exception. We have been using media to eradicate discrimination. NHRC Bangladesh receives complains from marginalized communities, he expressed.

Hon. Mohana Ansari from Nepal discussed about the historical background and current situation of NHRC. (Slides presented as Annex 3.9) She also made reference to international human rights

instruments and procedures to which Nepal is a party and national constitutional and legal frameworks. She opined that the issue of non-discrimination is still a cosmetic disposition. She stated that the NHRC has been responding to the needs of marginalized people but that is not sufficient. She also made a mention of conflict related cases, impunity and breach of laws as current challenges of Nepal's human rights situation.

After the presentations from the panelists, the moderator Mr. Adhikari opened floor for questions and comments.

**Questions and comments:**

- Despite the presence of multiple human rights institutions, the cases of violation are on the rise. Police denies filing cases. What can be done?
- Media and NHRIs are hopes for hopeless people.
- What has NHRC done in relation to Dalits' rights?
- How many cases related with CBD been registered with your Commissions?
- Why our NHRC is not inclusive?
- What recommendations have been made by NHRC to the government to dismantle CBD?
- How independence of NHRC is ensured?

**Responses of Panelists:**

Pakistan

- Pakistan is sensitive to human rights situation. We have been monitoring cases and addressing the reports through reporting and making government aware about it.
- Process of complaint handling - we receive complains, ask concerned department for information, we go back to complainant, conduct hearing and recommend actions to the government.

Bangladesh

- In Chittagong case, the victims were given proper reparations and further work is being done at the recommendation of NHRC.
- Killings are not only caste-based but based on politics and more. We investigate such unnatural killings.
- When we receive complaints, we act. We also monitor cases.

Nepal

- Pluralism is essential and the NHRC can be made inclusive in future.
- NHRC has monitoring and investigation mandate - focal commissioners are there to take care of such cases.
- Government reporting to treaty bodies is not done appropriately.
- Police has started investigation after our intervention in many instances.

- We don't know the mandate of other commissions.

Moderator

- Challenge is the justice needs. There are some comparative questions on how complaints are handled in different commissions.

## **Session 7: Strengthening Access to Justice for Marginalized Communities**

The Seventh Session was a group work in four teams and the inputs of the group were integrated in the Kathmandu Declaration presented as Annex 1 of this document. The groups, themes and facilitators are given below:

Theme 1: Paralegalism, Community Organizing and Equality

Facilitators: Natalia Camburian and Marbre Stahly Butts

Theme 2: Technology and Legal Empowerment

Facilitators: Matthew Burnett, Som Niroula and Dr. V. A. Ramesh Nathan

Theme 3: Access to Legal Identity and Legal Empowerment

Facilitators: Khalid Hussain and Anita Thapaliya

Theme 4: Economic Justice, Legal Empowerment and Equality

Facilitators: Kamran Arif and Renu Sijapati

## **DAY THREE: 15 AUGUST 2018**

The third day began with the reading out of the draft of Kathmandu Declaration and feedbacks were collected from the participants in four groups. The final Declaration is given in Annex 1.

### ***Closing Session***

In the Closing Session the Declaration was read out by Yagya Prasad Adhikari, Director of NHRC.

N. Paul Diwakar thanked the participants for organizing the event and congratulated the group for successfully completing the event. He mentioned that the gathering of participants from 9 countries of 3 continents was historic one and the participation of NHRIs and civil society together was notable. He stressed that there are multiple layers of intersectionality with gender, disability, age, religion, language, place of inhabitation (rural or urban) and sexual orientation, in addition to caste. He added that this is a global phenomenon affecting people from the globe. He urged, 'We need to have a forum to take up this issue globally and advocate for a UN declaration on discrimination based on work and descent including caste. He opined that a formal global mechanism to address DWD including caste would be an effective measure to empower Dalits.

Mr. Hari Sharma, Director of Local Foundation of OSF in Nepal as a special guest, stated that we have been fighting against CBD for years and action from this type of group is assuring. He added: 'Social activism is recent in South Asia except in India. Conversations like this are useful. Institutions are changing, there are new possibilities with new generation. Youth, new technology, can be used for new type of social movement. Targets are changing. Our space is being limited by the state differently. It's a difficult task. Turning rights movement into justice movement is the need of the time. As long as rights are business of professional NGOs, states don't respond to them. Rights don't ensure justice. Rights have been fragmented. Justice is a political struggle. Using law for justice is a peaceful way, future will be contentious. Fight for justice is a long one.'

Mr. Aftab Alam, Director General of NCHR Pakistan said that this conference has given good insight on marginalization. Solution to diverse problems should also be different. Discrimination still existing in South Asia and complexities associated with their resolution have been discussed. Holistic approach is needed in modern day principles of human rights. Constitutions and affirmative actions enshrined in the are not adequate to address discrimination, he added. He further elaborated: 'Lack of implementation of laws and policies is a problem and the discrimination continues. Marginalization is due to poverty and illiteracy. Dalit women face more discrimination. Occupation and places of settlement are changing in South Asian society. If citizenship is a bundle of rights, Dalits are far short of them. We need to work collaboratively in dismantling the caste based discrimination. It should not be as a charity but a right movement.'

Ms. Renu Sijapati, FEDO delivered vote of thanks to NHRC, OSF, panelists, moderators and participants for their respective roles in the conference and for providing important issues.

Hon. Prakash Osti, member of NHRC and chair of the closing session stated that discrimination can not be justified on any ground. Law enforcement has been weak in Nepal despite the laws criminalizing it, he clarified. Historically, division of labour was done but that was misused and turned into a caste system, he added. He further emphasized that there are laws and constitution on anti-discrimination but the implementation is important.

He further added that NHRC has a focal officer to look into CBD and NHRC provides advice to the government of Nepal on UPR, untouchability, torture, violence against women, etc. as a priority. He added: 'Untouchability is a heinous crime and we will work with multiple stakeholders to end that. Laws are not sufficient to abolish ill practices. Education, economic prosperity, social cohesiveness are instruments to address CBD faced by people in South Asia region. The 30-point declaration is an important move towards dismantling CBD. The declaration needs implementation. NHRC will be with you always. Transformation is needed in society. Let us determine to end discrimination.'

## Annex 1: Declaration

### **REGIONAL CONFERENCE ON EQUAL ACCESS TO JUSTICE FOR ALL: USING LAW TO DISMANTLE CASTE BASED DISCRIMINATION IN SOUTH ASIA**

**Organized by:**

**National Human Rights Commission (NHRC) Nepal, Feminist Dalit Organization (FEDO) Nepal and Open Society Justice Initiative**

**Kathmandu, Nepal 13-15 July 2018**

### **Kathmandu Declaration on Equal Access to Justice for All: Using Law to Dismantle Caste Based Discrimination in South Asia**

#### **Preamble**

- 1) We, the National Human Rights Institutions, Civil Society Organizations of South Asia and Human Rights Organizations and Dalit Rights Movements from the continents of Asia, America and Europe (Bangladesh, India, Maldives, Macedonia, Nepal, Pakistan, Romania, UK and USA) have come together in Kathmandu on 13-15 August, 2018, at the **Regional Conference on Equal Access to Justice for All: Using Law to Dismantle Caste Based Discrimination (CBD) in South Asia** to express our solidarity in calling upon all the organs of the State and inter-State bodies regionally and globally to end the caste and gender based discrimination and untouchability perpetrated against the communities affected by this systemic and heinous crime and to work for their development and progress within the parameters of equality, justice, equity and inclusion.
- 2) ***Recalling** the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, ethnicity, sex, sexual orientation, gender identity, disability, language, religion, social origin, birth or other status;*
- 3) ***Recognizing** that caste-based discrimination is a violation of international human rights law affecting more than 260 million people worldwide, mainly in South Asia;*
- 4) ***Taking note** that Dalit and similarly marginalised communities remains socially and economically vulnerable, politically and educationally excluded and disempowered and continue to suffer from access to justice, marginalization and economic deprivation across the world, mainly in South Asia;*

- 5) We recognize caste and gender based discrimination as one of the worst forms of discrimination in the world. Within the international discourse, particularly in UN Systems, **caste-based discrimination is referred to as *Discrimination based on Work and Descent (DWD)***. We further believe that promoting peaceful just and inclusive societies is possible by providing access to Justice for all and the accomplishment of the Sustainable Development Goals No. 5,10,16 and others adopted by the United Nations General Assembly (UNGA) in September 2015 is largely dependent on effective, inclusive and accountable justice systems and institutions.
- 6) Dalit women are amongst the most marginalised people in the world. The caste hierarchy and patriarchal structures multiply alienate Dalit Women on the basis of class, caste, age, disability and LGBTIQ. While Dalit women experience high levels of physical and sexual violence, their vulnerability is largely a result of socio-economic deprivation, cultural and political exclusion.
- 7) ***We recognize** that DWD/CBD affects millions of people mainly in South Asia and worldwide. It violates a wider range of civil, political, economic, social, cultural and religious rights;*
- 8) ***We are aware** that there remain constitutional, legislative and institutional gaps in protecting and promoting the rights of Dalits and Dalit women;*
- 9) ***We are mindful** that the lack of equal access to justice for all, particularly Dalit women, children, people with disabilities hinder their overall development and well-being;*
- 10) ***We are concerned** that lack of adequate and effective accountability measures and redressal mechanisms at the local, regional and global levels impede full enjoyment of human rights by all due to CBD;*
- 11) ***We stand** in support and solidarity for the effective implementation of the UN OHCHR Guidance Tool for Elimination of Discrimination based on Work and Descent (DWD);*

**I. We, therefore, call on the United Nations and Member States:**

- 12) To take necessary steps towards legal empowerment of women affected by DWD/CBD through enabling community leaders, paralegal practitioners and sub-national governments;
- 13) To prioritize and arrange for DWD Desks and to give representation to the DWD/CBD communities at the National Human Rights Institutions and proactively address such human rights violation cases;
- 14) To make necessary arrangements for mechanisms and institutions to address all cases of violence and discrimination against Dalit women;
- 15) To ensure that UN Sustainable Development Goals (SDGs) identify Caste and DWD as a system which excludes communities and, therefore, make proactive measures to address DWD and caste and gender based discrimination across targets with necessary indicators;
- 16) To urgently adopt the ***Draft Principles and Guidelines for the Elimination of Descent and Work based Discrimination*** which was prepared and recommended by two eminent Special Rapporteurs appointed for this purpose and which still awaits the UN Human Rights Council's formal recognition and approval;



- 17) To call for a UN Declaration and/or Convention for combating discrimination on work and descent and caste discrimination and establish a Special UN Fund to support representatives of those communities from across the globe to participate in all UN processes on behalf of the community.
- 18) To initiate a Forum on DWD issues similar to the Permanent Forum on Indigenous issues and the Forum on Minority Issues
- 19) To give due recognition to the rights of the growing population of DWD/CBD affected children and youth, plans specially designed development projects that are relevant to their needs today and accordingly allocate sufficient budgets,

## **II. We call on the nation states which have a large number of population affected by DWD/CBD:**

- 20) To take urgent steps to fulfill the commitments made by the Busan Partnership for effective Development Cooperation on Promoting Sustainable Development Goals in situations of conflict and fragility by donors;
- 21) To invest more in legal empowerment to build the capacity of Dalit community Paralegals, particularly Dalit women for the consistency and quality of their efforts;
- 22) To build and strengthen legal frameworks and enforcement of justice systems and administration of justice and implement available laws on access to justice for women and people facing DWD/CBD;
- 23) To encourage sub-national governments to make SDG Goals No. 5, 10, 16 and others a development agenda and codify SDG 16 in plans and programmes to uplift the Dalit community, in particular Dalit women;
- 24) To promote community-based justice services including institutionalization of the paralegal services and introduce provision of emergency funds from the governments to enable victims of DWD/CBD and domestic violence to access justice;
- 25) To document good practices from past or ongoing initiatives on access to justice for all within South Asia and across the world, collect disaggregated data with safeguards for misuse of such data for policy interventions;
- 26) To increase public financing for empowerment of people affected by DWD/CBD, keep track of financial resources used for people affected by DWD/CBD;
- 27) To promote new technologies and approaches in the elimination of caste based discrimination, implementation of laws and connecting the larger populations in South Asia and across the world and between countries;

- 28) To accelerate global efforts towards dismantling caste based discrimination in all its manifestations and criminalizing such discriminations with stronger penalties and creating basket funds for providing legal support to the victims;
- 29) To ensure security of Dalit community in particular inter-caste marriages;
- 30) Take up measures for political participation and strengthen Capacity development initiatives for Dalit and DWD communities;

Kathmandu, 15 August 2018

## Annex 2: Conference Schedule

### REGIONAL CONFERENCE ON EQUAL ACCESS TO JUSTICE FOR ALL: USING LAW TO DISMANTLE CASTE BASED DISCRIMINATION IN SOUTH ASIA

Hotel Himalaya, Kathmandu, Nepal  
13-15 August 2018

#### Programme Agenda

<b>DAY ONE: 13 August 2018 (Monday)</b>	
8:00 am - 8:45 am - Registration / Tea coffee / Breakfast	
9:00 am - 10:30 am	<p><b>Opening Session: How Do We Move Towards Equity and Equal Justice for All?</b></p> <p>This session will aim to put into context the theme of the conference:</p> <ul style="list-style-type: none"> <li>• Chair - Kala Swarnakar, President, Feminist Dalit Organization (FEDO)</li> <li>• Chief Guest - Hon. Anup Raj Sharma, Former Chief Justice and Chairperson, National Human Rights Commission (NHRC) Nepal</li> <li>• Special keynote speech - Hon. Sapana Pradhan Malla, Justice, Supreme Court of Nepal (15 minutes)</li> <li>• Special Guest - Hon. Nira Jairu, Member of Parliament (5 minutes)</li> <li>• Guest - Hon. Enamul Hoque Chowdhury, National Human Rights Commission of Bangladesh</li> <li>• N. Paul Diwakar - Chairperson, Asian Dalit Rights Forum (ADRF)</li> <li>• Welcome speech - Durga Sob, Founder President, FEDO</li> <li>• Objectives and highlight - Sumaiya Islam, OSJI</li> <li>• Bhakta Bishwakarma, Dalit NGO Federation (DNF) (5 minutes)</li> </ul> <p>Moderator: Ms. Neetu Pokharel, OSJI</p>
10:30 am - 11:00 am	Tea/Coffee Break and Group Photo
11:00 am - 12:30 pm	<p><b>Session 1: Time for Justice: Understanding and Addressing the Justice Needs of Dalit Communities</b></p> <p>The purpose of this session is to explore Dalit perspectives on justice. In modern South Asia, caste continues to persist and intersect with other forms of</p>

