

Towards Fundamental Rights for Dalits in Nepal: A Discourse

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ABSTRACT

The paper attempts to explore the situation constraints towards implementation of fundamental rights for Dalits in Nepal by addressing the research questions ahead: How are fundamental rights for Dalits treated in Nepal? Why are fundamental rights for Dalits constrained? The researcher employed a narrative approach that collected the narratives from the individuals in this study that reveals their experiences. This study explored the constraints against fundamental rights for Dalits in Rukum and Jumla districts of Karnali Province. The researcher undertook a critical review of the pertinent literatures. It found that the fundamental right against caste-based discrimination and untouchability under Article 24 of the Constitution is minimally implemented on the one hand and the right of Dalits under Article 40 is yet to be implemented fully on the other hand. The reigning ideology of caste system has been entrenched into the socio-cultural processes of Nepali society for which Dalits are treated as the lowest rung in a hierarchy. The progressive realization towards socio-cultural and political equality is yet to be institutionalized in the society. Dalits are excluded and subjugated from socio-cultural integration

Keywords: Caste System, Exclusion, Fundamental Rights, Progressive Realization, Subjugation.

INTRODUCTION

Article 16 to Article 46 of the Nepali constitution guarantees thirty-one fundamental rights for Nepali people of different walks. These include to freedom to live with dignity, freedom of speech and expression, religious and cultural freedom, right against untouchability and discrimination and so on. Article 48 describes the duties of every Nepali citizen attaching to the safeguard of nationality, sovereignty and integrity of the country (Constitution of Nepal). Despite entitlements, Dalits are subject to caste discrimination and untouchability in the society. Nepal retains its centuries-old caste system. Dalits suffer from the caste system for generations. Dalits are those communities who have been oppressed and marginalized in the worst forms for millenniums in the name of caste, the major practice of social stratification in the Hindu society in South Asia. They are termed as 'untouchables' by the radical enforcers of the extremely rigid caste system. Dalits are defined as 'those communities who, by virtue of atrocities of caste-based discrimination and untouchability, are most backward in social, economic, educational, political and religious fields, and deprived of human dignity and social justice'¹. There are twenty-three social sub-caste groups within Dalit communities; there are five sub-caste groups from the hills and mountains, fifteen from the plains and three from the Kathmandu valley that Dalits are discriminated socially and culturally in Nepali society. The all spheres of the society keep them in isolation. The hill and mountain Dalits include Kami, Damai, Sarki, Gaine and Badi whereas the Terai Dalits include the sub-caste groups such as Chamar, Musahar, Dusadh, Tatma, Khatwe, Dhobi, Batar, Chidimar, Mali, Dom, Halkhor, Patharkatta, Pangadiya, Bhahat, and Newar Dalits from Kathmandu valley include Pode, Chyame, and Halahulu². Combining, it is rightly claimed by the national and international human rights obligations that all citizens are equal regardless of their different identities and origin. In practice, it is not applicable to the context of Dalits in Nepal. Thus, it needs to explore further: What is the legal context of Dalit rights in the society? How are the Dalit fundamental rights perceived in the society? Why are the abuses of fundamental rights against remaining in the society? That is why the study holds a purpose to explore the extent of implementation and challenges of fundamental rights of Dalits in Nepal.

No doubt the caste system is closely associated with Hinduism in South Asia. It is the oldest survival social hierarchy in the world. Nonetheless, it is mostly dominant in Nepal and India. It is supposed to be one of the rigid stratification systems without any possibility to change one's caste or move between the castes categories in indeed. The caste of person is

¹Ram Bahadur B.K., *Nepal Dalits' Commission*12(Sita Sunar 2017).

