

Between Law and Practice: Ongoing Discrimination against Dalits in South Asia

India and Nepal

The Annex provides a synopsis of the electoral and relevant legal rights of Dalits in South Asia. It is beyond the scope of this report to provide a detailed analysis of such an extensive topic. However, there are significant gaps between the rights afforded by the law and the rights that Dalit people enjoy in practice.

For example, although Nepal's legal framework includes some protections for the rights of marginalized populations, including Dalits, and has ratified international human rights conventions such as the International Covenant of Civil and Political Rights, it demonstrates only a partial endorsement of human rights conventions.^{3, 4} More importantly, continued acts of violence against Dalits across the country are tolerated despite the legal rights the framework confers to those communities. The Samata Foundation, a Dalit rights organization based in Kathmandu, noted in 2019 that at least 16 caste-based killings had been reported since the 2011 enactment of the Caste Based Discriminations and Untouchability (Offense and Punishment) Act, which prohibits all forms of discrimination against vulnerable communities, including Dalits.⁵ In 2020 alone, the Nepal Monitor, a human rights and security incident monitoring and alert system, recorded 27 cases of caste-based discrimination and atrocities.⁶ However, it is important to note that caste-based atrocities are rarely reported to the police or go to court; even when such crimes are reported, conviction rates are low, often resulting in only small fines and minimal jail terms. The Nepal National Dalit Commission, formed in 2015 under the new Constitution to protect the rights of Dalits and hold the state accountable, has provided minimal benefit to the greater Dalit community. These facts reinforce survey respondents' expressed fear of violence toward Dalits, which was identified as a top barrier to all aspects of political participation—from voting to running for office.

India has more than 200 million members of scheduled castes and Dalits, constituting one-sixth of the total population. Inclusion and equal representation are central to the country's Dalit and Bahujan movements.⁷ Despite steps taken to abolish widespread caste discrimination, Dalits face caste-based persecution, discrimination, and several structural challenges that impede their inclusive representation and engagement in elections and politics. Indeed, many survey respondents did not think existing inclusion efforts guarantee the consideration of Dalit issues at the local or national levels. This leaves a substantial part of the population without proper representation.

³ Nepal Treaty Act, 2047, 1990.

⁴ "View the Ratification Status by Country or by Treaty," [tbinternet.ohchr.org](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en), accessed February 7, 2023, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en.

⁵ "Discrimination against Dalits Still Rife, Continue to Be Left out of Decision-Making Processes." Kathmandupost.com. September 8, 2019. <https://kathmandupost.com/national/2019/09/08/discrimination-against-dalits-still-rife-continue-to-be-left-out-of-decision-making-processes>

⁶ "Nepal: Ensure Justice for Caste-Based Killings," Human Rights Watch, October 28, 2020, <https://www.hrw.org/news/2020/06/01/nepal-ensure-justice-caste-based-killings>.

⁷ "Bahujan" refers to the combined population of the scheduled castes, scheduled tribes, Muslims, rural populations, and other minorities.

This neglect reaches many other levels of society. Caste-based occupational distribution is evident in reserved government employment, with Dalits assigned primarily to manual work. Government institutions' failure to enforce the reservation policies for Dalit representation in government is mirrored by pervasive acts of violence, including the rape and murder of Dalit candidates. Intimidation, hate speech, and violence have been used to prevent Dalits from standing for election. For example, in October 2005, a Dalit woman, Prabhati Devi, was burned alive for contesting a *panchayat* (village council) election against an upper-caste candidate in the Mirzapur district in Uttar Pradesh, India, after she defied a local politician's warning not to run.⁸ Public authorities and private actors systematically discriminate against and abuse Dalits, acting without fear of punishment and rarely facing legal recourse for their violations of Dalits' fundamental rights.⁹ Additionally, due to their reluctance to investigate complaints by Dalits and their own lack of familiarity with relevant legislation, police systematically foster improper and incomplete registration of cases of discrimination or violence filed by Dalits.¹⁰