	<p>differences/inequalities across the region. Panelists will discuss how Dalit communities continue to experience injustices, seek remedies and the situation on the ground to advance rights of those impacted by caste hierarchies.</p> <ul style="list-style-type: none"> <li>• What are the most pressing legal needs of Dalit communities in different contexts?</li> <li>• How do Dalit communities resolve disputes that affect their lives?</li> <li>• What are the greatest challenges in strengthening access to justice for Dalit communities?</li> </ul> <p><b>Moderator:</b> Dr. Ram Krishna Timalaena, Executive Director, National Law College (NaLW)</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Dr. V. A. Ramesh Nathan - India</li> <li>• Tek Tamrakar - Nepal</li> <li>• Anis Bibi Memon - Pakistan</li> </ul> <p>[Time: 40 min panel discussion followed by 20 minutes Q/A]</p>
12:30 pm - 1:30 pm	Lunch Break
1:30 pm - 3:00 pm	<p><b>Session 2: Legal Empowerment and Advancing Equality: Making Law Work for Marginalized Communities</b></p> <p>This session will seek to explore how movements across different contexts are using law to advance the rights of marginalized communities.</p> <p><b>Moderator:</b> Sumaiya Islam, Senior Programme Manager, OSJI</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Crina Marina Morteauanu - Romania</li> <li>• Prakash Nepali - Nepal</li> <li>• Magbre Stahly Butts - USA</li> <li>• Khalid Hussain - Bangladesh</li> </ul> <p>[Time: 40 minutes panel discussion followed by 45 minutes Q/A]</p>

3:00 pm - 3:30 pm	Tea/Coffee Break
3:30 pm - 5:00 pm	<p><b>Session 3: Social Movements for the Legal Empowerment of Dalit in South Asia</b></p> <p>This session will explore efforts for collective mobilization to advance the rights of Dalit Communities, the role of law and the ways in which legal empowerment efforts are critical for reform and progressive transformations.</p> <p><b>Moderator:</b> Paul Diwakar</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Bhakta Bishwakarma - Nepal</li> <li>• Sono Khangarani - Pakistan</li> <li>• Milon Das - Bangladesh</li> </ul> <p>[Time: 40 minutes panel discussion followed by 45 minutes Q/A]</p>
6:00 pm	Group dinner at Hotel Himalaya [Nepali participants will also join the dinner]

<b>DAY TWO: 14 August 2018 (Tuesday)</b>	
8:00 am - 8:45 am	Breakfast
9:00 am - 10:30 am	<p><b>Session 4: Dalit Women and the Struggle for Justice</b></p> <p>Many Dalit women are denied access to education, to meaningful employment, health provision and are the first to suffer from extreme discrimination, exploitation and marginalisation. During the interactive session, we will focus on:</p> <ul style="list-style-type: none"> <li>• Key justice issues Dalit women experience</li> <li>• How to create an enabling environment for women's access to justice? How to create justice institutions to make them effective, accountable and gender responsive as front-line points of contacts?</li> <li>• How can Dalit women be legally empowered women with the tools to know, claim and exercise their rights and extending knowledge of other key stakeholders?</li> </ul>

	<p><b>Moderator:</b> Hon. Dr. Bimala Rai Poudyal, Member of Parliament</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Zakir Hussain - Bangladesh</li> <li>• Manjula Pradeep - Indida</li> <li>• Durga Sob - Nepal</li> <li>• Sono Khangharani - Pakistan</li> <li>• P. P. Sivapragasam - Sri Lanka</li> </ul> <p>[Time: 40 minutes panel discussion followed by 45 minutes Q/A]</p>
10:30 am - 10:50 am	Tea/Coffee Break
10:50 am - 12:00 pm	<p><b>Session 5: Advancing Equality Using Justice Data and Legal Strategies</b></p> <p>This session will focus on leveraging justice data from surveys and administrative data and legal strategies to advance rights of marginalized communities.</p> <p>Session 5.1: Making the Case for Basic Justice Services: Strengthening and Leveraging Evidence on the Legal Needs of Dalit and Marginalized Communities</p> <p><b>Moderator:</b> Kamran Arif</p> <p><b>Discussants:</b></p> <ul style="list-style-type: none"> <li>• Legal needs of Dalit communities in Nepal - Deepak Thapa, Executive Director, Social Science Baha, Nepal</li> <li>• Using data and legal advocacy to advance rights of marginalized communities - Alexis Johara Hoag, USA</li> <li>• Investing in justice needs study to scale up services for marginalized communities in Moldova - Natalia</li> <li>• Strengthening the use of case data to advance rights of women in Nepal - LACC</li> </ul> <p>[Time: 40 minutes panel discussion followed by 30 minutes Q/A]</p>
12:00 pm - 1:00 pm	Session 5.2: Sustaining Basic Justice Services: Exploring Public and Private Financing Models

	<p><b>Moderator:</b> Yagya Prasad Adhikari, Director, NHRC Nepal</p> <p><b>Discussants:</b></p> <ul style="list-style-type: none"> <li>• Innovative financing models - Matthew Burnett, OSJI</li> <li>• Public Private Partnership - Prof. Dr. Govinda Nepal, Nepal, ISSR</li> <li>• Public financing for access to justice - Sumaiya, OSJI</li> </ul> <p>[Time: 30 minutes panel discussion followed by 30 minutes Q/A]</p>
1:00 pm - 2:00 pm	Lunch Break
2:00 pm - 3:30 pm	<p><b>Session 6: Scaling Up Basic Justice Services: Institutional Reform and Role of NHRIs and Other Key Actors</b></p> <p>Complex justice problems require long term efforts by multiple constituencies. National Human Rights Institutions (NHRIs) in attendance have seen significant gains in promoting human rights through their work. Promoting access to justice falls as part of their mandate connected with individual/community's direct access or government's accountability. We will hear from the speakers to discuss about the role of NHRIs in South Asia, how they have been responding to the justice needs of Dalit community, marginalized people. This session will highlight about the effort of NHRIs in scaling up community justice services from the perspective of marginalized communities. What are their key priorities of institutional reform within the NHRIs, and within the government's justice systems to strengthen and scale up the basic justice services?</p> <p><b>Moderator:</b> Dr. Bipin Adhikari, Dean, Kathmandu University School of Law (KUSL)</p> <p><b>Panelists:</b></p> <ul style="list-style-type: none"> <li>• Hon. Mohna Ansari - NHRC, Nepal</li> <li>• Hon. Enamul Hoque Chowdhury - NHRC Bangladesh</li> <li>• Aftab Alam (Director General) - NHRC Pakistan</li> </ul> <p>[Time: 50 minutes presentation: 10 minutes each, 40 minutes Q/A]</p>
3:30 pm - 4:00 pm	Tea/Coffee Break

4:00 pm - 5:30 pm	<p><b>Session 7: Strengthening Access to Justice for Marginalized Communities</b></p> <p>Thematic discussions:</p> <p><b>Theme 1: Paralegalism, Community Organizing and Equality</b></p> <p>Facilitator: Natalis Camburian</p> <p><b>Theme 2: Technology and Legal Empowerment</b></p> <p>Facilitators: Matthew Burnett and Som Niroula</p> <p><b>Theme 3: Access to Legal Identity and Legal Empowerment</b></p> <p>Facilitators: Khalid Hussain and Anita Thapaliya</p> <p><b>Theme 4: Economic Justice, Legal Empowerment and Equality</b></p> <p>Facilitators: Kamran Arif and Renu Sijapati</p>
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<b>DAY THREE: 15 August 2018 (Wednesday)</b>	
8:00 am - 8:45 am	Breakfast
9:00 am - 10:00 am	<p><b>Small Groups</b></p> <p>Drafting of Declaration by Declaration drafting team</p> <p>(Break out groups to take regional collaboration forward along themes that emerge from Day 1 and Day 2.</p> <p>Draft to be prepared on day 2 by a small drafting team to which people are invited to join. Share and ask for feedback before finalization.)</p>
10:00 am - 10:30 am	<b>Small Groups report back</b>
10:30 am - 11:00 am	Tea/Coffee Break
11:00 am - 12:30 pm	<p><b>Closing Session</b></p> <ul style="list-style-type: none"> <li>• Moderator: Neetu Pokharel, ASD</li> <li>• Chair: Hon. Prakash Osti, Member of NHRC Nepal</li> </ul>



	<ul style="list-style-type: none"> <li>• Chief Guest -</li> <li>• Commissioner - Bangladesh</li> <li>• Closing Remarks - Hari Sharma, ASD</li> <li>• Mr. Yagya Prasad Adhikari, Director, NHRC (Presenting Declaration)</li> <li>• Vote of Thanks - FEDO</li> </ul>
12:30 pm - 1:30 pm	Lunch

## Annex 3: Presentations

### *Annex 3.1: Access to Justice for Dalits in India*

**Dr. V.A.Ramesh Nathan**

General Secretary

National Dalit Movement for Justice- NDMJ (NCDHR)

New Delhi

#### **Presented at the Regional Conference on Equal Access to Justice for All: Using Law to dismantle Caste-Based Discrimination in South Asia**

Dalits constitute about 201 million of the population of India continue to face the most inhuman forms of caste based discrimination and untouchability, human rights abuses and social exclusion on a daily basis.

Despite the Social safeguards contained in Article 17 (Abolition of Untouchability), Article 24 (Prohibition of employment of children in factories, etc) of the Indian constitution, Economic Safeguards in 23 (prohibits the traffic in human beings) and Article 46 (The State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation) in respect of education and safeguards in respect of reservation in employment in Article 15(4) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”. Article 16 (equality of opportunity in matters of public employment) , 16(4)(a) (the state may make reservation of appointments or posts in favour of any 'backward class' of citizens etc), beyond enacting laws, acts, policies and setting up mechanisms, the government has not made any sincere efforts to ensure the knowledge on rights and entitlements disseminated to Dalit's or for effective implementation of the laws.

Though abolished the practice of ‘untouchability’ in the constitution, still persists due to its systemic character of Caste System in the form of Culture, beliefs, social norms etc. Hence, the Indian Parliament enacted the Untouchability Offences Act 1955, which underwent amendment and renaming in 1976 to become the Protection of Civil Rights (PCR) Act. Under this Act, ‘untouchability’ as a result of religious and social disabilities was made punishable. However, due to legal loopholes, the levels of punishments being less punitive as compared to those of the IPC, and the law and order machinery being neither professionally trained nor socially inclined to implement such social legislation, a more comprehensive and more punitive Act was required to protect SCs and STs from violence committed by other communities. This gave rise to the SC/ST (PoA) Act 1989<sup>1</sup>.

It has been 27 years since the Indian Parliament enacted the SC/ST (Prevention of Atrocities) Act 1989 (herein PoA Act), followed by the SC/ST (Prevention of Atrocities) Rules in 1995, to put an end to targeted caste and ethnicity based crimes against Dalits and Adivasis by non-Dalits and non-Adivasis. The PoA Act introduced a new category of offences - “atrocities”, committed against a SC or ST by a person/s not belonging to a SC or ST community, and instituted special procedures to prosecute these offences, mandated the designation of special courts for speedily trying these cases, and imposed more stringent punishment on those found guilty of these crimes.

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<sup>1</sup> The **Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989** is an [Act](#) of the [Parliament of India](#) enacted to prevent atrocities against [scheduled castes and scheduled tribes](#). The Act is popularly known as POA, the SC/ST Act, the Prevention of Atrocities Act, or simply the Atrocities Act.

The discrimination and “Untouchability” practices restrict Dalits to enhance their individual freedom in developmental spheres of their lives – land, labour, employment, education and political participation. Dalit assertion is being snubbed in the budding stage itself with brutal force. Even if Dalits attempt to assert their right to resources like land/water/livelihood; participation in religious or cultural celebrations; using right to vote or contest in elections, they are abused, physically attacked, subjected to social boycott, economic boycott, tortured, humiliated.

Our experiences show that violence is unleashed on Dalits by dominant caste persons/communities either to reinforce socio-economic and power inequalities or to suppress their assertion and claims to resources and opportunities for socio-economic development, such as land, fair minimum wages, education, and so on. Violence is used as a tool to subjugate them and crush any form of resistance to protect and assert their dignity because as per the caste system, they were meant to only serve the communities placed on the so-called higher rungs of the caste hierarchy.

Atrocities that were identified and recognized in the PoA Act in 1989 have not only grown in number over time, but with the neo-liberal scenario and rapidly changing economic landscape, caste induced vulnerabilities and marginalization have escalated with new manifestations of caste hatred and atrocities against Dalits. These newer forms of atrocities and offences are related to assault on dignity; atrocities against women; access and ownership over land and housing; exercise of franchise; and ‘untouchability’ in the public sphere. These newer offences are brought in as offences in the PoA Act Amendment Act 2015, which has recently been passed on 21<sup>st</sup> December 2015 in the upper house of the Parliament and it has now become an ACT: PoA Amendments Act, 2015.

### **Dalit Women**

The position of Dalit women is one of the lowest from all these aspects. They suffer multiple forms of discrimination – as Dalits, as poor, and as women. Certain kinds of violence are traditionally committed against Dalit women: extreme filthy verbal abuse and sexual epithets, naked parading, dismemberment, being forced to drink urine and eat faeces, branding, pulling out of teeth, tongue and nails, rape, gang rape, burnt alive and violence including murder after proclaiming witchcraft, are only experienced by Dalit women.

### **Dalit Children**

Despite the Right to Education and Sarva Shiksha Abhiyan, about 60.64 lakh children remain out of school across the country out of these 60.64 lakhs, 32.4% children belong to the Schedule Caste, the corresponding number for Schedule Tribes stands at 16.6% in 2016 (Ministry of Human Resource and Development). Census data showing the literacy rate among SCs to be 66.07, for it was STs 58.96, while the total stood at 74. The figures also showed that school dropout rate among SCs for 2013-14 for class I-X was 50.1, for STs it was 62.4 while the total was 47.4 per cent.