²Ganesh Bishwokarma, *Dalits in Nepal* 25 (National Dalit Network 2014).

determined by his/her into a particular social group. Similarly, the caste system is an inseparable aspect of Hindu society and maintains close nexus with Hindu philosophy, religious beliefs, customs and traditions. On top of the philosophy, the strata wise functions and obligations are imposed. The caste system has contributed to the determination of stratification, differentiation and segmentation of Hindu society. With reference to Nepal, the institutionalized exploitations on Dalits date back to the medieval period in 13th century when King *JayasthitiMalla* introduced the caste system³. *Janga Bahadur Rana*, the then the Prime Minister of Nepal, further formalized the caste system through a Civil Code in 1854 with the caste hierarchy ahead; (1) Sacred thread wearing or twice- born, (2) Liquor drinking, (3) Touchable low castes, and (4) Untouchables¹. This way of caste division created a huge gap between Dalit and non-Dalit sections in Nepali society pushing Dalits towards a marginal space⁴. Nepal, Dalits are treated as low caste people and left behind in social, cultural and religious spheres and deprived from the human dignity and social justice due to caste based discrimination and untouchability.

Social exclusion and inclusion are multi-dimensional terms and their definitions, meanings and connotations are context dependent. Social exclusion as a concept has its origin in Europe, more specifically in France, and therefore, the issues addressed in the social exclusion context were specific to Europe. Subsequently, the concept was introduced in India where it has primarily focused on inequalities and exploitation based on membership of particular social groups and is seen in terms of exclusionary processes based on caste, gender, tribe and religious identities⁵. While concluding, social exclusion describes a process by which certain groups are systematically disadvantaged as they are discriminated against on the basis of their caste, ethnicity, race, religion, sexual orientation, descent, gender and so on where they live. Discrimination occurs in public institutions, such as the legal system or education and development services, as well as social institutions like the household and the community.

It is conveniently argued that caste is one of the oldest and most pervasive forms of social stratification, and results in injustices based on ascribed role differentiation. Caste stratification, traditionally associated with the Hindu religion, is sustained by an ideology that legitimizes inequality according to the status of birth. Interactions between castes is restricted, and the differential privileges and burdens are accorded, according to one's position in the caste hierarchy. The so-called higher castes and more particularly Brahmins, have over time developed rules that helped ensured superior status for themselves in the overall social hierarchy; the British colonizers helped entrench this system.

Arguably, caste is one of oldest and most pervasive forms of social stratification, and results in injustices based on ascribed role differentiation. Caste stratification, traditionally associated with the Hindu religion, is sustained by an ideology that legitimizes inequality according to the status of birth. Interactions between castes is restricted, and differential privileges and burdens are accorded, according to one's position in the caste hierarchy. The so-called 'Higher castes' and more particularly the Brahmins, have over time developed rules that helped ensured superior status for themselves in the overall social hierarchy; the British colonizers helped entrench this system⁶. Historically, caste controls have been most violently enforced on those at the lowest rungs of the caste ladder, the so-called scheduled castes or Dalits. Through daily practices of humiliation and coercion, the ideology of Dalits as 'untouchables' and hence as the others and outsiders to the caste system, persisted. They were viewed as regressive, barbaric and irrational in contrast to those within the caste system. It is important to recognize that social exclusion is a dynamic and on-going process, reflecting 'the dynamic process of being shut out, partially or fully, from any or all of several systems which influence the economic and social integration of people into the society'⁷.

METHODOLOGY

The research has followed a qualitative research design. Marshal & Rossman (1999) opined that qualitative research is a broad approach to the study of social phenomena, its genres are naturalistic and interpretive and they draw on multiple methods of inquiry in qualitative method, the researchers are intrigued with complexity of social interactions as expressed in daily life and with the meanings, the participants themselves attribute to those interactions⁸. The researcher employed a

³Kailash Pyakuryal & Madhusudan Subedi, *Understanding Nepal's development: Context, interventions and people's aspirations* (Michigan State University, 2000).

⁴Andras Hofer, *The Caste Hierarchy and the State in Nepal: A Study of Muluki Ani 1854* (Lalitpur: Himal Books, 2004).

⁵K M Zyauddin & Kasi Eswarappa, *Dimensions of Social Exclusion: Ethnographic Explorations*. Newcastle(UK: Cambridge Scholars Publishing, 2009).

⁶Romila Thapper, *Ancient Indian Social History: Some Interpretations* (New Delhi: Orient Longmans, 1979).

