

## Annex: Current Legal and Electoral Rights Frameworks for Dalits

India, Nepal, Bangladesh, Pakistan, and Sri Lanka have made formal commitments to uphold their Dalit communities' rights and privileges through international agreements and national laws. The specific obligations vary across countries. This section presents the legal frameworks for Dalit rights of inclusion and representation currently in effect. This discussion presents some critical features of the electoral and legal frameworks, although it is not exhaustive.

### International and Regional Human Rights Frameworks

International human rights instruments, including the Universal Declaration of Human Rights (UDHR),<sup>27</sup> International Covenant on Civil and Political Rights (ICCPR),<sup>28</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>29</sup> and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>30</sup> enshrine the principles of non-discrimination and political inclusion and the right to political participation. Having ratified those conventions, the South Asian countries discussed in this paper are obligated to respect, protect, and fulfill the human rights stemming from them.

### India's Legal Framework

India's Constitution,<sup>31</sup> ratified in 1950, was primarily influenced by the ideas of Dr. B. R. Ambedkar, the chairman of the constitutional drafting committee. A Dalit himself, Ambedkar was a strong advocate for inclusion and worked for the good of all Indian citizens.<sup>32</sup> India abolished the concept of "untouchability" through the 1950 Constitution and guaranteed the right to life and liberty, which the Indian Supreme Court has interpreted to include the right to freedom from degrading and inhuman treatment and the right to personal integrity and dignity.<sup>33</sup>

A party to both the CEDAW and the ICERD, India implemented the provisions applicable to Dalit communities and established constitutional bodies such as the National Commission for Scheduled Castes and Scheduled Tribes. The commission is in charge of promoting respect for the human rights of Dalits and tribal groups, monitoring and investigating the observance of those rights, and securing appropriate redress when they have been violated.

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<sup>27</sup> United Nations. 1948. "Universal Declaration of Human Rights." United Nations. United Nations. December 10, 1948.

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR). 2013. "International Covenant on Civil and Political Rights." Ohchr.org. United Nations Human Rights Office of the High Commissioner. 2013.

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>29</sup> UNITED NATIONS. 1966. "International Covenant on Civil and Political Rights." OHCHR. United Nations. December 16, 1966.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>30</sup> Ibid.

<sup>31</sup> "Constitution of India." n.d. <https://legislative.gov.in/constitution-of-india>

<sup>32</sup> "India for All: How Ambedkar Ensured the Constitution Is All Inclusive and Meant for Common Good." 2019. Edex Live. January 24, 2019. <https://www.edexlive.com/happening/2019/jan/24/india-for-all-how-ambedkar-ensured-the-constitution-is-all-inclusive-and-meant-for-common-good-5133.html>

<sup>33</sup> "Failure to Meet Domestic and International: Legal Obligations to Protect Dalits - Broken People: Caste Violence against India's 'Untouchables' (Human Rights Watch Report, 1999)." 2019. <https://www.hrw.org/reports/1999/india/India994-13.htm>.

India enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 and the Protection of Civil Rights Act in 1995, enhancing the legal framework for prohibiting caste discrimination. In addition, Ambedkar advocated for the Indian Parliament to introduce a system of reservations for jobs in the civil service, schools, and colleges for members of scheduled castes and tribes.<sup>34</sup> Among the reforms Ambedkar thought should be implemented to annihilate caste and improve lower-caste communities, the distribution of land to Dalits was fundamental.<sup>35</sup>

The original text of the Indian Constitution recognized the right to property as a fundamental right; however, Article 19(5) empowered the state to impose reasonable restrictions on this right in the general public's interest or to protect the rights of scheduled castes and scheduled tribes. Nonetheless, the 44th Constitutional Amendment Act of 1978 changed the fundamental right to property to a constitutional right, expanding the state's power to appropriate property for a social purpose by redistributing land to the landless people of India. The amendment was momentous in its broader significance for Dalit rights, as land ownership is fundamental to addressing the inequities that exacerbate barriers to free participation in economic, social, and political life.