School is also a site of severe abuse and violence on Dalit children both boys and girls and many of these are linked to the lower caste position and polluted status. They face Caste based discrimination in the education system includes the many ways in which the education system denies equitable education opportunities, education services and supportive mechanisms to facilitate Dalit students to access an equal quality of education and to reduce educational inequalities between Dalits and non-Dalits. SC children face discrimination in access to drinking water and midday meals, are made to do cleaning and other menial tasks and also face verbal abuse on the basis of their caste. The India-level literacy rate for SC children, moreover, continues to be lower than that of other castes: overall 66.1% for SCs compared to 73% generally. These children form the largest percentage of bonded labour and trafficked children.

### **Status of Atrocities against Dalits**

The Crime in India Report 2016 data has revealed that *atrocities Against Scheduled Castes have increased by 5.5%* in 2016 (40,801) over 2015 (38,670). Uttar Pradesh (10,426 cases) reported the highest number of cases of atrocities against Scheduled Castes (SCs) accounting for 25.6% followed by Bihar with 14% (5,701) and Rajasthan with 12.6% (5,134) during 2016. *Atrocities/Crime Against Scheduled Tribes have increased by 4.7% in 2016* (6,568) over 2015 (6,276). Madhya Pradesh (1,823 cases) reported the highest number of cases of atrocities against Scheduled Tribes (STs) accounting for 27.8% followed by Rajasthan with 18.2% (1,195 cases) and Odisha with 10.4% (681 cases) during 2016.

### **Status of Dalit Women**

Facing intersecting discrimination on the basis of gender, caste and class, Dalit women are particularly vulnerable to human rights violations and social, economic and political exclusion. SC women are also vulnerable to specific forms of violence. Studies revealed that over 90% of *Devadasi/Jogini* women forced into ritualized prostitution are scheduled caste women.<sup>2</sup> Official statistics also show that over 2,500 women have been killed of the suspicion of practicing witchcraft in the past 15 years. The former UN High Commissioner for Human Rights, Navi Pillay, has noted that, “An estimated 90% of manual scavengers are Dalit women who face multiple vulnerabilities and discrimination based on their caste and gender, and who are often exposed to violence and exploitation.”<sup>3 & 4</sup>

*Assaults on women with the intent to outrage modesty*, at 7.7% (3172 cases), reported the highest number of cases of crimes/atrocities against Scheduled Castes (SCs), followed by rape with 6.2% (2541 cases) during 2016. Uttar Pradesh recorded the highest number of crimes against women at 1065, of which 557 were rape cases. Bihar, curiously, reported very few cases of crime against Dalit women, even though it was only second to Uttar Pradesh in reporting the maximum number of crimes against Dalits. Bihar, the data shows, registered only 45 cases of crime against Dalit women. All were rape cases. Rajasthan, which has recorded 5134 cases of crimes against Dalits in 2016, reported 641 cases of crimes against women. Of these, 327 were rape cases. Similarly, Madhya Pradesh reported 1833 cases of crimes against Dalit women, of which 439 were cases of rape. Andhra Pradesh too recorded 90 cases of rape against a total of 748 cases of crimes against Dalit women.

### **Response of the Police:**

Under the SC/ST (Prevention of Atrocities) Act, 1989 there were total of 11,060 cases for investigation. The charge-sheeting rate was 77.0. Information from CSO monitoring atrocity cases and DHRDs continue to reveal a number of ways in which police ensure the non-registration of atrocity cases. These include neglect and disinterest towards SC/ST atrocity victims; discouraging SCs/STs from registering cases and instead encouraging compromises with the accused; threatening victims into silence or even inflicting violence on victims; refusing to register cases under the PoA Act to avoid punitive measures against the perpetrators of atrocities; foisting false cases against victims at the behest of the perpetrators of atrocities to push through a settlement; accepting bribes from the perpetrators to drop the victim's case; declaring the perpetrator of atrocities innocent without following due legal process; and delaying their arrival to the scene of atrocity, which contributes to weakening the evidence trail.

### **Response of the Judiciary:**

<sup>2</sup> Black, Maggie, 2007. *Women in Ritual Slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*. London: Anti-Slavery International: [http://www.antislavery.org/includes/documents/cm\\_docs/2009/w/women\\_in\\_ritual\\_slavery2007.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/w/women_in_ritual_slavery2007.pdf).

<sup>3</sup> UN High Commissioner for Human Rights Navi Pillay, 2013 (31 Jan.). ‘Pillay applauds Indian movement to eradicate ‘manual scavenging’, OHCHR News, available online: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E)

<sup>4</sup> A national study on health services found that caste identity was important in accessing resources such as anganwadi services both as health service provider and recipient. Caste discrimination was reported in these services from almost all the study villages. In some instances, separate anganwadis in the ‘upper’ and ‘lower’ caste localities was a practical solution without, however, resolving the issue (Source- C. Sathyamala et al. (2012). ‘Public Report on Health Some Key Findings and Policy Recommendations’, Economic and Political Weekly 47(21), pp.43-54)

Till 2017, only 14 States/Union Territories (UTs) out of the total 36 states and 7 UTs have set up a total of 195 Exclusive Special Courts to try cases under the PoA Act. Even in these 12 states/UTs, the number of atrocity-prone districts continues to outstrip the number of available courts. According to NCRB data, at the end of 2014, 85.5% cases under SC/ST PoA Act of crimes against SCs were pending trial across the country. Convictions were awarded in only 28.4% of cases (4,716 cases) in 2014 that completed trial. The high pendency rate for cases under trial can be attributed to the inadequate number of Special Courts and Special Public Prosecutors (SPPs); delayed investigation and registration of cases; no day-to-day trial; and overburdened designated courts which also try non-atrocity cases as well. Moreover, a deep rooted caste bias and failure to recognize the importance of the POA Act as a social protection law prevents these atrocity cases from being treated on a priority basis. The phenomenon of high rates of acquittals in cases of crimes against SCs is also disturbing: There were a total of 50,357 cases came for trial and a total of 701 cases ended in conviction and thus the conviction percentage under the Act was 15.4%.

#### **Status of Accountability and Mandatory Mechanisms:**

The various mandatory and accountability mechanisms to monitor the implementation of the POA Act and prevent atrocities, such as periodic reviews of cases and the performance of SPPs; reviews by the SC/ST Protection Cell, Nodal Officer and State and District Level Vigilance Monitoring Committees (SVMCs and DVMCs), etc. in most of the states are more widely flouted than adhered to. Even though SVMCs and DVMCs have been constituted in a number of states, for example, in the absence of regular meetings no follow up action emerges, let alone the plans of action mandated by the PoA Rules. Furthermore, victims and witnesses of atrocities are not informed about their rights and entitlements to travel and daily allowances to enable them to attend court hearings. The states are mandated by the PoA Act to declare atrocity prone areas in order for officials to take preventive measures to stop the occurrence of atrocities. However, according to the MSJE Annual Report 2013 on the Status of Implementation of the PoA Act, only ten states had identified 171 districts as atrocity-prone by 2013. Such is the appalling state of affairs and level of poor coordination between the enforcement authorities and the victims/witnesses. While according to the MSJE, SC/ST Protection Cells have been instituted and Nodal Officers and Special Officers appointed in most states/UTs, no information is publicly available about their functioning, which raises doubts about the level of outreach they have to SC and ST communities.

#### **International Mechanisms**

The UN evolved several mechanisms - as for example, CERD General Recommendation 29, CESC General Recommendation 20, and Concluding Observations of CEDAW, CRC, CAT - to respond to this issue of caste discrimination and to recognize the dignity and rights of Dalits. Several Special Rapporteurs and UN Independent Experts also came out with specific recommendations in their reports on how to address Discrimination based on Work and Descent (DWD). Moreover, the Special Rapporteurs also evolved the Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent. This is a comprehensive legal framework designed to eliminate caste based discrimination globally.

CERD, CESC and CEDAW have given a number of recommendations to India to address Caste Based Discrimination. CERD in its 2007 Concluding Observation has given a series of recommendations to India to ensure the following: the rights of members of Scheduled Castes (SCs) including and Scheduled Tribes (STs) to freely and safely vote and stand for election; the SCs, including SC women, to have access to adequate land; the proper implementation of the Employment of Manual Scavengers and Construction of dry Latrines (Prohibition) Act, 1993; the provision of adequate health care facilities, safe drinking water and access to public distribution system; the reduction of school dropout rates and increase in the enrollment rates of SC children and the promotion of non discriminatory practices in class rooms and also in the midday meal scheme<sup>5</sup>. CERD also observed that Dalits who convert to Christianity or to Islam reportedly lose their entitlements under affirmative action programmes and also recommended

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<sup>5</sup>*Concluding observations of the Committee on the Elimination of Racial Discrimination, Seventieth session, CERD/C/IND/CO/19, 5 May 2007*

GoI to restore the eligibility for affirmative action benefits of all the members of Scheduled Castes and Scheduled Tribes having converted to another religion<sup>6</sup>. CESC (2008) recommended the strengthening of procedures for prompt and impartial investigations and effective prosecutions under the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and improve awareness arising among various enforcement officials regarding caste based crimes<sup>7</sup>. CEDAW (2007) recommended India to enforce the laws preventing discrimination and crimes against Dalit women, end impunity, and urged it to eradicate Manual Scavenging. It also recommended providing comparable data disaggregated by sex, caste, minority status and ethnicity, on the enrolment and retention rates of girls and women at all levels of education and trends over time<sup>8</sup>.

When reviewing India's interaction with the UN human rights mechanisms, there is a gap of coordination between the national and state level ministries and institutions regarding the implementation of recommendations resulting in incoherence and misalignment between the ratified treaties and domestic mechanisms. There have been significant delays in submitting reports periodically to the Treaty Bodies and the recommendations on Scheduled Castes and other vulnerable communities of CESC, CERD, and CEDAW still remain unfinished.

### **Legal Mechanisms and Redressal Action South Asia:**

Number of legal measures have been put in place for the protection of Dalit's communities in India, Nepal and Pakistan and ensures the right against "Untouchability" in any form. Constitution of Bangladesh and Srilanka recognize that all persons are equal before law and shall not be discriminated. In Nepal the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 seeks to protect Nepali citizens from a caste and untouchability related crimes. Legal mechanisms need to be formulated in Bangladesh to address violence stemming from inter-caste marriages. Special measures need to be in place for intersectional caste and gender violence and exploitation in laws or policies. Need to have separate mechanism of lodging complaints made by Dalits in police stations in Bangladesh. The laws, policies and programmes on forced, bonded or child labour currently being implemented by the Bangladesh government need to make reference to caste vulnerabilities.

Commission exist in Nepal - National Dalit Commission. But the commissions are very limited in terms of its functions and ability. There are no specialized institutions to safeguard or oversee Dalit welfare in Bangladesh. The National Human Rights Commission has received capacity building support from UNDP, recruited commissioners. The Law Commission has submitted the draft of Anti- discrimination Act to the Ministry of Law, Justice and Parliamentary Affairs, which explicitly acknowledges and seeks to redress CBD.

### **Key Strategies of NDMJ – Access to Justice:**

- a) Developing mechanisms to promote and protect the rights of Dalit human rights defenders, building their capacity through trainings and provision of legal information.
- b) Establishing a network of Dalit Lawyers, providing training and enabling them to collectively address the judiciary and other enforcement and statutory bodies.
- c) Networking with Dalit and Adivasi CSOs to jointly combat caste based discrimination.
- d) Advocacy towards parliamentarians and Human Rights Commissions.
- e) Use of the Right to Information Act to access information
- f) Holding Citizens Audits

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<sup>6</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination, Seventieth session, CERD/C/IND/CO/19, 5 May 2007*

<sup>7</sup> *Implementation of the international covenant on economic social and cultural rights, Pre-sessional working group, E/C.12/IND/Q/5, 14 September 2007*

<sup>8</sup> *Concluding comments of the Committee on the Elimination of Discrimination against Women: India, Thirty-seventh session, CEDAW/C/IND/CO/3*

- g) Building the assertiveness of survivors of atrocities to become a collective force. Training and supporting them to meet regularly with enforcement authorities. Survivors are often the best advocates for change.
- h) Community mobilization to become a collective force to address issues of discrimination.
- i) Protecting the civil and political rights of Dalits by monitoring major violations of rights, where necessary making legal interventions and raising cases through public campaigns or in the media.
- j) International Advocacy – Participating and presenting the status of implementation of existing laws at the UN level, intervening through UN Procedures, research papers, shadow reports, benchmarking studies etc.

#### **Examples of Good Practices:**

- a) Building a National Campaign “National Coalition for strengthening PoA Act 1989 with more than 500 organizations across the country leading to major amendments to the PoA Act 1989 and its Rules 1995.
- b) Intervention with National Commission for Scheduled Caste having authority to inquire into specific complaints of atrocities against scheduled castes. The final outcome of the intervention was a report was placed before the Parliament on the atrocities committed against the Kuruvan community- been stigmatized as a “criminal caste” facing harassment, including false charges, illegal detention and extreme custodial violence.
- c) Legal Clinic and Victims and Witnesses facilitation Centre intervention modal - Legal Clinics have focused on ensuring that Dalit and Adivasis have the support to access justice.
- d) NDMJ Atrocity Tracking and Monitoring System- The Atrocity Tracking and Monitoring (ATM) system is a digital portal that functions as a first point of contact for victims of atrocities and a repository for documentation on atrocity cases across the country.
- e) Scheduled Caste victims of atrocities can access support by sending a text message received by a dedicated ATM operator. The victim is linked to CSOs and DHRD that will work with them to register the case, engage in fact finding and obtain support through Legal Clinics; DHRDs use the ATM system to aggregate and access registered contacts from over 15,000 police stations; track cases; and send out automated reminders of key dates to police, judges and lawyers.