⁷Patrick Commins, *Poverty and Social Exclusion in Rural Areas: Characteristics, Processes and Research Issue*. *Sociologia Ruralis* ((January, 2004).

⁸C. Marshal & G.B. Rossman, *Designing Qualitative Research* 35 (3rd edition, SAGE 1999).

narrative approach that collected the narratives from Dalit individuals that tells their experiences. A critical review of the pertinent literatures was undertaken to interpret the context.

RESULTS

International Context

Human rights are universal and inalienable. All people in the world are entitled to them. The very rights are indivisible. The civil, political, economic and cultural rights are inherent to the dignity of every human person. There is no hierarchy of human rights. The realization of one right often depends, wholly or partly, upon the realization of others. The realization of right to health may hinge upon the right to information or of the right to education. All individuals are entitled to their human rights without discrimination of any kind, such as race, color, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaties bodies. Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, political, economic, social and cultural development, through which human rights and fundamental freedoms can be realized. States and other duty-bearers must comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved right-holders are entitled institute proceedings for appropriate redress before a competent court or other adjudicator, in accordance with the rules and procedures provided by the law⁹. The ratification of international human rights treaties till now is eighteen. Nepal has ratified the following human rights treaties as indicated by the table 1.

Ratification of International Human Rights Treaties¹⁰

Human Rights Instruments(Date into force)	Ratification Status	Declaration
International Convention on Elimination of All Forms of Racial Discrimination: 1753	Signature: NA, Ratification/Accession: 1971	↓
International Covenant on Civil and Political Rights: 1753	Signature: NA, Ratification/Accession: 1991	
Optional Protocol to the International Covenant on Civil and Political Rights:1753	Signature: NA, Ratification/Accession: 1991	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of death penalty:1753	Signature: NA, Ratification/Accession: 1998	
International Covenant on Economic, Social and Cultural Rights:1753	Signature: NA, Ratification/Accession: 1991	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights:1753	Signature: NA, Ratification/Accession: NA	
Convention on Elimination of All Forms of Discrimination against Women:1753	Signature:1991, Ratification/Accession: 1991	
Optional Protocol to the Convention of Elimination of All Forms of Discrimination against Women:1753	Signature:2001, Ratification/Accession: 2007	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:1753	Signature: NA, Ratification/Accession: 1991	
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:1753	Signature: NA, Ratification/Accession: NA	
Convention on the Rights of the Rights of the Child: 1753	Signature: 1990, Ratification/Accession: 1990	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict:1753	Signature: 2000, Ratification/Accession: 2007	↓
Optional Protocol to the Convention on the Rights of	Signature: 2000, Ratification/Accession:	

⁹UNISEF, *UNISEFF Annual Report*56(UNISEF 2015).

¹⁰Min Bahadur Oli, *Human Rights and International Instruments* 31(Progressive Publication 2022).

the Child on the sale of children, child prostitution and child pornograp:1753	2006	
Optional Protocol to the Convention on the Rights of the Child a communication procedure:1753	Signature: NA Ratification/Accession: NA	
International Convention on the Protection of the Rights of All Migrant Workers and Members of the Families:1753	Signature: NA Ratification/Accession: NA	
International Convention for the Protection of the Rights of all persons from Enforced Disappearance:1753	Signature: NA Ratification/Accession: NA	
Convention on the Rights of Persons with Disabilities:1753	Signature: 2008, Ratification/Accession: 2010	
Optional Protocol to the Convention on the Rights of Persons with Disabilities:1753	Signature: 2008, Ratification/Accession: 2010	

Promoting and encouraging respect for human rights without discrimination is one of the main purposes and principles of the United Nations, as enshrined in article 1 of the United Nations Charter. All United Nations agencies, funds and programs are governed by, and have a mandate to promote, the principles of the United Nations Charter. As clearly stated in the *Guidance Note on Human Rights for Resident Coordinators and UN Country Teams*, meeting this mandate is not optional; it is a duty for the whole United Nations System¹¹.

The UN human rights system has extensively addressed situations of caste discrimination, including through mandates and processes concerning ‘racial discrimination’. The UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines ‘racial discrimination’ as: any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life¹².