India holds elections for members of Parliament, state legislative assemblies, state legislative councils, and municipal bodies. The electoral inclusion of Dalits in India was embedded in Ambedkar's negotiations with the central authorities in drafting the 1950 Constitution. Articles 243, 330, and 332 provide for the reservation of seats in those bodies for members of scheduled castes and scheduled tribes.<sup>36</sup> The reservation system was expanded to apply to central and state appointments of members of scheduled castes and tribes, providing an additional platform for representation in mainstream society.

India's reservation system grants scheduled castes and scheduled tribes reserved seats with joint electorates. This means that, in reserved constituencies, only candidates from scheduled castes or scheduled tribes can run for election, but voters from all groups can vote for them. From 1951 to 1961, these seats were seen as "extra" in some constituencies; after the passage of the Two-Member Constituencies (Abolition) Act in 1961, each constituency was assigned as open to all candidates or reserved only for those from scheduled castes and scheduled tribes.<sup>37</sup> Although this reservation system is the most extensive and longest-established electoral quota system, the full electoral inclusion of Dalits in India remains difficult. Quotas, such as the reservation system, are helpful to combat the systematic exclusion of Dalits from positions of power and break down stereotypes and social barriers between groups. However, change that benefits minority interests will more likely result from changes in political discourse than simply from using quotas in representation.<sup>38</sup>

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<sup>34</sup> Kumar, Kamal. 2014. "Indian Constitution: The Vision of B. R. Ambedkar." *IOSR Journal of Humanities and Social Science* 19 (3): 29–

36. <https://doi.org/10.9790/0837-19342936>

<sup>35</sup> "RAS | B R Ambedkar on Caste and Land Relations in India." n.d. Ras.org.in.

[http://ras.org.in/b\\_r\\_ambedkar\\_on\\_caste\\_and\\_land\\_relations\\_in\\_india](http://ras.org.in/b_r_ambedkar_on_caste_and_land_relations_in_india)

<sup>36</sup> "Selected Articles of the Indian Constitution - Broken People: Caste Violence against India's 'Untouchables' (Human Rights Watch Report, 1999)." n.d. [https://www.hrw.org/reports/1999/india/India994-15.htm#P2394\\_516084](https://www.hrw.org/reports/1999/india/India994-15.htm#P2394_516084).

<sup>37</sup> "Electoral Quotas as a Tool for Fighting Exclusion and Discrimination." 2016. Center for the Advanced Study of India. April 11, 2016. <https://casi.sas.upenn.edu/iit/francescajensenius>

<sup>38</sup> Ibid.

## Nepal's Legal Framework

As a state party to the legally binding UDHR, ICCPR, ICERD, and CEDAW, Nepal is obligated to respect and ensure the rights they enshrine for all individuals within its territory and subject to its jurisdiction. Furthermore, the 1990 Nepal Treaties Act stipulates the legal mechanism that binds the country's obligation to any international treaties it ratifies, explicitly stating that these should effectively be considered Nepali laws. In essence, any components of domestic laws that contradict ratified treaties shall be nullified. Thus, Nepal should implement the legislative, executive, or judicial tools at its disposal to honor its international obligations.

Nepal's commitment to economic, social, and cultural rights is also made explicit in its foundational legal frameworks. The 2015 Constitution<sup>39</sup> contains provisions for protecting individual rights, including freedom of speech and expression and the right to form unions and associations not motivated by politics, further cementing the government's obligation to ensure and promote those rights.<sup>40</sup> Articles 16 through 46 of the Nepali Constitution cover fundamental rights. These include the right to live with dignity; the right to freedom; the right to equality; the rights of Dalits; the right to social justice; the right not to be subjected to torture; and the right not to be subjected to untouchability and discrimination; and overall economic, social, and cultural rights.

Nepal has taken significant measures to make its legal system inclusive by ensuring the representation of the most marginalized communities and protecting the political and social rights of Dalits. Article 255 of the Constitution establishes the National Dalit Commission of Nepal, which conducts studies on, monitors, and formulates policies regarding the overall situation of the Dalit community. Article 40 ("Rights of Dalit") is a standalone article that protects the rights of Dalits. Among other provisions, Article 40 ensures the rights of Dalits:

- To participate in all state bodies on the basis of the principle of proportional inclusion, with special provisions for the empowerment, representation, and participation of the Dalit community in public services and other sectors of employment;
- To receive free education from primary to higher education, and technical and vocational education;
- To receive health services and social security; and
- To use, protect, and develop their traditional occupations, knowledge, skills, and technology.