#### **Key Recommendations:**

##### ***To the Government of India:***

1. The Indian State should strengthen enforcement of existing legal prohibitions of discrimination and, in addition, consider enacting comprehensive anti-discrimination legislation guaranteeing the right to equal treatment and protection against discrimination, including in employment.
2. Robustly, enforce and implement the amended SCs and STs (PoA) Act 1989 and Rules 1995 and in specific the rights of victims and witnesses as enshrined in the amended Act.
3. Establish mandatory Exclusive Special Courts as per Section 14 of the SCs and STs (PoA) Act 1989 in each district. These courts shall not take cases of any other legislation.
4. Take immediate measures to appoint Public Prosecutors of victim’s choice as per Rule 4 (5) of the SCs and STs (PoA) Rules 1995 for the speedy trial of the cases.
5. Conduct an open and transparent investigation under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and prosecute those Government and police officials under section 4 of the Act who are found to have aided and abetted criminals or found to have negligent in their responsibilities in implementing the provisions of the Act /plan and schemes.
6. Immediate notification or G.O to be issued to all the state governments to frame contingency plan in line with the contingency plan framed by the Govt. Tamil Nadu and framing of schemes under the plan if any for the purposes of rehabilitation, employment, pension, strengthening socio economic conditions of the victims.

7. NHRC, SC & ST Commissions shall conduct open hearing all over the country on cases of atrocities and on the implementation of the SCs and STs (PoA) Act. The Commissions shall ask for the annual reports from the states and present the same before the Parliament.
8. Ensure that the under developed Dalit and Adivasi habitats, habitats prone to atrocities, and habitats which are arsoned or damaged are provided with land, adequate housing, clean water and sanitation facilities and infrastructure facilities from the SCP/TsP and from the provisions of Contingency Plan.

***To the respective governments of South Asian Countries:***

9. Official recognition of caste-based discrimination in Bangladesh, Srilanka and Pakistan and to implement without delay measures for its elimination and adoption and full implementation of appropriate legislative and policy measures to eliminate caste- based discrimination.
10. Clear guidance and procedures for identifying, registering and investigating cases of caste-based discrimination and Untouchability Practices and guidelines to ensure effective enforcement of accountability mechanisms to ensure that officers fulfill their legal duties.
11. The draft UN Guidelines on Elimination of Discrimination based on Work and Descent lays down the framework of State obligations to remove Caste based Discrimination from all areas of life. South Asian countries shall engage in —substantive discussions on these guidelines, and accordingly adopt this comprehensive framework in order to eliminate caste-based discrimination.
12. UN Human Rights Council shall ratify the above draft U.N Guidelines and hold a international Convention on Elimination of all forms of Discrimination based on work and Descent (Caste).
13. Affirmative actions must be recognized and shall be extended to Dalits in all these affected countries, for their socio – economic and political development.
14. Close co-operation among the CSOs and NHRIs to undertake joint interventions, activities and programs, and to promote access to justice for victims of caste-based discrimination and Untouchability Practices.



## ***Annex 3.2: Equal Access to Justice for All: Using Law to Dismantle Caste-based Discrimination “With Special Reference to Nepal”***

**TEK TAMRAKAR**

Human Rights Advocate

### **OUTLINE**

- Background
- Normative frameworks on non vis-à-vis anti-discriminations
- Access to Justice of affected communities
- Issues and challenges
- Take Way

### **BACKGROUND**

- Law can affect behavior in a number of ways, including the use of sanctions
- It's an important agency of social control and also a means of empowerment
- Law has to be in full action to deliver
- It requires accountability measures for its effectiveness
- Law has to have sufficient redressal mechanism, and
- Access to remedy and people's scrutiny

### **NORMATIVE FRAMEWORKS**

- Constitution
- National laws/regulations
- International human rights instruments
- Supreme Court directives
- Policies/pronouncements
- Remedial measures, and
- Accountability measures

### **ISSUES IN ACCESSING JUSTICE**

- Substantive Issues:
  - Mala-fide-Intent of laws; elimination or just control
  - Non-participatory law making process
  - Interpretation and Implementation
  - Capacity of accountability measures
- Structural Issues:
  - Exclusionary law enforcement agencies
  - Decreased level of parliamentary control over law implementation
  - Low level of people's confidence
  - Ownership
- Procedural Issues:
  - Undermining HRBA both at formal and informal justice level
    - Lack of fairness in investigation, prosecution and adjudication
    - Coordination and collective efforts
    - Too formalistic and time-consuming court procedure
    - Elite centric court system
    - Execution of court decisions

### **AREAS OF INTERVENTIONS**

- Creating an enabling environment:
  - Reforming formal and informal norms

- Making policies more supportive
- Promoting representation in law enforcement agencies
- Creating effective, accountable and Dalit responsive system:
- Reforming human rights institutions
- Effective dalit's participation, coordination response to Dalit 's justice needs
- Relaxing the existing process and procedures
- Providing oversights to informal justice system
- Legally empowering Dalits:
  - Empowering Dalits with the tools to know, claim and exercise their rights and
  - Extending knowledge of their rights and community power structures
  - Providing integrated legal aid services

### **TAKE WAY**

- Multi-sectoral analysis of anti-discriminatory laws
- Analysis of law enforcement agencies
- Law with severe penalties and adequate compensation
- Non-judicial measures for non-repetition
- Non-territorial jurisdictions
- Coordinated criminal justice system
- Witness protection
- Burden of proof
- Open statutory limitations
- Strict liabilities
- Separate tribunal or benches
- Redefining the court procedures with fast track and waiver
- Clear and justiciable sanction
- Oversight for the implementation
- Periodic assessment of the implementation
- Strong NHRIs with robust coordination

### ***Annex 3.3: Social Movements for the Legal Empowerment of Dalit in South Asia***

Bhakta Bishwakarma  
Acting National President  
Dalit NGO Federation (DNF)  
Email: [gbkbhakta@yahoo.com](mailto:gbkbhakta@yahoo.com)

#### **Before Old Civil Code -1854 AD:**

There were some reformists' steps taken by some Kings about the society and justice in Nepal but those were by themselves not by movement. (Ram Saha and others)

The caste system was introduced in Nepal by King Jayasthiti Malla (*during the periods of 12-13 centuries*).

#### **After Old National Civil Code, 1854:**

The Old National Civil Code, 1854, (Muluki Ain) legalized the caste system and established it as the basis of social mobility.

Dalits communities in Nepal are a historically victimized by the state by enacting law (Old Civil Code), a first written law of the country, which was divided its people as so-called untouchable and touchable and provided legal status.

It laid out detailed codes for inter-caste behavior and specified punishments for their violation.

Such discriminatory legal system and hierarchical social structures, in course of time, formed as a rigid “value system” of social behavior and practices of daily life.

#### **Dalit Social Movement and Legal Reform:**

The Dalit movement is the pioneering among social movements in Nepal. Its history goes even beyond the democratic movement that took place in 1951 AD.

Nepali Dalit movement emerged as a social movement rather political which was first initiated by great leader Bhagat Sarbajeet Bishwakarma in 1940 establishing *Vishwa Sarvajan Sangh*; opposing the then authorities that now become as a vibrant social movement.

This pioneer anti discrimination movement challenged the discriminatory policies imposed by the Rana oligarchy.

Indeed, the Dalit movement in Nepal has been both social and political movement.

#### **Democratic Era: 1951-1962**

Under the Civil Liberties Act of 1954, unequal treatment of Dalits by the government is prohibited.

Constitution of Nepal 1959 (2015 BS), Right to equality

New Civil Code (Muliki Ain) 1963, Section 10A excludes Dalits at religious practice.

Dalit Movement continuously demanded that the caste based discrimination and untouchability should be criminalized and punishable by laws both organized and non organized forms.

#### **Restoration of Democracy 1990:**

The Constitution of Kingdom of Nepal 1990, Article 11 (D)

Writ petition at Supreme Court by Late Mana Bahadur Bishwakarma for amending New Civil Code 1994 (10A)

Emergence of organized CSOs movement (NNDSWO, DNF, FEDO etc.

Despite enormous efforts, no any comprehensive law had been enacted during the periods.

#### **Republican Era: 2006-2018**

There were three major fractions of Dalit Movement

Dalit Sister Organizations (Joint Political Struggle Committee)

Dalit Civil Society

Member of the parliament

Declaration of Untouchability Free Nation at 2006.

Interim Constitution of Nepal 2007, (recognized CBD as a crime punishable by law and consider as fundamental rights)

Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 has been endorsed by the state clearly defining caste based discrimination and untouchability and the penalties as well.

It was possible because of continuous Dalit Social/political/human rights movement,

Became one of the core issues of Republican political movement

Supported by UPR process 2011,

### **The Constitution of Nepal (2015)**

Preamble:

Build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste based untouchability,

### **The Constitution of Nepal (2015)**

Article 24, Right against Untouchability and Discrimination and Article 40, Right of Dalit

General laws need to be enacted based on Article 40 of the constitution for future

(1) Dalit shall have the right to participate in all agencies of the state based on the principle of proportional inclusion.

(2) Provisions of free education with scholarships

(3) Health care and social security to Dalit community,

(4) Right to traditional occupation, knowledge, skill and technology.

(5) Provide land to landless Dalit for one time.

(6) housing as for Dalit who do not have shelter of their own

*(Now, we are in the process of enacting all above legislation and realized of additional movement)*

### **Major Achievement**

Dalit Rights have consider as fundamental rights

Criminalized Caste Based Discrimination and Untouchability and made punishable by laws both public and private places

Assurance participation of Dalits at all structures of state organs including political participation.

Constitutional commitment to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste based untouchability,

Began to Dalit targeted plans and programs at local level (Now no clear??)

Established NDC, Dalit Development Committee and Badi Community Upliftment Committee)

### **Major Achievement**

Election Law for 13.8% Dalit and Dalit women participation

Civil Service Act for 9% Dalit out of 45% reserve seats

Participation at Nepal Police and Armed Police Force

Participation at Nepali Army

### **Major challenges:**

Better operationalize and implementation of the constitutional and legal provisions as well as plans and programs that are dedicated to the Dalits because of lack of willingness and commitment of the government authorities are being great challenge for us

Lack of accountability of the concern authorities including political actors

### **Way forward:**

A continuation of vibrant movement/campaign and safeguarding initiatives for effective implementation of constitutional and legislative provision.

Raise public awareness to the general public especially to non-Dalit communities against CBD &U.

Make accountable to all three level of government, political parties and other concern stakeholders towards fulfilling their commitments.

Thank You

### ***Annex 3.4: Dalit Women and Struggle for Justice***

Durga Sob, FEDO

- ▶ Key justice issues of Dalit women
  - ☐ Denial of access to education
  - ☐ Extreme poverty and less economic opportunities
  - ☐ Illiteracy and poorest economic situation
  - ☐ Displacement from society due to inter-caste marriage
  - ☐ Gender-based violence in their life time.
  
- ▶ Less reporting of cases because of their lack of awareness about their rights
  - ☐ Largely lengthy and inaccessible justice system to Dalit women
  - ☐ Patriarchal and caste ridden socio-cultural practices
  - ☐ Abused induced from inter-caste marriage dowry-related violence, polygamy, accusations of witchcraft, and trafficking rampant among Dalit women and girls.
  
- ▶ Challenges in access to justice
  - ☐ Illiteracy Dalit women
  - ☐ Economic dependence and lack of access to resources
  - ☐ Lack of confidence and capacity to assert their rights
  - ☐ Insufficient legal aid provision and low quality of legal aid services.
  - ☐ Lack of coordination amongst legal aid service providers
  - ☐ Lack of synergy amongst government and civil society actors to ensure effective service delivery
  - ☐ Inadequate legal representation of Dalits
  - ☐ Lack of strengthened informal justice mechanisms.
  - ☐ Lack of affirmative provisions for accessing to justice to the court system
  - ☐ Social threats for not to register cases.
  - ☐ Forceful treatment to withdraw the registered
  - ☐ Lack of capacity of National Women's Commission dealing with the cases of Dalit women
  - ☐ Less coordination among CSOs
  
- ▶ How to empower Dalit women
  - ☐ Providing paralegal training and orientation to Dalit women
  - ☐ Empowering Dalit women in a collective way to raise their voices on access to justice at local level
  - ☐ Formatting and mobilization of resource groups for para legal support
  - ☐ Training to frontline leaders on para legal, legal information, case management, mediation
  - ☐ Forming and mobilizing response mechanism to deal with the cases of untouchability, discrimination, human rights violation and gender-based violence
  - ☐ Civil society activism in addressing justice problems of Dalit women.
  - ☐ Empowering Dalit women to claim their rights and implement anti-discriminatory laws
  - ☐ Strong coordination and collaboration of human rights institutions, Bar Association, Legal aid centers and law enforcement agencies.
  - ☐ Strong and enhanced National Dalit Commission to deal with the issues of Dalit women's issues
  - ☐ Capacity building of Dalit women's local representatives at local government
  - ☐ Develop a collective understanding on violence against Dalit women
  - ☐ Launching zero tolerance against discriminations
  - ☐ Conducting massive awareness programs that increase the knowledge
  - ☐ Developing links with legal aid centers/service providers, the police (especially women police) and women's cells

- ☐ Ensuring that rights and correlative legal protections are recognized, improving the gender responsiveness of the justice system.
- ☐ Provide legal literacy to Dalit women through constant support
- ☐ Develop and enhance the capacity of frontline women leaders at the community level
- ☐ Organize and mobilize Dalit women groups to claim rights and entitlements
- ☐ Generate a sustainable mechanism of response supported in a strong network in case of human rights violations

### *Annex 3.5: Legal Needs of Dalits in Nepal*



## **Legal Needs Survey of Nepal** **Dalits in the Survey**

Deepak Thapa  
Social Science Baha

14 August 2018

### **Background**



- Legal Needs Survey (LNS) conducted to identify obstacles for the citizenry to access the justice system.
  - Social differentiations contribute to restricting people's access to justice, especially in countries like Nepal, where deep-seated values and discriminatory attitudes often lead to poor implementation of laws.
- Literature review suggested that studies have focused mainly on:
  - selected areas with limited geographical coverage
  - on specific topics such as domestic violence
  - on particular groups, primarily, Dalits and women
- No attempt to examine the situation of access to justice for the entire population and the challenges different groups of people face



## Research questions



To what extent do people experience justice problems?

- How does this vary for different problem types?
- How does this vary by socio-demographic characteristics?
- How does this vary by proximity to justice institutions?

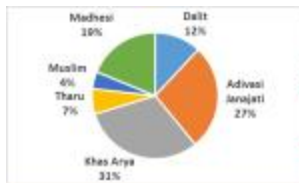
How do people experiencing justice problems try to resolve them?

- What services and/or advice do they access, and how?
- What forums do they engage with?
- How does this vary for different problem types?
- How does this vary by socio-demographic characteristics?
- What are their problem outcomes, and how do these vary?
- What proportions of problems are resolved through courts and what proportion through informal systems and in what timescales?