Fundamental Rights for Dalits in Nepal: An Overview

The National Civil Code of Nepal promulgated in 1854 had recognized untouchability and caste system legally. It is supposed that the untouchability had been outlawed by the National Civil Code of 1963, however, it is not true. The evidence is that the provision of the clarification of the section Number 10 (a) of *Adal* (Decency/Etiquette of *Muluki Ain* (Civil Code) that ‘the rituals traditionally being followed at a temple or religious place shall not be deemed discriminatory’ was annulled stating it to be encouraging discriminatory behavior at the public places¹³. Article 11(4) to the constitution of Nepal 1990 declared that no person, shall on the basis of caste, be discriminated against as untouchable, be denied access to any public places or be deprived of the use of public utilities. Any contravention to this provision shall be punishable by law¹⁴.

Article 24 to the Constitution of Nepal guarantees right against untouchability and discrimination. Sub-article (1) reveals that no person shall be treated with any kind of untouchability or discrimination in any private or public place on the ground of caste, ethnicity, origin, community, occupation or physical condition. Sub-article (2) remarks that no person belonging to a particular caste or ethnicity shall be prevented from buying an object or getting services or facilities in the process of production of such object or in the distribution or delivery of services, or no such objects shall be sold to, or facilities or services distributed or delivered to persons belong to a particular caste or ethnicity. Sub-article (3) articulates that racial discriminations shall not be encouraged in any way or these shall not be any behavioral attitude to exhibit high or low status on grounds of a particular caste or ethnicity or community or physical conditions of a person, or these shall not be any behavioral attitude that justifies social discrimination based on caste, ethnicity, or untouchability or encouragement for propagation of attitudes based on the caste superiority or untouchability or hatred. Sub-article (4) mentions that there shall be not any racial discrimination in the workplace by indulging or not indulging in untouchability. Sub-article (5) envisages

¹¹United Nations, *Guidance Note on Human Rights for Resident Coordinators and UN Country Teams* 22(<https://undg.org/wp-content/uploads/2016/10/UNDG-Guidance-Note-on-Human-Rights-for-RCs-and-UNCTs-final.pdf>).

¹²United Nations, *Treaty Bodies, Special Procedures, UPR etc.* (www.isdn.org).

¹³Man Bahadur Bishwokarma vs. Ministry of Law, Justice and Parliamentary Affairs(N.K.P. 2049 B.S., Issue 12, Page 1010 et. al D. No. 4670

¹⁴Ministry of Law, Justice and Parliamentary Affairs, *The Constitution of the Kingdom of Nepal* 8(Nepal Law Books Management Boards, Babarmahal, Kathmandu).

that all forms of untouchability or discrimination contrary to this provision shall be punishable by law as serious social crime, and the victim of such an act shall have the right to have the compensation as provided for by the law¹⁵.

Notwithstanding the recent provisions, Dalits are not free from caste discrimination and untouchability. Such incidents unfortunately widespread. The catalogue of shame is a long one. A twelve year-old Dalit girl was raped and murdered in September 2020. A 21 year –old female Dalit social activist was gang-raped and murdered in 2018. *Mana Sarki*, a Dalit ward representative at local government was beaten to death at her home in the same year mentioned ahead. *Ajit Mijar*, an 18 year-old Dalit man was murdered for marrying a girl from so-called high caste in 2018¹⁶. Based on the media reports, over two dozen Dalits have been killed for breaking caste based norms since 2011. Many of those killings were pertained to the inter-caste marriages. In one year alone- the fiscal year that ended in mid-July 2020-30 crimes related to untouchability were registered with police officials in Nepal¹⁷.