Despite these severe shortcomings, the constitutional frameworks of India and Nepal provide a basis for Dalit activism and reforms that guarantee the rights to electoral participation and meaningful representation.¹¹ Other South Asian states like Bangladesh, Pakistan, and Sri Lanka do not share this feature.¹²

Bangladesh

Although Bangladesh is a party to international human rights conventions, brutality and discrimination against Dalits are pervasive. Directives such as the Social Safety Net Programme and the National Social Protection Strategy aim to enhance food security and housing and end social and economic discrimination. However, they have had little effect, and the legal system is unresponsive to the discrimination and violence that Dalits face. For example, discrimination in employment is common, with Dalits often relegated to menial and dangerous jobs, such as cleaning toilets, sweeping streets, and cleaning septic tanks. In educational settings, Dalit students are forced to clean classrooms and fetch water and are compelled to sit separately from other students.¹³

Bangladesh Dalits have limited membership in political parties, and very few are involved in local governments. Similarly, although Dalits can exercise the right to vote, no specific legislative mechanisms ensure other kinds of participation in political parties by minority communities.¹⁴ However, Bangladesh does have women's representation

⁸ "Caste Discrimination Against Dalits or So-Called Untouchables in India Information for the Consideration of the Committee on the Elimination of Racial Discrimination in Reviewing India's Fifteenth to Nineteenth Periodic Reports Presented at the Seventieth Session of the Committee on the Elimination of Racial Discrimination." 2007. <https://www2.ohchr.org/english/bodies/cerd/docs/ngos/chrqj-hrw.pdf>

⁹ "Hidden Apartheid: Caste Discrimination against India's 'Untouchables.'" *Human Rights Watch*, February 12, 2007.

¹⁰ "Report on Prevention of Atrocities against Scheduled Castes." National Human Rights Commission, India. 2004. https://nhrc.nic.in/sites/default/files/reportKBSaxena_1.pdf

¹¹ "The Constitution of Nepal - Ag.gov.np," accessed February 7, 2023, https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov.npDate-72_11_16.pdf; "Constitution of India: Legislative Department: Ministry of Law and Justice: GoI," Legislative Department | Ministry of Law and Justice | GoI, accessed February 7, 2023, <https://legislative.gov.in/constitution-of-india>.

¹² "Bangladesh's Constitution of 1972, Reinstated in 1986, with Amendments through 2014," Constitute Project, accessed February 7, 2023, https://www.constituteproject.org/constitution/Bangladesh_2014.pdf?lang=en; "The Constitution of the Democratic Socialist Republic of ... - Sri Lanka," accessed February 7, 2023, <https://www.parliament.lk/files/pdf/constitution/constitution-upto-17th.pdf>; "The Constitution of the Islamic Republic of Pakistan," accessed February 7, 2023, https://na.gov.pk/uploads/documents/1333523681_951.pdf.

¹³ "The Dalits in Bangladesh." 2016. *The Daily Star*. January 19, 2016. <https://www.thedailystar.net/law-our-rights/rights-advocacy/the-dalits-bangladesh-203845>

¹⁴ Farvergade, Vartov. n.d. "Joint NGO Submission Related to the Review of Bangladesh at the 30th Universal Periodic Review Session in 2018. Situation of Dalits in Bangladesh Prepared by BDERM and Nagorik Uddyog in Association with IDSN." <https://idsn.org/wp-content/uploads/2018/03/NGO-report-UPR-Dalit-rights-in-Bangladesh-2017.pdf>

quotas at all levels of the elected government. Dalits in the country experienced a surge of deadly violence after the 2014 general election, including rapes, abductions, murders, displacement, and the vandalization of Dalit houses and properties.¹⁵