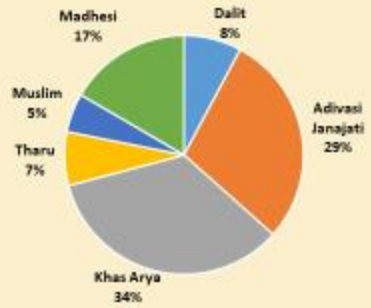
## Methodology



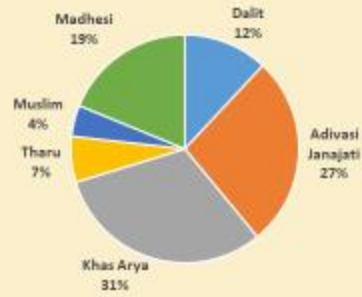
- **Legal Needs Survey**
  - Nationwide survey
  - Sample size of 3000 respondents aged 18 and above
  - Respondents selected through random sampling
  - Spread across 66 districts
- **Based on review of literature, and consultations with civil society and National Judicial Academy (NJA) 14 problem categories identified to be covered by the survey**
  - Government administration and public services
  - Government payments and benefits
  - Community resources
  - Public utilities
  - Land acquisition
  - Education services
  - Money/debt
  - Employment/labour
  - Family relationships
  - Property
  - Housing
  - Health
  - Migration
  - Consumer rights



Unweighted

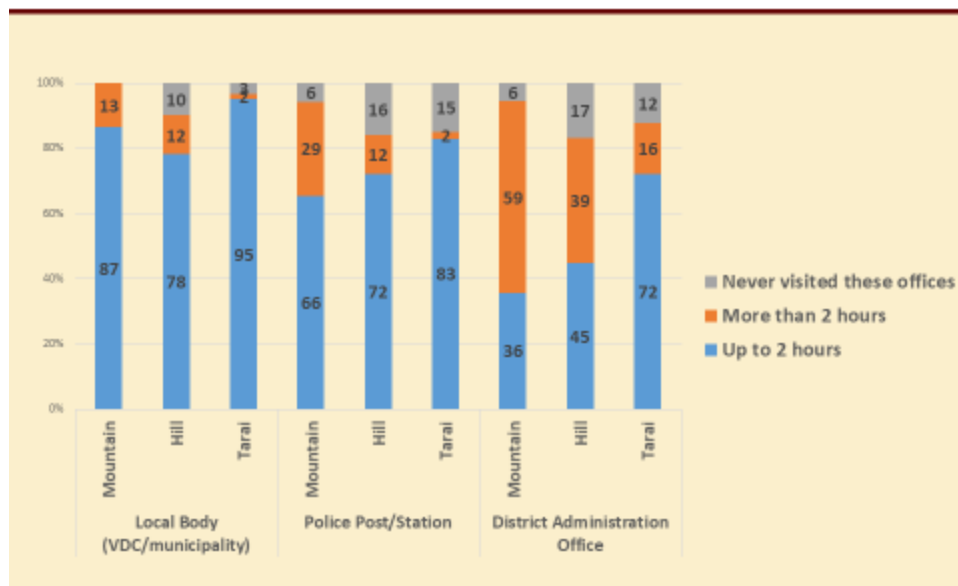


Weighted

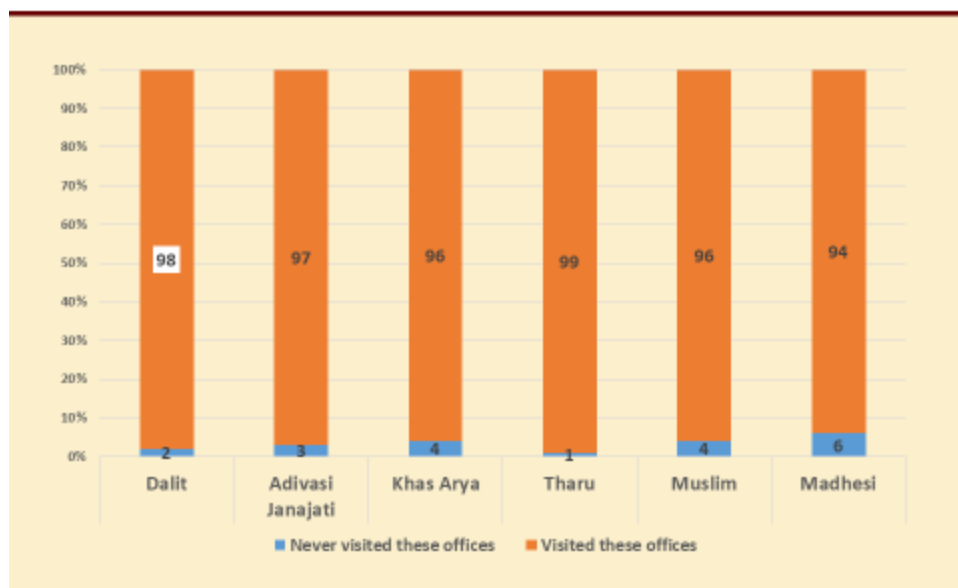


## The Findings

## Access to administration

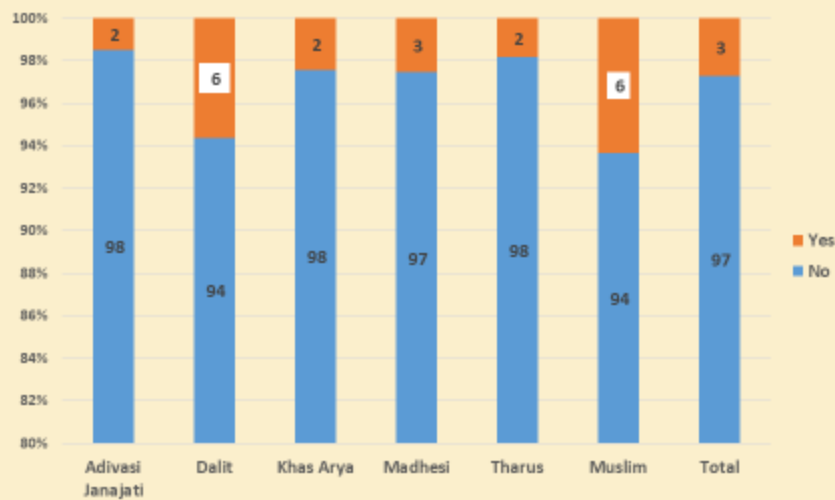


## Access to administration



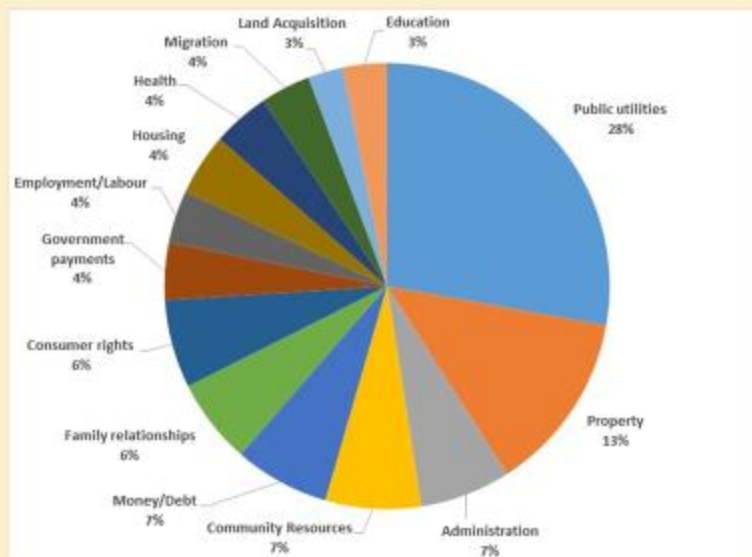
## Victim of crime: self or family (in preceding 2 years)

सोशल साइन्स बहा  
SOCIAL SCIENCE BAH

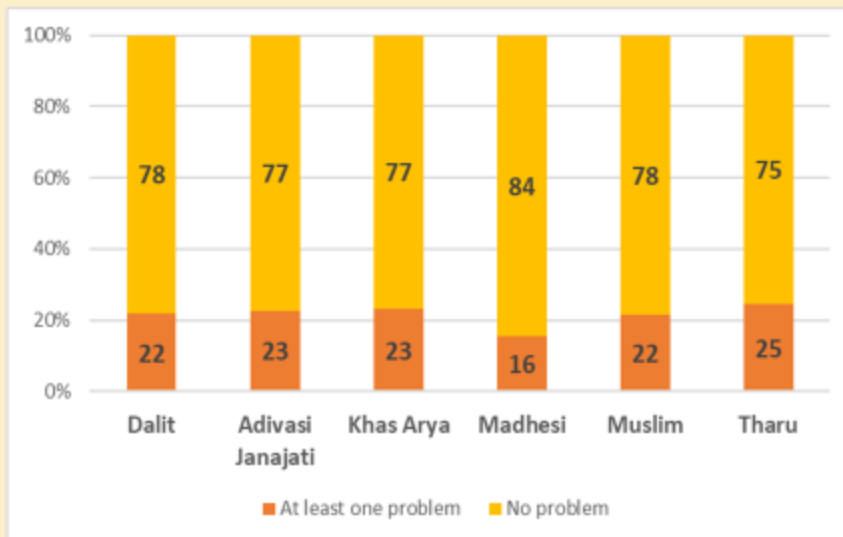


## Experience of everyday problems

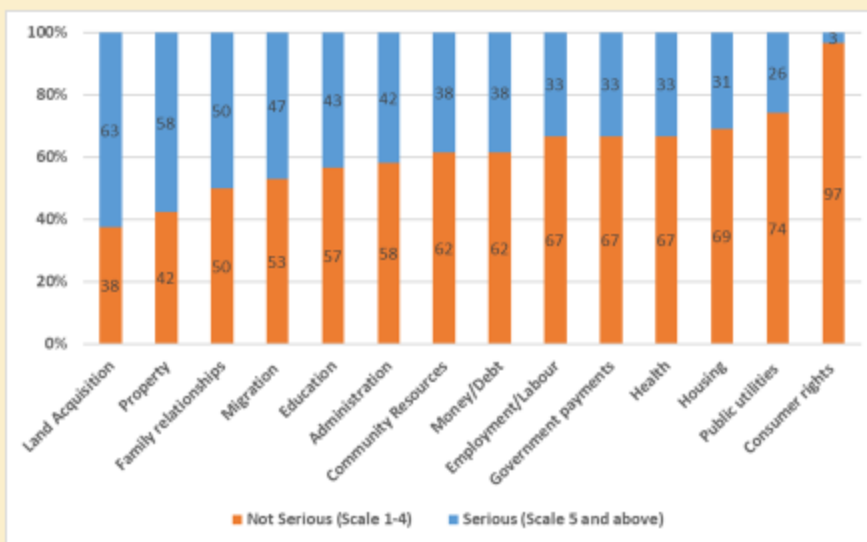
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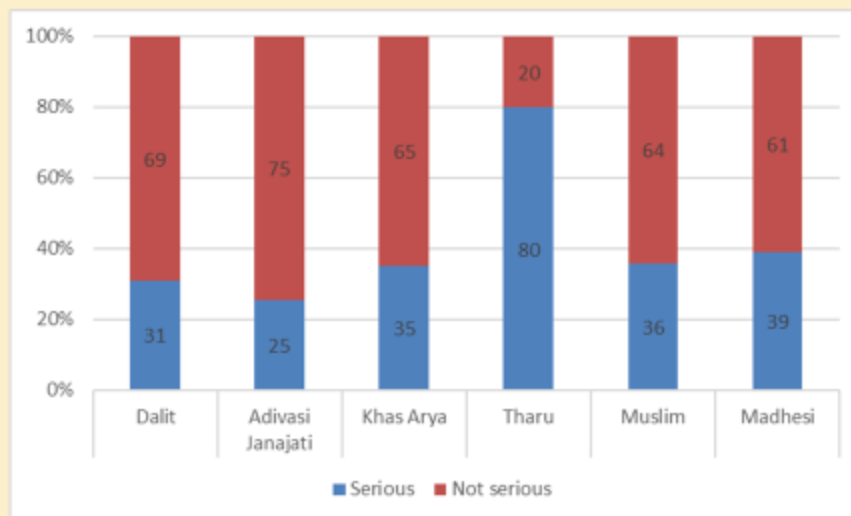
## Distribution of problems



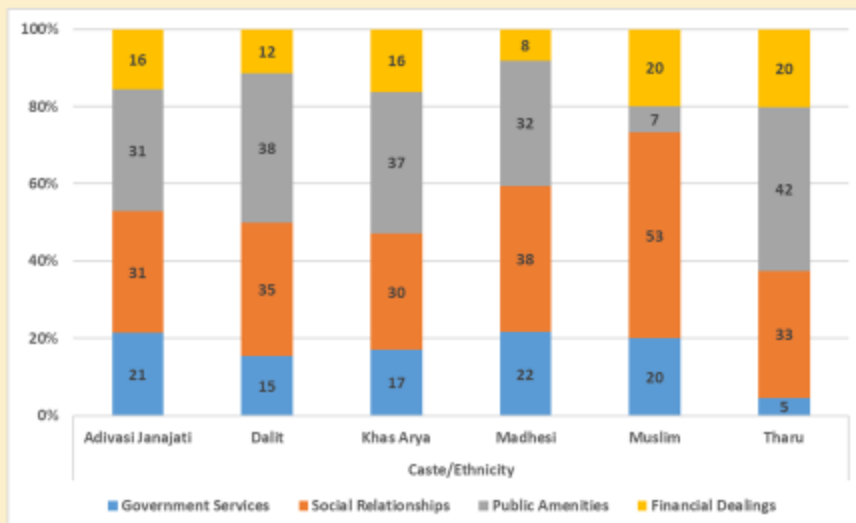
## ‘Serious’ vs ‘not serious’