The reservation policy was put in place by Public Service Commission for Dalits and marginalized communities providing 45% of positions in the federal civil service for specific disadvantaged groups as identified by the constitution. The progress is gradual for Dalits. Unfortunately, the quotas are not in compliance with the proportional representation system as the Dalit community has 9% reserved of 45% classified seats for marginalized groups of 100% vacancies. Dalit representation in the civil service was 1% prior to the introduction of reservation policy, however, it remained around 2% by 2018. Contrary to the context, the representation by *Khas Arya* group is about 62%¹⁸. The federal cabinet of Nepal does not have a proportional representation of Dalits and women. The House of Representatives of Nepal only includes 6.91 % representation of Dalits. Not a single provincial parliament has proportional representation of Dalits. At the 753 mayoral positions at local level, only six (2.05%) individuals have been elected as mayors in municipalities and one (0.22%) in a rural municipality. Twelve (4.10%) have been elected as deputy-mayors in municipalities and 15(3.26%) as vice-chairs in rural municipalities¹⁹. The representation of Dalit community in judicial mechanism is also insignificant as there have never been any Dalit judge in the Supreme Court. There have only been three Dalit judges in all seven High Courts, and one Dalit District Judge of 77 District Courts. Representation in high-ranking positions in police office is also negligible²⁰.

Dalits are one of the marginalized communities in Nepal along less access to resources, they have food insecurity, sustain themselves on daily wages, and less access to have rights and justice system. Dalits comprise the poorest community in Nepal in terms of all poverty measures-income, consumption and human development. Discrimination is the single important factor responsible to disproportionate affection of poverty by Dalits. Around 42% percent of Dalits live below the poverty line against the national poverty rate of 25.2%. While the immediate causes of this gap are limited employment opportunities due to occupation specialization preventing Dalits from accessing well -paid jobs, as well as lack of access education and land that perpetuates poverty from one generation of Dalits to the next, the persistence of social discrimination is the overarching factor depicting this situation²¹. Land is the main source of determining social status and living standard in Nepali society. 36.7 % of Hill and 41.4% of Madhesi Dalits landless. Landlessness makes Dalits economically vulnerable and dependent upon landlords. Most of the Dalits are occupational and agricultural laborers and are generally landless. This makes them vulnerable to violence and discrimination. The constitution guarantees provisions of land and housing for landless Dalits according to the law. Nevertheless, the amended law on land distribution is overly complex, and imposes many conditions on acquisition of land. The same condition is also applicable to housing acquisition. The root cause of patron-client relationship between the resource holders and Dalits is landlessness²². The literacy rate for Dalits aged six years and above 52.4% compared to the national average of 65.9%, while the literacy rates for Tarai Dalits is just 34.5%. Women from all Dalit groups have lower literacy rates compared to their male counterparts and national average. The literacy rates of Dalit women 45.5% overall, with women hailed from the Musahar and Dom community at the bottom, with literacy rates of 17.4% and 17.9% respectively²³. Children from Dalit communities face discrimination at schools from their teachers and peers. Due to the prejudiced mindset derived from a reigning ideology of caste system, teachers provide less care to Dalit children, who are addressed, in a rude manner, and are placed in separate lines and seats and so on. Ultimately, these students fall behind in learning achievements and often dropping out. In turn, the educational

¹⁵Ministry of Law, Justice and Parliamentary Affairs, *The Constitution of Nepal*16-17, 23-24(Nepal Law Books Management Boards, Babarmahal, Kathmandu).

¹⁶Pansara Nepali, Interviewed by Upendra Bahadur B.K. 8 October 2023, Surkhet.

¹⁷Tekendra Bishwokarma, Interviewed by Upendra Bahadur B.K. 15 October 2023, Dailekh.

¹⁸Hari Bahadur Nepal, *Dalits and Participation in Governance* 17(Dalit NGO Federation 2022).

¹⁹Man Bahadur Luhar, *Dalits and Inclusion* 35(Civil Society Organization 2021).

²⁰Mangle Sarki, *Justice and Dalits* 34 (NNDSWO 2022).

²¹Maha Nepali, *Deprivation of Dalits from Economic Resources* 23(RDN 2018).

²²GorakhSarki, *Dalits and Education* 13(DNF 2018).