Furthermore, Article 40 envisages special provisions regarding land: "The State shall once provide land to the landless Dalit and arrange settlement for the Dalit who do not have housing in accordance with the law." Also stipulated is just distribution that enables Dalits in all communities to obtain land proportionately to other populations.<sup>41</sup> The 2018 Lands (Seventh Amendment) Act provides a legal framework for implementing Article 40(5), which requires the provision of land to landless Dalits.<sup>42</sup>

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<sup>39</sup> The Constitution of Nepal Date of Publication in Nepal Gazette." 2015. <https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>

<sup>40</sup> "List of Multilateral Treaties to Which Nepal Is a Party and a Signatory Government of Nepal Ministry of Law, Justice and Parliamentary Affairs." 2018. <http://www.moljpa.gov.np/wp-content/uploads/2019/04/List-of-Multilateral-Treaties-Signed-by-Nepal.pdf>

<sup>41</sup> "The Constitution of Nepal Date of Publication in Nepal Gazette."

<sup>42</sup> "Nepal: Land for Landless Peasants Comments and Recommendations on Amendment to the Lands Act 1964." n.d. <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3112212019ENGLISH.pdf>

Nepal's history of oligarchies and patronage rule by royal elites and high-caste Hindus imposed acute social and political barriers to the upward mobility of Dalits and other marginalized communities. The 1990 Constitution, for instance, continued the exclusionary electoral system envisaged by the Panchayat regime (1960–1990), with Article 122(3) prohibiting the formation of any political party based on religion, caste, tribe, or religion.<sup>43</sup>

Since its first democratic elections in 1991, and particularly with the ratification of the 2015 Constitution, Nepal has made steady strides to ensure the political representation and participation of Dalits in electoral processes. The country's transition to a federal democratic republic localized inclusion. The introduction of a mixed electoral system—a combination of first-past-the-post and proportional representation, with distinctive inclusive treatment for minorities and women—demonstrated remarkable progress toward the realization of an inclusive electoral system. The Constituent Assembly swelled to 601 members after increasing the number of first-past-the-post seats from 205 to 240 to increase the representation of Madhesis<sup>44</sup>—indigenous inhabitants of the *terai* region who were historically excluded from political and electoral processes and who have had limited access to education, medical care, and economic opportunities.<sup>45</sup>

Nepal's Constitution also includes special provisions for the political representation and electoral inclusion of women and Dalits. Article 215(4) states that a village executive shall include four women, elected by the members from their number, as well as two members of Dalit or minority communities. Article 216(4) states that members of a municipal executive shall include five women elected by the members from their number and three members of Dalit or minority communities. Article 220(3) states that a district assembly shall elect a district coordination committee with a maximum of nine members, including one chief, one deputy chief, at least three women, and at least one Dalit or minority representative. Article 222(2) states that a village assembly shall consist of the chairperson and vice chairperson of the village executive committee, ward chairpersons, four members elected from each ward, and members of the village executive elected from the Dalit and minority communities.<sup>46</sup>

As a result of the proportional representation system, in 2017, Nepal's local, provincial, and federal elections marked a milestone for inclusive representation in the political and public spheres. Women comprised 41 percent of those elected to public office in local government units (approximately 14,000, including over 6,500 Dalit women). However, representation did not necessarily become meaningful at the decision-making level. Most Dalit women, for instance, occupy positions on ward committees but have limited representation at the mayor and deputy mayor levels.<sup>47</sup> Electoral quotas provide for increased inclusion of marginalized groups, such as Dalits and women politicians, that otherwise would not be represented at the same levels. However, loopholes in the legal framework relegate marginalized groups to secondary positions and exclude certain groups from competing for seats that are not

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<sup>43</sup> Ibid.

<sup>44</sup> Reynolds, Andrew. 2010. "Electoral Democratisation in Nepal." *Journal of Contemporary Asia* 40 (3): 509–19. <https://doi.org/10.1080/00472331003798517>

<sup>45</sup> "Background of the Terai's Madhesi People." 2007. *The New Humanitarian*. February 8, 2007. <https://www.thenewhumanitarian.org/report/70027/nepal-background-terais-madhesi-people>

<sup>46</sup> "The Constitution of Nepal Date of Publication in Nepal Gazette."