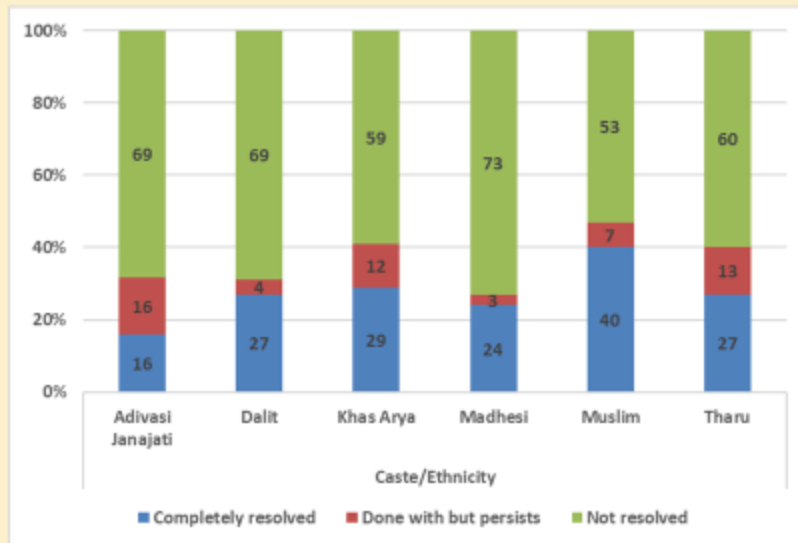
## 'Serious' vs 'not serious'



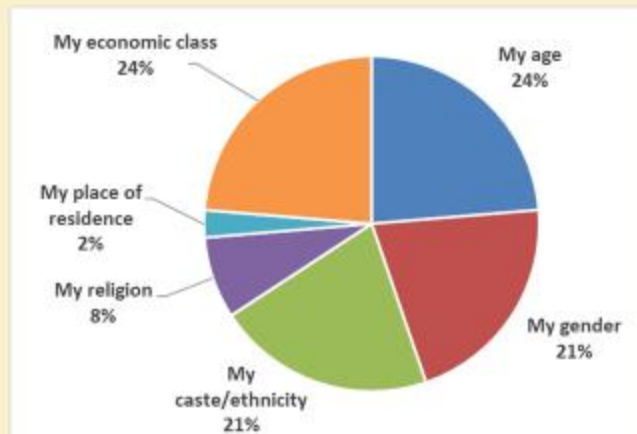
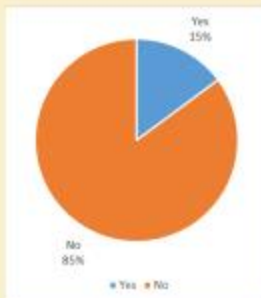
## Problem clusters (by caste/ethnicity)



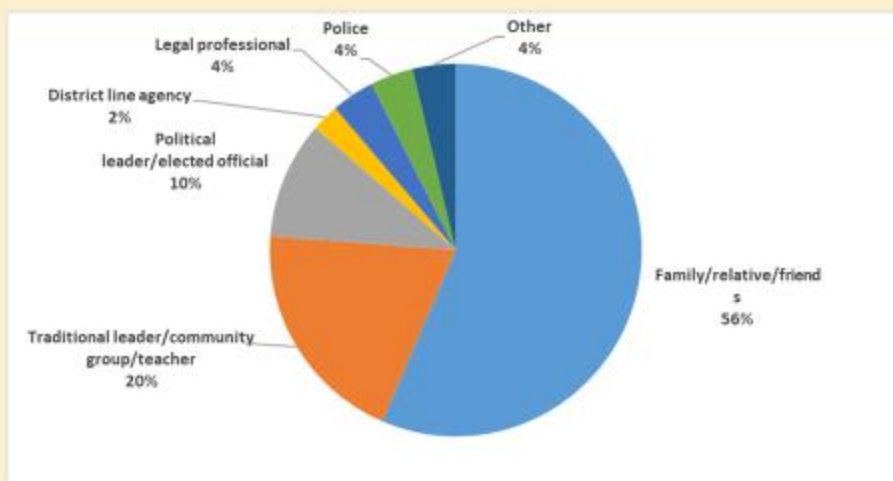
## Status of problems



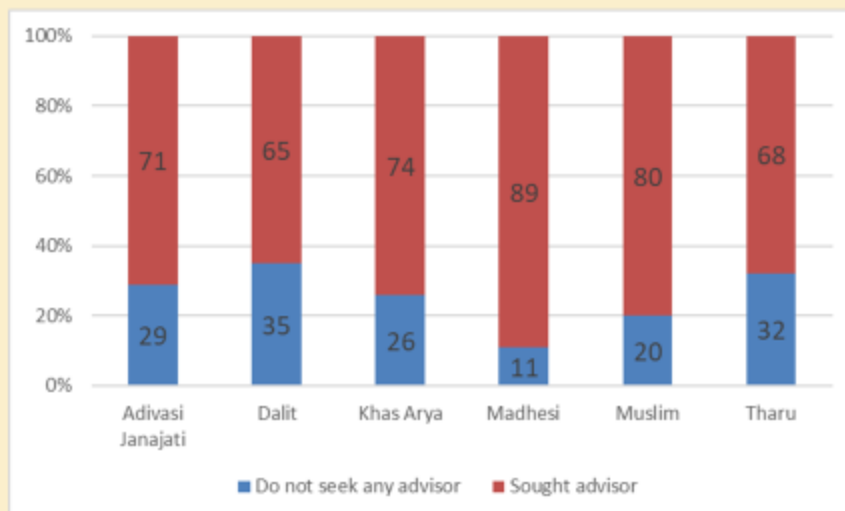
## Impact of identity on not resolving problems



## Source of help in identifying advisors



## Advisors sought or not



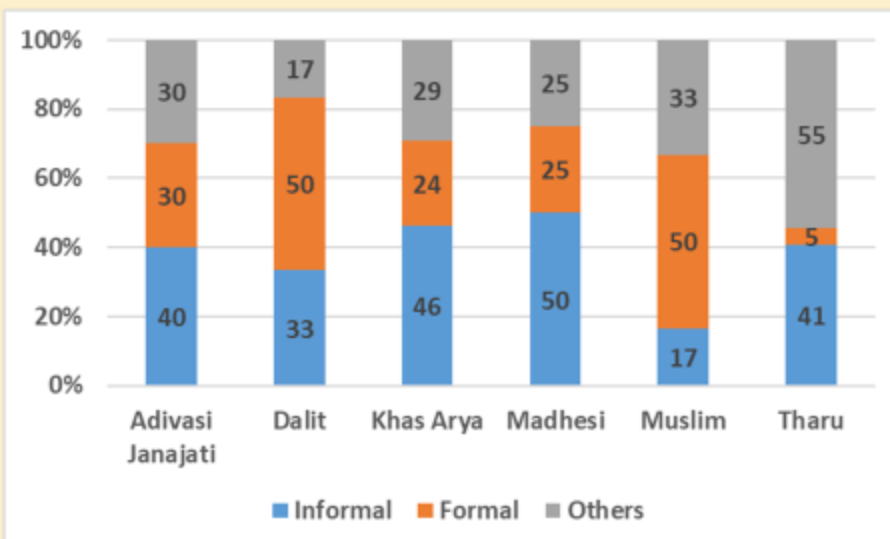


## Time taken to resolve problems (days)

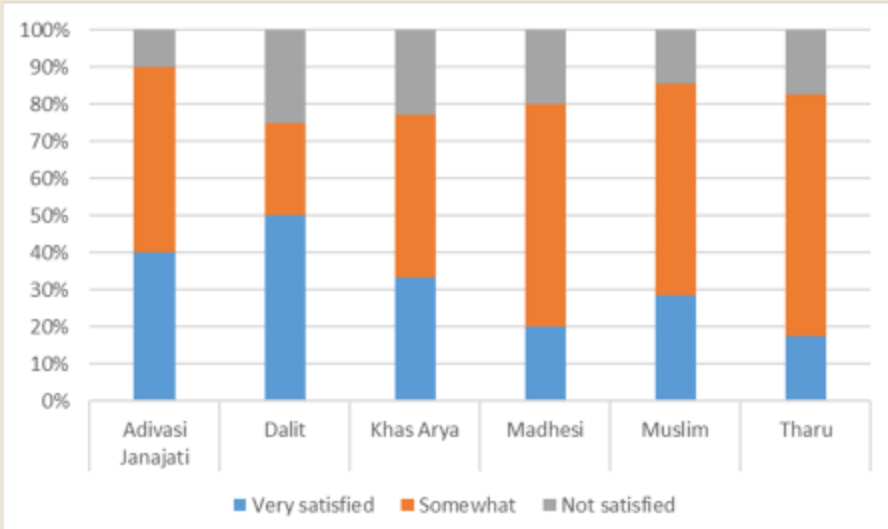


Caste/Ethnicity	Mean	Minimum	Maximum
Adivasi Janajati	230	1	2190
Dalit	232	30	1095
Khas Arya	187	1	943
Madhesi	162	7	545
Muslim	243	3	730
Tharu	369	1	1825

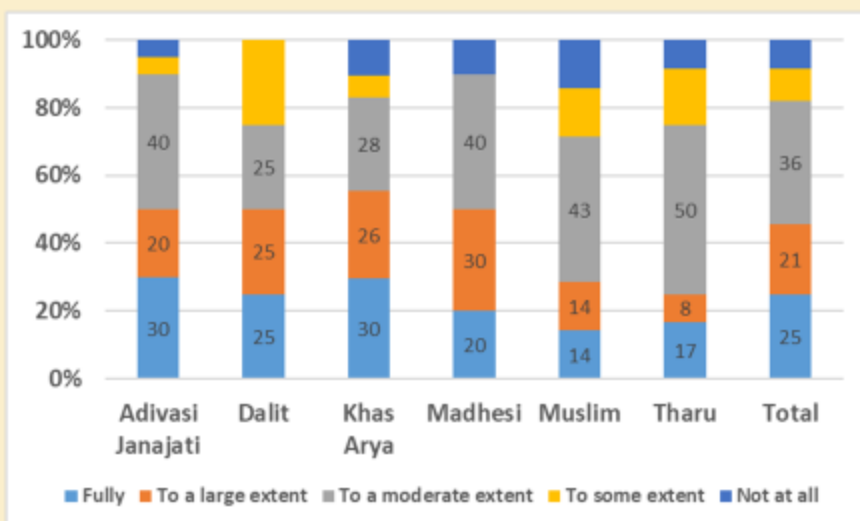
## How problem was resolved



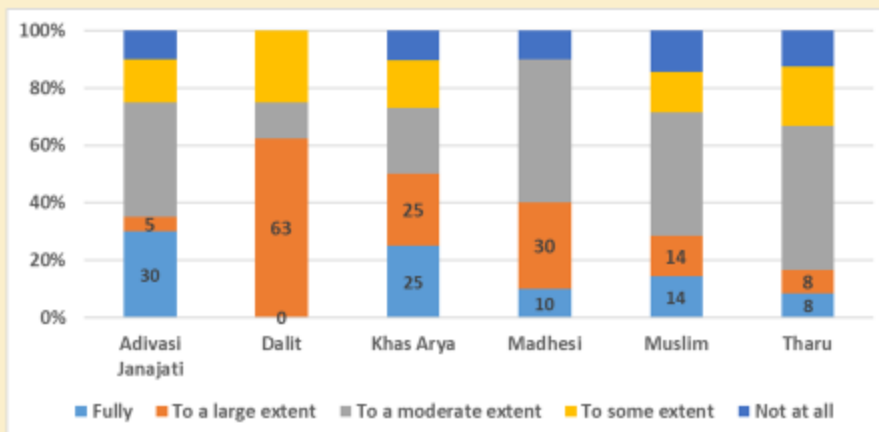
## Satisfaction with resolution



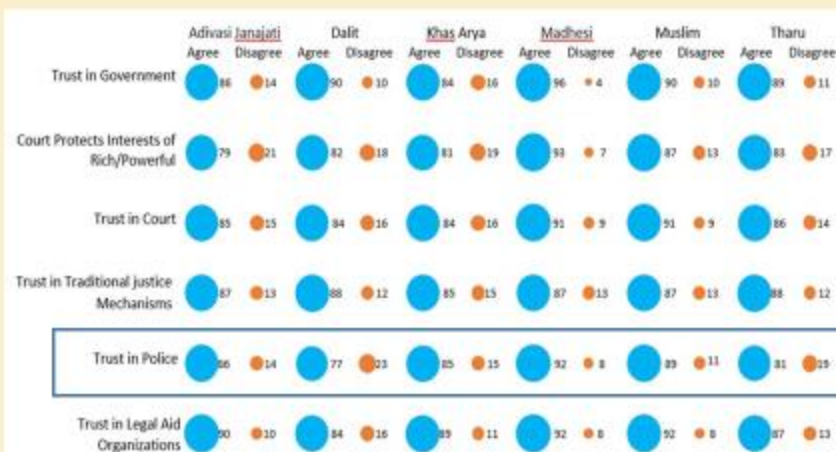
## How far resolution ended the problem



## Implementation of result



## Perception about justice institutions



## ***Annex 3.6: Using Data and Legal Advocacy to Advance the Rights of Marginalized Communities***

**Equal Access to  
Justice for all: Using  
law to dismantle  
caste based  
discrimination in  
south Asia**

*Alexis Haag, NAACP Legal  
Defense & Educational Fund,  
Inc. (New York City)*

*Kathmandu, Nepal  
Tuesday, August 14*

# **Using Data & Legal Advocacy to Advance the Rights of Marginalized Communities**

## **Overview**

- About NAACP LDF
- Cultural, political, and economic structures in US based on slavery, subjugation of Black people
- Data sources
- Examples of data supported litigation (criminal justice, education, and political participation)





## Fight for Racial Justice

- ▶ Transformative mission: achieve racial justice, equity, and an inclusive society
- ▶ *Brown v. Board of Ed.* (1954): outlawed "separate but equal" doctrine that legally sanctioned discrimination (Jim Crow)
- ▶ Overturned state-sanctioned segregation of public buildings, parks & recreation facilities, hospitals, and restaurants
- ▶ Impact areas: (1) criminal justice; (2) economic justice; (3) education; (4) political participation
- ▶ Tools for change: litigation, public education, advocacy to executive & legislative branches, monitor federal & state government activity, coalition building, community organizing, & policy research





The majority of laborers who built the U.S. capitol and White House were enslaved African-Americans

US as economic world power based on slavery

View that freed Blacks would take political and economic power away from whites

Short lived Reconstruction era

## Criminalization of Black Conduct

- Criminal justice system developed to control conduct of freed Blacks;
- Slave patrols and night watches informed today's police methods;
- Black Codes allowed local authorities to arrest freed Blacks for minor infractions and prevented Blacks from serving on juries;
- 13<sup>th</sup> A (abolished slavery) remains constitutional basis for involuntary labor as punishment for crime
- Mass incarceration





## Lynching as Racial Terror



- Between Civil War and WW II, whites lynched thousands of Blacks in US ([EJI Report](#));
- Similar reign of terror in US/Mexico border states from 1849-1930 targeting Mexicans and Mexican-Americans;
- Public acts of violence and torture that traumatized whole communities;
- Largely tolerated by state & federal officials
- Land acquisition, economic power, maintaining social order
- Localities w/ highest rates of lynching have high rates of Black people sentenced to death today

## The Great Migration

"With no protection from the constant threat of death, nearly six million Black Americans fled the South between 1910 and 1970. Many left behind homes, families, and employment to flee racial terror as traumatized refugees. Lynching profoundly reshaped the geographic, political, social, and economic conditions of African Americans in ways still evidence today."