²³RajitKanaujiya, Interviewed by Upendra Bahadur B.K. 20 September 2023.

achievements have a multiple impact of social and political life of Dalits and remain adverse to human development. The segregation of Dalit students are apparent. Teachers in Nepali schools are from upper caste males and females who have not internalized a meaning of dignity and social justice in practice. Dalits are discouraged from becoming teachers and occupying higher executive positions in schools as non-Dalit community does not want to pay respect to Dalits²⁴.

Problems of Implementation of Fundamental Rights for Dalits

Political parties are the key institution in democratic practice. Political parties are perceived as a group of people who have joined forces to pursue their common social and political goals. Parties have been formed in all societies and states where the population actively participates in the political process. Political parties serve as a primary link between the government and society. As such, they have a unique role in fostering democratic governance ensuring that is responsive to societal needs. If they fail in this role, true democracy has a little chance of surviving. It is further argued that political parties help turn citizen interests and demands into policies and law. However, if they fail in this mission, the whole democratic experiment can disintegrate²⁵. Despite the established theoretical insights on the political parties, Dalit exclusion reverses it. Parties aggregate diverse demands into coherent political programs. They then translate these programs into effective collective action through elections and legitimated control of political office. Yet they face a crisis of representation. The development of political parties into a bureaucratic organization clearly informs the information and decisions up and down. The hyper-bureaucratization becomes inclusionary and exclusionary at the same time. The inclusion and exclusion dynamic within the parties centralizes power in the hands of a small coterie of the party apparatchiks in the control of organization. The centralization of power not only marginalizes the rank and file and support base of the party; it also breeds a personality cult whereby the party leader becomes synonymous with the party and vice-versa²⁶. Many Dalits view the political parties are inaccessible and unresponsive to the concerns of the group. Parties pose specific challenges for Dalits who face both formal and informal barriers to participation –including opaque nomination procedures, sub-ordination and mono-inclusive cultures. Barriers to effective citizen participation hamper community decision-making processes. Unequal power relations are an unequal system or situation in which it gives more power or privileges to one person or group of people than to others. The caste system has created unequal power relations between Dalits and non-Dalits in the society. The exclusionary mechanism of caste system hardly provide a space for Dalits to choose and influence the agendas.

Civil society seeks to strengthen the consciousness and mobilization capacity of excluded groups, such that they will be willing and able to stand up for their rights and entitlements. In the society, Dalits are compelled to live on humiliating power relations. The domination of leadership in the civil society is hailed from non-Dalits. As the society is divided on the caste lines. The civil society organizations directly and indirectly work for non-Dalits. Promotion of citizenship and social inclusion falls on the part of civil societies. This process can contribute to developing the potential for collective action and popular claims-making and strengthening a sense of citizenship and social inclusion. The role to enhance the empowerment of marginalized groups making a sense of citizenship falls on the domain of civil society, however, the divided societies on the caste lines do not favor Dalits exclusively to get the stakeholders influenced on their demands and aspirations of development. This is because of a sense of realization on Dalits is lacked by the non-Dalit leadership in the organizations. It has been explored the degree to which CBOs serve as political actors or otherwise act as representatives of marginalized populations. The caste based society has made the CBOs and social organizations inherit the legacy of unequal power relations created by the caste system. The reflection of high castes people is observed in the organizations. The composition of high castes people leadership does not work for empowerment of the marginalized sections of society. It serves to the structural inequality of the social and political system. Democracy establishes a normative foundation for political equality. Yet the dominance of the elites over the masses, and the systematic exclusion of particular social and economic groups from the influence on, and outcomes of, important decisions, manifest in political inequality. Rulers are referred as elites that is, a majority of individuals who, due to the concentration of material and symbolic resources of power, and because of their privileged structural and political position, have the capacity to make important community and societal decisions or to influence those decisions. There is no deliberative democracy as the local level decision-making processes are well-captured by the local elites. Dalits are not in leadership positions in local governments. Only the elected members from Dalits cannot influence the decision-making. The first reason is that the norms of deliberative democracy are not followed at all steps of local level planning. Therefore, Dalits are deprived of the meetings and discussions. The second reason is that as Dalits are not in leading positions of local governments, non-Dalits having leading positions decide agendas and make decisions taking nominal suggestions of their coterie.