Pakistan and Sri Lanka

The title of the International Dalit Solidarity Network's report on Dalits, "Caste-Blind Does Not Mean Casteless," sums up the situation in both Pakistan and Sri Lanka.¹⁶ Despite its human rights commitments, Pakistan does not acknowledge Dalit issues and dismisses them on religious grounds. Of the 40 caste categories listed in the Presidential Ordinance of Pakistan of 1957, 32 were scheduled castes (including Dalit communities). Scheduled castes are often interpreted as referring to Hindus only, given the belief that Islam has no caste hierarchies. No political or economic security measures in Pakistan are extended to scheduled castes. To complicate matters further, the 2017 Census of Pakistan listed scheduled castes (which include Dalits) in the "religion" category, which meant one could not opt to identify as both a Hindu and a member of a scheduled caste, such as a Dalit. According to International Commission for Dalit Rights (ICDR) research, virtually no Dalits hold higher positions in Pakistani government departments and law enforcement agencies.¹⁷

Similar caste-based discrimination plagues the Dalit community in Sri Lanka. Although some claim discrimination takes milder forms in Sri Lanka, studies have shown that such practices as untouchability and restricted access to temples and water sources have simply become "a hidden entity, not openly addressed by Sri Lankan society."¹⁸ Sri Lankan Dalits are primarily from the minority Tamil community; the majority Sinhala caste system does not include Dalits. Nevertheless, caste-based discrimination exists. Lower castes are not well-represented in political parties and organizations, and issues related to Sinhala castes are rarely discussed openly.

Intersections of religion, gender, sexuality, disability, caste, and ethnicity influence the ability to obtain elected office and the power that elected officials exercise. Various studies have demonstrated that the institutional conditions under which candidate selection processes take place influence parties' decisions.¹⁹ This sometimes means privileging minority men over women, supporting the "double jeopardy" hypothesis of compounding marginalization at various levels.²⁰ These actions reflect the reinforcement and reproduction of inequalities through policies resulting from ethnic blindness in the case of gender and gender blindness in the case of ethnicity. The disjunction between democracy and representation is thus compounded for Dalits, who also face intersectional experiences with marginalization. As a result, women are generally the most disadvantaged and remain at the lowest level of representation.

Including Dalit women in political activity is necessary to ensure that their interests are represented. Representatives of politically marginalized communities often claim to represent all constituents—including those with subordinate

¹⁵ Ibid.

¹⁶ "Dalits of Sri Lanka: Caste-Blind Does Not Mean Casteless." International Dalit Solidarity Network, 2008.

¹⁷ "Challenges for Dalits in South Asia's Legal Community." International Commission for Dalit Rights, December 2021.

¹⁸ "Dalits of Sri Lanka: Caste-Blind Does Not Mean Casteless."

¹⁹ Htun, Mala N., and Juan Pablo Ossa. 2013. "Political Inclusion of Marginalized Groups: Indigenous Reservations and Gender Parity in Bolivia." *SSRN Electronic Journal*: 4–25. <https://doi.org/10.2139/ssrn.2259289>

²⁰ Mügge, Liza M., and Silvia Erzeel. 2016. "Double Jeopardy or Multiple Advantage? Intersectionality and Political Representation." *Parliamentary Affairs* 69 (3): 499–511. <https://doi.org/10.1093/pa/gsv059>

identities. However, those claims may not be entirely true. Patriarchal controls are also at play in subjecting Dalit women's participation, mobility, and conduct to scrutiny. A 2019 study of the political representation of marginalized groups in India concluded that "Dalit women lack confidence and public exposure and there is also a sense of inferiority [compared to non-Dalits and men]. They perceive politics as a male domain and site of conflict, slander, and violence."²¹ It is also important to note that Dalit women are not a homogenous constituency. Even though they belong mainly to the laborer class, intra-group caste structures are essential determinants of the overlapping social and economic relations that are embedded in their daily lives and keeps them fragmented.

²¹ Mehrotra, Ishita. 2019. "Political Representation in Indian Democracy: A View from the Margins." *Journal of Social Inclusion Studies* 5 (1): 59–71. <https://doi.org/10.1177/2394481119859669>