[EJI National Memorial for Peace and Justice](#), Montgomery, AL



## The Great Migration (cont.) [Interactive Map](#)

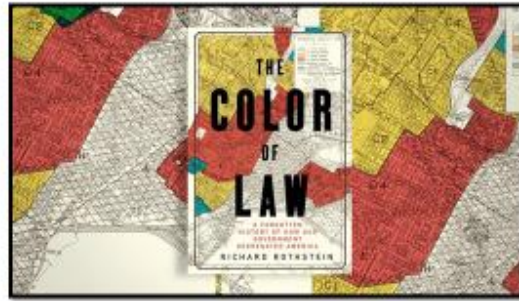


	1910	1970
Los Angeles	2.4%	17.9%
Oakland	2%	34.5%
Chicago	2%	32.7%
Detroit	1.2%	43.7%
St. Louis	6.4%	40.9%
NYC	1.9%	21.1%
Cleveland	1.5%	38.3%
Jacksonville	50.8%	22.3%
Tallahassee	64.5%	25.3%
Huntsville	43.5%	12.1%
Montgomery	44.5%	33.4%
Shreveport	49.6%	34.1%

## Limited Job Opportunities



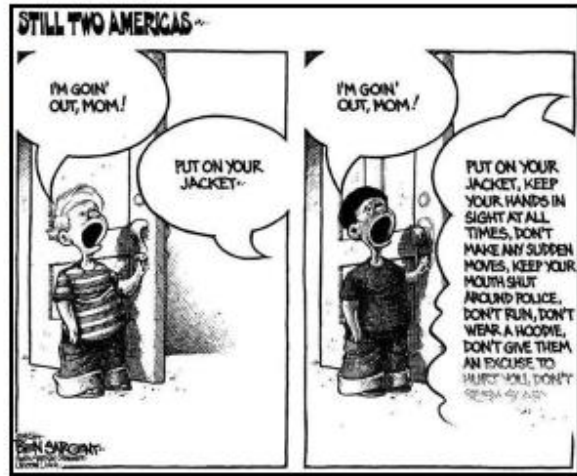




## Criminalization of Schools

- Police presence in schools creates pipeline into the criminal justice system;
- Under resourced schools are ill equipped to support students who may be encountering trauma at home;
- Black Escalation Effect: Black students expelled and suspended 3x as often as whites;
- Black children are punished more severely than non-Black students w/ out of school suspensions and arrests for relatively minor infractions





## Obtaining data

- Public records requests – Freedom of Information Act (1967) and state equivalent statutes; sue when denied access to information
- Consent decree – court ordered data collection (school districts, public agencies)
- Government agency transparency – police & prosecution collect data
- Census
- Election commissions – voting precinct locations
- Court records, clerks offices



## Political Participation: Terrebonne Parish, LA

- Terrebonne Parish used at-large voting system to maintain racially segregated judicial district
  - Black candidate had never been elected
  - Blacks made up 20% of Parish, racially segregated geographically
- Local NAACP had been trying for over 20 years to hold district-based voting, lobbied state legislature to create fair electoral opportunities
- LDF filed lawsuit in 2014, alleging Parish's at-large voting system for judges unconstitutionally prevented minority voters from electing candidates of their choice
- Court ruled in 2017 that at-large voting violated Voting Rights Act & US Constitution



## Education: Meridian, MS

- Meridian operated two school systems (one for white children, one for Black children) LDF sued in 1965; DOJ intervened, desegregation order 1967
- Early 2000s, Meridian disciplined Black students more often and more severely than whites; 2013 court order required district to collect & share data
  - Race of students disciplined (level of infraction, consequence)
  - Race of teacher/staff
  - Race of students at each school
  - Educational opportunities offered at each school
- Expert analyzed data
- Community organizing, public education, reengagement w/ original plaintiffs
- Return to court, hold hearing to determine if district is meeting its burden to operate schools free from racial discrimination





## Police Reform: North Charleston, SC



- In 2015, white police officer shot and killed unarmed Black man, officer sentenced to 20 years in prison
- National protests over racially biased policing and use of lethal force; LDF involved in community organizing
- 2017, LDF issued public records request from NCPD (age, race, gender, reason for stop, citation issued)
- Expert analyzed data (2018)
  - Alarming racial disparities in traffic stops
  - Police are more than twice as likely to search young Black motorists than white
- Next step: send demand letter, threatening litigation
- If unsuccessful, we file pattern and practice lawsuit, under 14<sup>th</sup> and 4<sup>th</sup> A

Thank  
you!

NAACP Legal Defense & Educational  
Fund, Inc.

40 Rector St, 5th Floor

New York, NY 10006

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[www.naacpldf.org](http://www.naacpldf.org)

### *Annex 3.7: Innovative Financing for Basic Justice Services*



August 14, 2018  
Katmandu, Nepal

## Roadmap

- What is the Cost of Justice?
- Why Innovative Financing?
- Innovative Financing Models
- Opportunities and Risks

# What is the Cost of Justice?

**Other than knowing that most people cannot afford the legal system, we know very little about the specific costs of justice** – how to measure, manage and reduce those costs, what it would cost to provide increased amounts of public legal services, what it would cost to help prevent legal problems from occurring in the first place, or what the relative costs and savings of doing so might be.

*Everyday Legal Problems and the Cost of Justice in Canada*  
Canadian Forum on Civil Justice (2017)

## Potential Sources of Data

- Global Comparative Data
  - World Justice Project *Global Insights on Access to Justice*
- National/Sub-National Legal Needs Surveys
  - More than 50 large-scale legal needs surveys in over 30 countries
- Administrative Data
  - Case management, court and other data from within justice systems
- Economic (Cost Benefit) Studies
  - Can be focused sector-wide or on specific models/interventions

# Measuring the Costs of Justice

## Why measure the costs of justice?

- Understand the costs to various justice stakeholders and the potential to reduce costs or better realize value
- Understand the benefits and the potential to increase impact
- Make the case for public and private sector investments based on cost savings or to maximize social impact

# Measuring the Cost of Justice

## What costs, and to whom?

- **Access and delivery** costs:
  - Access costs for individuals
  - Delivery cost for basic legal services
- Cost of **unresolved** justice problems to:
  - Individuals
  - Government
  - Private sector

## Access Costs to Individuals

- Legal fees
- Transportation
- Court fees
- Materials (copying/printing)
- Other (e.g. child care, communications)

## Delivery Costs of Justice Services

- Program costs
- Overhead/operating costs
  - Rent, administration, fundraising, etc.



## Cost of Unresolved Justice Issues

To individuals:

- Financial hardship
- Personal stress
- Performance at work
- Family problems
- Health issues

## Cost of Unresolved Justice Issues

To government:

- Social assistance/public benefits
- Employment-related benefits
- Health care
- Housing

## Cost of Unresolved Justice Issues

To the private sector:

- Costs to productivity
- Employment loss
- Increased cost for health care and other benefits

## Measuring the Benefits

Economic benefits:

- Individuals (debt recovery, child/spousal support, etc.)
- Government (savings on health care, housing, education, employment)
- Private sector (employee health, increased productivity, reduced turnover)

Social benefits:

- Social and economic wellbeing
- Public safety
- Trust in the justice system

## Why Innovative Financing?

- Public funding is not sufficient to meet the demand for basic justice services;
- Diverse sources of revenue help CSOs grow more resilient and sustainable;
- Government and the private sector benefit from basic justice services.

## Example 1: Social Enterprise

Examples:

- Fee-for-service
- Membership
- Side businesses

Needed insights:

- Demand for services
- Cost to deliver services
- Market rate for services

## Example 2: Cooperatives/Legal Insurance

Examples:

- Legal services cooperatives
- Legal insurance schemes

Needed insights:

- Demand for services
- Cost to deliver services
- Market rate for services
- Likely utilization

## Example 3: Results-Based Financing

Examples:

- Social or Development Impact Bonds (government/private investors/service providers)
- Outcomes Rate Cards
- Outcomes-based contracts

Needed insights:

- Cost to deliver services
- Social impact
- Savings to government
- Likelihood of investor returns (impact bonds)

## Risks

- Innovative financing models may not be mission-aligned
- Potential negative impact the reputation of an organization in the community
- May increase focus on populations that can afford services/are easier to serve
- Lack of organizational capacity/expertise
- Risk to existing funding (e.g. restrictions by government or donors)

## Opportunities

- New revenue potential
- Revenue is not purpose-restricted
- Reduces reliance on traditional sources of funding
- Potential to engage new public and private stakeholders
- Increased learning about the social and economic benefits of basic justice services

*Annex 3.8: Innovative Financing and Sustaining Basic Justice Services (Public Private Partnership)*

## Innovative Financing and Sustaining Basic Justice Services

### Public Private Partnership

Presented by

Govind Nepal

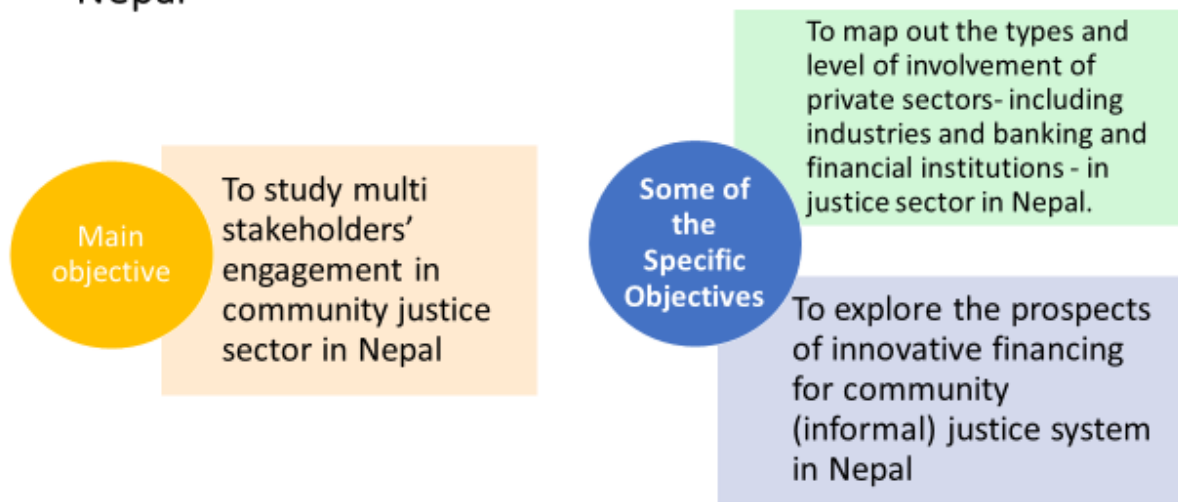
Institute for Strategic and Socio-Economic Research (ISSR)

Kathmandu

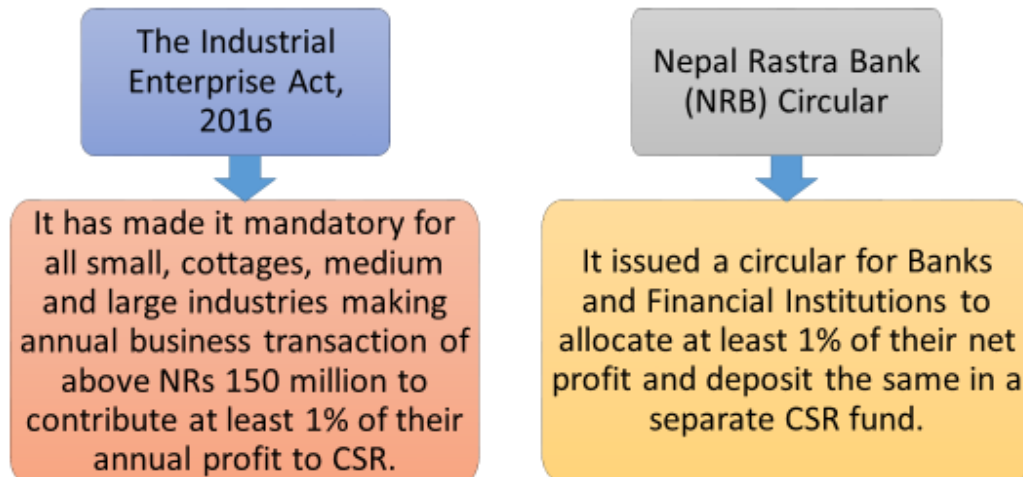
### Need for Sustainable Financing mechanism for justice

- The cost for financing social infrastructure projects particularly justice facilities has been challenging as most of the development budget is allocated for Physical infrastructure in Nepal
- Only about NRs 6 billion has been allocated to justice services out of more than NRs 1300 federal budget of this year.
- Public Private partnership delivery model could be another way of dealing with a social infrastructure.
- if the vision of equal access to justice for all set out in the SDGs is to become a reality, there is a need for setting up a sustainable nationwide system for legal services along with sustainable financing mechanism

## ISSR Project: Status of and Prospects for Multi-stakeholders' Engagement in Community Justice Sector in Nepal



## Mandatory CSR Provisions in Nepal



## Study Methodology

### Desk Study

Mini Survey of Industries with the support from FNCCI

Three discussion programs conducted with,

- Federation of Nepalese Chamber of Commerce and Industries (FNCCI) on CSR
- Nepal Bankers' Association (NBA) on CSR
- Donor Communities through Ministry of Finance (MoF)

## Study Findings: FNCCI

Very limited information about CSR provided in websites and annual reports of the company, which, in most of the cases, did not even disclose about the exact areas and amount where the CSR activities had been undertaken.