²⁴Manju Nepali, Interviewed by Upendra Bahadur B.K. 18 October 2023 Surkhet.

²⁵A Kellman, Democracy Assistance in Practice: The Designing of a Political Party Training Program in the Republic of Kenya (2004).

²⁶Raju Nepali, Interviewed by Upendra Bahadur B.K. 27 October 2023.

Several political changes have taken place in Nepal since 1950 till now. However, a vertical division of society in the name of caste system has been working in the society systematically. Untouchability is a key form of caste discrimination that refers to the humiliations imposed, from generation to generation, on a particular but sizable section of the population that relates to impurity and pollution²⁷. The caste system has consolidated a systematic exclusion in the institutional level. In the socio-cultural processes of society, Dalits are put to the lowest rung. So-called upper caste people do not perceive them as sub-ordinates. Dalits are excluded in the community based organizations due to the influence of the exclusion on socio-cultural processes. This leads to the exclusion of Dalits in political parties. The overall impact of exclusion of political parties leads to the exclusion of Dalits in getting opportunities of political posts. Consequently, it creates a situation of Dalit exclusion in decision-making levels of the state²⁸.

There is a widening gap between the law and implementation. The duty-bearers do not take a crime of untouchability and discrimination seriously as they indulge into the influence of caste line polarization in the society. The victims of untouchability and discrimination are overwhelmed to compromise with the perpetrators in the society. As there is no meaningful participation of Dalits in law enforcement agencies on the one hand and no progressive realization in law enforcement agencies against untouchability and caste discrimination on the other hand, Dalits are compelled to bear atrocities and discrimination²⁹.

There have been 33 cases of violence discrimination against Dalits in 2020 according to Nepal Monitor, a Kathmandu-based human rights organization. Last year, it recorded 84 cases. June 17, 2020³⁰. The civil society organizations and networks are indifferent to advocacy for implementation of fundamental rights envisaged for Dalits. The decision-making levels of the organizations are well-captured by non-Dalits and Dalits are represented in the membership positions to complement a formality of inclusion. The sufferings and abuses of fundamental rights of Dalits are not made the agendas of meetings and decisions. During the meetings of Community-based organizations, Dalits were treated as untouchables and non-Dalits did not take water and tea with them. Those who opposed to the injustice were threatened and intimidated by the chairpersons and local leaders. The discrimination is prevalent in the society from then till now³¹. Even the educated, socially and politically height gaining personalities in the society cannot go against the untouchability and discrimination as has been criminalized. In 2018, a *Badi* (one of strata of Dalits) girl was misbehaved and scolded by Khagendra Bahadur Thapa, a principal of Ammar Higher Secondary School of Neware, Surkhet, in the classroom. When her parents were about to knock at the door of Police through FIR, days later, they were forced to get back compromising with the headmaster. The condition was created by Yal Lal Kandel, a former minister and a UML leader³². The lawyers and advocates have a crucial role in protecting and promotion of justice through advocacy for marginalized sections. Contrary to the assumption, the lawyers and advocates seem to be equally responsible for a compromise on untouchability and discrimination cases shouldering with caste lines in the society. The leaders of political parties and social organizations use lawyers and advocates as intermediary to normalize the case³³.

Dalits have been bearing subjugations and discriminations for generations due to the unequal power relations created by caste system. Dalits are not empowered themselves for their group rights. The low level of empowerment is seen in the society that cannot change unequal power relations. Besides, Dalits are divided by 'divide and rule' formula of caste system. Hence, Dalits are unable to influence duty-bearers for policy-influence³⁴. The state as well as the society is said to be zero-tolerant against untouchability and caste discrimination. There is a gap between the commitment and performance. The society has been witnessing that the crime of untouchability and discrimination is supposed to be a civil dispute seeking solutions through mediation. Even non-violent communication is sought in mediation between the parties. The local leaders and power elites further discriminate Dalits through intimidation and power influence even on the criminal cases. It is easy to know to what extent our society is being entrenched by a reigning ideology of caste system³⁵.