<sup>47</sup> "Electoral Provisions in the Constitution of Nepal and Some Relevant Information." The Election Commission of Nepal, 2016. <https://nepal.ec-undp-electoralassistance.org/wp-content/uploads/sites/16/2018/12/ec-undp-ift-nepal-resources-publications-electoral-provisions-in-constitution.pdf>

reserved through election quotas.<sup>48</sup> It is thus vital to highlight factors such as how political participation and representation have been enacted, the vested interests and demands at play, and the level of understanding and engagement within the political system.<sup>49</sup>

## Legal Frameworks in Bangladesh, Pakistan, and Sri Lanka

The Constitution of Bangladesh guarantees most of the civil and political rights under the ICCPR, including the right to equality before the law and equal protection of the law. Discrimination based on race, religion, caste, or sex is prohibited, and none of these factors can detrimentally affect life, liberty, body, reputation, or property. The Constitution also ensures equal opportunity in public employment. It sets out fundamental principles that require the state to ensure, among other rights, women's participation in national life, free and compulsory education, public health, equal opportunity, work as a right and duty, rural development, promotion of local government institutions, and respect for international law.<sup>50</sup> Articles 14, 28, and 29 provide for the advancement of disadvantaged groups with respect to the mandates of those provisions, although they do not define what such measures entail.

Pakistan's Constitution guarantees life and liberty to all persons, as well as fundamental human rights that include, among others, human dignity; freedom of movement, assembly, association, and speech; and ownership of property. Article 25 of the Constitution guarantees that all citizens are equal before the law and are entitled to equal protection. Articles 36 and 38 are the most relevant for scheduled castes and their rights. Article 36 states, "The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services." Article 38 says that the state shall "secure the well-being of people, irrespective of sex, caste, creed, or race by raising their standard of living."<sup>51</sup> The Constitution also states that access to public education and public entertainment, as well as the ability to be appointed in the service of Pakistan, should not be determined based only on race, religion, caste, sex, or place of birth.<sup>52</sup>

Like that of Bangladesh, Sri Lanka's Constitution guarantees that all persons are equal before the law and entitled to equal protection of the law. The Constitution also includes a provision against discrimination and restricted access to public places on the grounds of race, religion, language, caste, sex, political views, or place of birth. Moreover, the state ensures equal opportunities for all citizens regardless of race, religion, language, caste, sex, political views, or occupation.<sup>53</sup>

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<sup>48</sup> 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>

<sup>49</sup> Lijphart, Arend. 1969. "Consociational Democracy." *World Politics* 21 (2): 207–25. <https://doi.org/10.2307/2009820>

<sup>50</sup> "Bangladesh's Constitution of 1972, Reinstated in 1986, with Amendments through 2014." Constitute Project, 2021. [https://www.constituteproject.org/constitution/Bangladesh\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Bangladesh_2014.pdf?lang=en)

<sup>51</sup> "Pakistan's Constitution of 1973, Reinstated in 2002, with Amendments through 2015." Constitute Project, 2021. [https://www.constituteproject.org/constitution/Pakistan\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Pakistan_2017.pdf?lang=en)

<sup>52</sup> Ibid.

<sup>53</sup> "Sri Lanka's Constitution of 1978 with Amendments through 2015." Constitute Project, 2021. [https://www.constituteproject.org/constitution/Sri\\_Lanka\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Sri_Lanka_2015.pdf?lang=en)

Even when every citizen is accorded the same formal political rights—such as the right to vote, assemble, and run for office—political equality can remain out of reach. Other inequalities between groups persist, such as the distribution of economic and educational resources and positions of power sustained through informal relationships.<sup>54</sup>

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<sup>54</sup> Khanal, Krishna, Frits Sollewijn Gelpke, and Ubbhab Prasad Pyakurel. *Dalit Representation in National Politics in Nepal*. Nepal National Dalit Social Welfare Organisation. 2012. [http://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/Nepal/2013/Dalit\\_Representation\\_in\\_National\\_Politics\\_of\\_Nepal\\_-\\_2012.pdf](http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/Nepal/2013/Dalit_Representation_in_National_Politics_of_Nepal_-_2012.pdf)