Engagement of private sector in the justice sector of Nepal is very minimal both at policy and implementation level

Most of the CSR of private sector has gone to education, health, sports, infrastructures, human welfare, cultural and heritage protection, natural calamities relief fund and to the environmental sectors.



## Study Findings: NBA

Many of the participated commercial banks did not have enough information regarding the SDGs and justice agenda indicated in SDG 16

Almost all banks, after the interaction program, showed their interest and eagerness to include justice as part of their CSR initiatives in the upcoming fiscal year.

Banks have been spending on CSR but this is reported qualitatively and not disclosed quantitatively often because of the tax policy of the Government.

## Recommendations: NBA

Amendment of existing Acts and regulations and to introduce **tax rebate facility** for the funds that private firms allocate to carry out CSR activities.

Government policies should make some contributions from organized private sectors mandatory or/and provide some incentives to them to allocate some funds for this purpose.

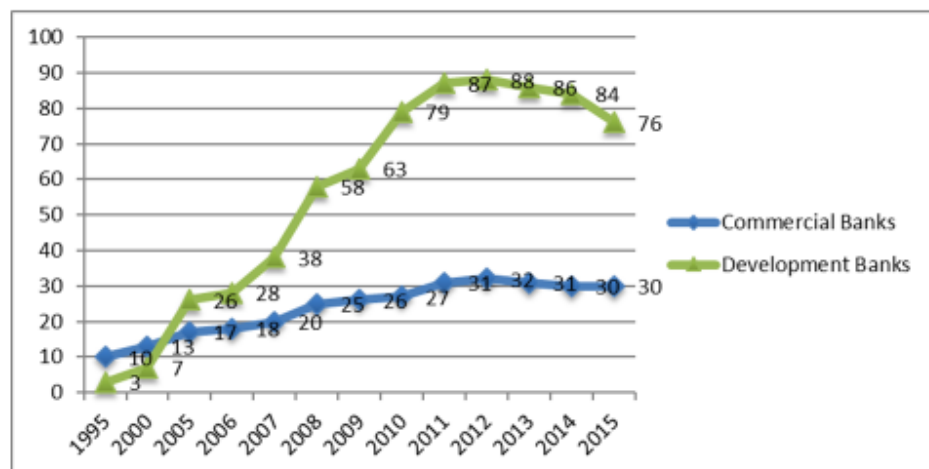
All interested banks should put their allocated **CSR fund into a basket** which should be mobilized by a small dedicated team.

Partnership with  
Private Sector



Concept on  
Basket Funding

Figure 1: Growth of Commercial Banks and Development Banks during conflict period



## Nepal's Commitment

- Constitutional provision: all citizens shall be equal before law; no person shall be denied the equal protection of law. The Constitution guarantees fair trial for all by an independent, impartial and competent court or judicial body and free legal aid for indigent parties.
- Budget Speech 2018/19: states that free legal service will be expanded to assure the access to justice for all; and Ghar Ghar Ma Manab Adhikar (Door to Door Human Rights) will be implemented at grassroots level to ensure the human rights for all citizens.
- However, the budgetary allocation for judiciary services is only NRs 6 billion (US \$ 60 million).
- So, Businesses can be required to put part of their mandatory CSR into a basket fund for legal services for affected communities

## Linking CSR with local community

- The community justice has come within the domain of local government. There are 753 Judicial Committees. The Judicial Committee has two types of judicial powers .
- Most of the community justice issues will be addressed by the Justice Committee headed by the Deputy Chief of the Local Governments
- CSR fund should be channeled to the community justice as per the demand from the community
- The CSR implementation mechanism and modality for justice should be discussed further with all stakeholders
  - commercial banks, central bank and finance ministry, and representatives of local governments.

## Need for Partnership

- In accordance to new constitutional provision, there is a need to
  - Build capacity of the Justice Committee
  - Create appropriate structures and procedures that delivery of justice is on time
  - Build working cooperation between the Para legal from civil society and the formal local Justice Committee
  - Make civil society aware of their rights and legal protection.

## BASKET FUNDING APPROACH TO SUPPORT ACCESS TO JUSTICE IN NEPAL

- Nepal Bankers' Association (NBA) should create and mobilize the basket fund for community justice.
- It should build a small organizational set up or entrust responsibility formally to its secretariat to cater the demand for fund, ensure effective implementation and monitor and review the implementation and report progress to all the participating commercial banks.
- A Steering Committee (SC) should be formed comprising of representatives from all stakeholders
- SC chaired by NBA president, upon agreement and will be responsible for budgetary control, providing guidance on CSR activities and initiatives and resource allocation.

## Mandate for Steering Committee

- Approve annual program budget
- Approve CSR delivery mechanism and Guidelines
- Identify and approve CSR funding activities and areas
- Help in coordination and monitoring
- Ensure broad and inclusive participation of all commercial banks in the justice sector
- Provide guidance to the secretariat to:
  - Map out access to justice related CSR activities by commercial banks.
  - Share outreach modality to the members

## Size of innovative financing

- Aggregate net profit of 28 commercial banks increased by 26.59 % to NRs. 45.26 billion in the Fiscal Year 2016-17, compared to the net profit of NRs. 35.75 billion in the previous fiscal year.
- According the Budget of Nepal 2017/18, BFIs made approx. NRs. 49 billion net profit.
- This indicates that the new rule to contribute 1% of their net profit to the CSR is quite a substantial amount (NRs 490 million) to invest.
- Part of the CSR fund (15 to 25 %) could be allocated by Banks to community justice agenda through basket funding.
- Indicates significant possibility to get innovative and sustainable finance for justice sector.

### ***Annex 3.9: Role and Mandate of NHRC***

Situation of Human Rights in Nepal,  
*With Reference to Duties of Government Officials*

Mohna Ansari

Commissioner and Spokesperson

NHRC Nepal

14 August 2018

- Outline of the Presentation
- Historical Background
- Human Rights?
- Paris Principle
- Provisions in Constitution/NHRC Act
- Function, Role and Power of NHRC
- Organizational Structure
- Achievements and Challenges
- Situation of HR in Nepal
- NHRAP and UPR process
- Role of CDOs/Government for HR
- Possibility of Cooperation and collaboration
- Historical Background
- Movement of 1990/ Restoration of democracy
- HR in preamble of Constitution, 1990- first time
- Int'l HR instruments ratified
- Blooming Civil Society Movement
- Historical Backg...
- Delay in formation of Commission
- Protest from Civil society
- Supreme Court's verdict to establish NHRC
- NHRC founded in 26 May 2000 (*13 Jeth 2057 BS*)
- People movement II

- Interim Constitution of Nepal, 2007 promulgated
- Commission become Constitutional status of NHRC in 2007
- Under New 2015 Constitution article 248 and 249 also carried same mandate (Independent autonomous body)
- Only Human Rights Commission but we are running under old act, NHRC Act, 2012
- What is Human Right?  
Rights related with:
  - Life
  - Dignity
  - Liberty
  - Equality

*(As mentioned in the NHRC Act, 2068 art 2)*

- Paris Principle of HR

*Conference of HR in Paris 1991*

*UN GA adopted the Paris principles of HR in 1993. (Resolution no. 48/134 of 1993)*

- Broad mandate
- Independent
- Pluralism
- Autonomous
- Adequate resources
- Adequate Power of Investigation

*The only one constitutional body accredited internationally. "A" status*

*Each & every activities of NHRC are evaluated in ICC (UN).*

- Provisions in the Constitution, 2015
- 5 members including Chairperson
- Appointment by the *President* on the Recommendation by *Constitutional Council*
- 6 years of Term of commissioners
- Appointment on the basis of *plurality, inclusion, representative, gender diversity*
- Wider mandate
- Independent, impartial and autonomous body
- NHRC's Recommendation is mandatory to Attorney General (*SC verdict 2069.11.23*)

- Duty of NHRC
- To ensure the **respect, Protection and promotion of HR** and *their effective implementation* (Article 249)
- Major Provisions in NHRC Act, 2068
- Draw attention to authority or to the officials, 5
- GoN should request NHRC for HR reporting, 6
- Publicizing/Recording the name of HR violator, 7
- Restriction for appoint, promotion and Foreign trainings ( for 3 years), 17
- Can Order for interim relief and rescue, 9
- Time bond of six months (Incident/investigation)10
- Mediation in joint request of the parties, 14
- Prosecute through Attorney General, 17
- Consent of NHRC to INGOs for HR activities, 20
- Note:
- Functions, Role & Powers
- Ensure the respect, promotion and protection of HR
- Receive complain on HR violation/Suo-moto
- Conduct inquiries, investigation for the fact finding
- Co-ordination with civil society for awareness building
- Recommend to the relevant authority for the necessary action to HR violator
- Ajit Mijar- (Recent Cases after NHRC intervention Nepal Police stated investigations)
- Laxmi Pariyar
- *Fact Finding on Religious premises like Chatt Puja issue in Tarai*
- Functions, Power...
- Review existing HR related laws
- Recommend the Govt. for the ratification of Int'l HR instruments (*UNCRPD, ICC , CEARD, ILO169, CEDAW, CRC, CAT etc..*)
- Treaty monitoring / findings / reporting
- Recommend to the govt. on above issues
- Publicizing the names of persons not following NHRC recommendation
- Functions, Power....



- Power as of Court including summon of person
- Provision of search and seizure
- Enter into any Govt. premises /other places without prior notice for rescue and immediate action
- Order compensation for the victims
- Exercise and carry out its duties as prescribed by the laws.
- CPA monitoring on HR issues – *Point 9.4*
- Monitoring of **NHR Action Plan of GoN** – *Themes including Security*
- Reporting
- NHRC produces its Annual Report to the president and through president to the prime-minister and to the parliament. (Art.... )
- *First time NHRC Parliamentary Committee initiated debate in the parliament- and its turning point*
- Major Functions of NHRC
- **Protection (Monitoring and Investigation)**

### **Monitoring**

1. Situation/Event/Thematic/Treaty/CPA/NHRAP
2. Complaint Basis/ Suo moto/General
3. Recommendations for necessary Dept./action
4. Detention monitoring – regular &  
Surprise visits

### **Investigation**

1. Registration of case/letters to concerned authority
  2. Collection of evidences, testimonies, statements etc.
  3. Recom. for the necessary action to GoN.
- Major Functions..
  - **Promotion** (Capacity Building, Trainings, Workshop, Interaction, Networking and Coordination, Cooperation, Collaboration, Dialogues & advocacy, Publication and Distribution, HRE & Awareness raising programs, Celebration of HR days, mass awareness campaigning)
  - **Legal Affairs** – Review, reform the law and Policies
  - **Int'l Treaty Monitoring & Reporting**
    1. Review of laws from the view point of HR
    2. Recom. to the Govt. for ratification/domestication of Int'l HR instruments

3. Feedback and assist on  
periodic reports of Treaties
1. UPR process (Jointly first time with other commissions like Dalit and Women Commission)
  - Organizational Structure

#### Head Office

- Departments
- Divisions
- Nine Thematic focal persons, Few Units
- Human Rights Resource Center

#### **Outreach extended as:**

- 5 Provincial Offices, Thematic focal persons
- 3 Sub-Provincial offices, Thematic focal persons
- Achievements
  - Trust on the Commission/activities
  - Accessibility increased
  - HR situation Improved *in some extent*
  - Partial fulfillment of Recommendation,
  - Contributed to peace building, *Draft of CPA*
  - Towards HR friendly constitution
  - Raised HR awareness through promotional campaign
  - HR related laws reviewed
  - Institutional capacity development - NGOs, Govt., Security,  
(HRE, HRBA, TJ etc...)
- Challenges
  - Conflict related cases are still to be settled
  - Lack of evidences, witness, awareness (security, Compensation) etc.
  - Financial Resource constraint
  - Full implementation of Recommendations, 12% and under consideration, 38%
  - Impunity
  - Breach of rule of law- untouchability and women/children issues
- Challenges.....

- Political instability and transitional phase
- Ignorance of HR even in high level of Bureaucracy
- Topographical Challenges
- Violation of law
- Lack of collaboration/Inter/national HR Community and overlapping
- Minimal coordination among Govt. Agencies
- Resource Constraints of Govt. for ESC Rights
- Widespread corruption (*Development and Governance system, local level, socially accepted*)
- Situation of HR
- Rule of law is ignored
- Impunity is widespread

(*Godar case, Dekendra Case, FIR etc..*)

- Torture in Custody is still exist
- No minimum standards at Jail
- Capture of property  
(Dang, Bardiya, Pyuthan..)
- Issues of Conflict victims are not settled
- Issue of Human Trafficking
- Citizenship in the name of mother and other too
- Situation of HR..
- Corporal punishment still in practice
- Worst form of Child labor
- No health workers, medicine at health centers
- Consumers are exploited (*both in public/private sector*)
- Issue of un-touchability is exist ( *Saptari, Dailekh, Bardiya, Doti, Dang, Jumla, Salyan..*)
- Domestic violence is less focused
- No Secretaries at VDC offices
- False registration of deaths of Disappeared.( *Bardiya, banke dang..*)
- NHRAP and UPR Process
- NHRAP- 3 years' HR Plan of GoN since 2004
- Three plans have been completed

- Fourth Five years' NHRAP is ongoing 2014 and we are working to send recommendation for amendment according to new Constitution
- NHRC Secretary is in Central monitoring Committee
- In regular UPR monitoring and reporting mechanism since 2011 Jan (HR Council, Geneva)
- UPR of Nepal second cycle review is ongoing
- All UN member countries are assessed in the UPR process
- Role of Govt. Officials for HR

*“Know the Rights and Bear the Duties”.*

- Respect *the HR*
- Protect *the HR*
- Promote *the HR*
- Fulfill *the HR*

*(Vienna Declaration of HR, 1993)*

*NHRC is the watchdog.*

NHRC is ready to cooperate and collaborate with Govt. agencies in the Ground of HR.

Thank you !!

#### **Annex 4: List of Participants**

S. N.	Name	Organization	Nationality	Contact Details
1.				
2.				

Annex 5: Pictures

Picture	Caption
Caption	Picture
Picture	Caption
Caption	Picture
Picture	Caption
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