Caste Based Discrimination and Untouchability (Offence and Punishment) Act was promulgated in 2011 in Nepal to promote fundamental and legal rights of Dalits. The Act shall be extended throughout Nepal and also be applicable to Nepali citizens residing outside Nepal having committed an offence pursuant to the Act against Nepali citizen. Whosoever

²⁷Radhamany Sooryamoorthy, *Untouchability in Modern India* 23(2) 283-293(International Sociology 2008).

²⁸Uma Nepali, Interviewed by Upendra Bahadur B.K. 27 September 2023.

²⁹Goma Nepali, Interviewed by Upendra Bahadur B.K. 20 October 2023.

³⁰Renu Nepali, Interviewed by Upendra Bahadur B.K. 13 October 2023.

³¹Hora Nepali, Interviewed by Upendra Bahadur B.K. 19 October 2023.

³²Berma Nepali, Interviewed by Upendra Bahadur B.K. 16 October 2023.

³³Hema Nepali, Interviewed by Upendra Bahadur B.K. 19 October 2023.

³⁴Bidhya Nepali, Interviewed by Upendra Bahadur B.K. 19 October 2023.

³⁵Dharma Nepali, Interviewed by Upendra Bahadur B.K. 19 October 2023.

commits an offence of untouchability and caste discrimination shall be liable to the imprisonment for a term three months to three years or the fine from fifty thousand rupees to two hundred thousand rupees or the both. If a person holding public post commits an offence pursuant to the act shall be liable to the punishment of additional fifty percent to the punishment as mentioned in the sub-section³⁶. Even Dalits and elected Dalits are discriminated by the elected non-Dalits. A representative offence of caste based discrimination and untouchability from Pokhara Metropolitan City has been mentioned in the paper. Bharat Bahadur Adhikari and Maiya Nepali are ward-chairperson and a ward member from ward number-24 of the Metropolitan City respectively. Maiya Nepali was hurled abuses of caste discrimination and untouchability by the ward chair. She had resorted to a path to law against the offence. Recently Kaski District Court has given a verdict of four month of imprisonment and the fine of seventy-five thousand rupees against the convicted. Even the convicted is liable for submission of ten thousand of rupees as compensation to the victim as he has been holding a public position at the local government³⁷.

DISCUSSION

The political change is unable to imbibe a sense of progressive realization for implementation of fundamental rights of Dalits in Nepal. Despite lack of implementation of the fundamental rights, Dalits are discriminated and subjugated over the years. The law enforcement agencies of the state are over represented by Non-Dalits and Dalits do not have their access and control over the law enforcement agencies. Dalits do not get justice properly on the cases of untouchability and caste discrimination as the law enforcement agencies are influenced by the caste line polarization in the society. As Dalits are under represented in community based organizations and political parties from decision-making point of view, the voices of Dalits against untouchability and caste discrimination are less amplified from law execution point of view. There is no alternative left rather to empower Dalits for group rights. Dalits are not empowered for their group rights to change unequal power relations in the society. Dalits are further divided by local elites and politicians using 'divide and rule' formula of caste system. The study found that the law enforcement agencies, local power elites and so-called Dalit leaders had collaborated to diffuse the cases against untouchability and caste discrimination. It further found that so-called Dalit leaders were compelled to follow a trend of compromise on the criminal cases as the pressure and orders given by political leaders and elites were beyond their capacities. In order to build our society egalitarian and just, the unequal power relations can be changed through group empowerment and progressive realization. The civil society organizations have to work for policy-influence for fundamental rights envisaged for Dalits in the constitution of Nepal. As of today, Dalits are politically underpowered, socially unequal, culturally disintegrated and economically deprived of resources. As a result, the voice of Dalit community is weak in all spheres of society to influence the duty-bearers on one hand and the society is caste biased in indeed.

³⁶Ministry of Law, Justice and Parliamentary Affairs, *Caste Based Discrimination and Untouchability* (Offence and Punishment) Act 1-8(Nepal Law Reforms Commission 2011).

³⁷Advocate Kunjani Pariyar, Interviewed by Upendra Bahadur B.K. 23 November 2023.